

(1996) 12 AHC CK 0008
In the Allahabad High Court
Case No : C.M.W.P. No. 4449 of 1996

Kalyan Chandra Srivastava

APPELLANT

Vs

Hon"ble Chief Justice, High Court and Others

RESPONDENT

Date of Decision : 17-12-1996

Acts Referred:

Allahabad High Court Officers and Staff (Conditions of Service and Conduct)
(Amendment) Rules, 1986 — Rule 20
Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules,
1976 — Rule 1, 20
Constitution of India, 1950 — Article 229, 229(2)

Citation : (1996) 12 AHC CK 0008

Hon'ble Judges : R.A. Sharma, J;D.K. Seth, J

Bench : Division Bench

Advocate : Sunil Ambwani, for the Appellant;

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Whether Rule 20 of Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 (hereinafter referred to as the Rules), as published vide Notification dated 13.12.1994 in the U.P. Gazette Extraordinary dated 16.12.1994, is illegal and ultra vires being inconsistent with and contrary to the Judges Committee's recommendations and the orders of Hon"ble the Chief Justice of this Court, is the question involved in this petition.

2. In 1961 Petitioner was appointed as Lower Division Assistant in High Court. In 1978 he was promoted as Upper Division Assistant. He appeared in the competitive examination held for selection of the Bench Secretaries and being successful, he was appointed as such on 7.2.1979. After completing ten years" service as Bench Secretary Grade II he was promoted on 15.6.1989 to the post of Bench Secretary Grade 1 in the pay scale of Rs. 2,000-3,500. On that post he was confirmed on 1.3.1992. Thereafter on 12.7.1995 he was promoted to the post of Bench Secretary (Senior Scale) in the pay scale of Rs. 3,000-4,500. On 24.7.1995 he was promoted as Assistant Registrar in the pay scale of Rs.

2,200-4,000. As the pay scale of Bench Secretary (Senior Scale) is higher than the pay scale of the Assistant Registrar, he raised objection against the said promotion and claimed that he is entitled to be promoted to the Post of Deputy Registrar. As Rule 20 after its amendment by Notification dated 13.12.1994 published in the U.P. Gazette Extraordinary dated 16.12.1994 (hereinafter referred to as the Notification) has excluded the Bench Secretaries from the eligibility list for appointment to the post of Deputy Registrar, he filed a representation before Hon"ble the Chief Justice for appropriate relief. Not having secured the desired relief, he has filed this writ petition challenging the validity of Rule 20. Incidental and consequential reliefs, including fixation of his seniority, have also been claimed.

3. The parties have exchanged affidavits. We have heard Sri. Sunil Ambwani learned Counsel for the Petitioner, learned standing counsel, Sri. S.C. Budhwar and Smt. Poonam Srivastava learned Counsel for the Respondent. We have also heard Sri. Rakesh Dwivedi, learned Additional Advocate General.

4. Learned Counsel for the Petitioner has raised a number of contentions, but it is not necessary to deal with and decide all of them, as we propose to allow this writ petition on his first submission. His first submission is that Rule 20 is illegal and ultra vires, because it is inconsonant with and contrary to the orders of Hon"ble the Chief Justice. From comparison of the Judges Committee's report and the orders of Hon"ble the Chief Justice accepting the same with Rule 20, it is apparent that there is material difference between the two. We, therefore, on 17.9.1996 directed the Registrar of this Court to produce the file containing the original relevant record. The record was placed before us on 18.9.1996. As Sri. Rakesh Dwivedi learned Additional Advocate General wanted time to go through the original record, we directed the case to be put up on the next day. On the next date we heard the learned Counsel for the parties on the first question regarding the unauthorised amendments of Rule 20 by the Notification. From perusal of the original record, it became apparent that many posts have been included in Rule 20 for appointment to Class I posts in the establishment of this Court, although there is neither any recommendation of the Judges Committee nor is there any order of Hon"ble the Chief Justice for their inclusion. The said Rule has also excluded the Bench Secretaries from the eligibility list for appointment to the post of Deputy Registrar, in spite of the Judges Committee's report as accepted by Hon"ble the Chief Justice for their inclusion. Sri. Rakesh Dwivedi, learned Additional Advocate General has also stated that the Notification containing the amended Rule 20 is ultra vires, because it has included many posts and excluded the Bench Secretaries without there being any recommendation of the Judges Committee and the orders of Hon"ble the Chief Justice for their inclusion/exclusion. After hearing the learned Counsel for the parties, we reserved the judgment.

5. As the writ petition did not contain appropriate pleadings regarding the unauthorised amendment of Rule 20 and the learned Counsel for the Petitioner

has built his arguments on the basis of the counter-affidavit filed by the Registry of this Court and the Judges committee's report and the orders of Hon''ble the Chief Justice filed along with it, we considered it appropriate that the Registry should be given another opportunity to produce in support of Rule 20 any other report and the orders of the Hon''ble the Chief Justice, if any permitting such drastic changes. Therefore, on 27.9.1996, we passed an order, relevant extract from which is reproduced below:

From perusal of the report dated 6.10.1994 of the Three-Judges Committee (hereinafter referred to as the Committee) recommending amendment of Rule 20 of the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 (hereinafter referred to as the Rules) which relates to the promotion to Class I posts in this Court, as accepted by Hon''ble the Chief Justice on 10.11.1994 and the final Notification dated 13; 12.1994 containing the amended Rule 20 as published in the U.P. Gazette dated 16.12.1994 (hereinafter referred to as the Notification), we find that there is inconsistency between the two. This is clear from the following:

(a) Assistant Registrar (i) In the notification for promotion to the post of Assistant Registrar Permanent Officer on Special Duty, Permanent Public Relation Officers and Permanent Section Officer (Cash) have been made eligible, although there was neither any recommendation of the Committee nor there appears to be any order of Hon''ble the Chief Justice to that effect. (ii) The Committee recommended 15 percent quota for the permanent private Secretaries including Assistant Principal Private Secretary for promotion to the post of Assistant Registrar, but the notification does not contain any such provision. (iii) The quota fixed for permanent Bench Secretaries for promotion to the post of Assistant Registrar by the Committee was 15 percent, but the notification has raised it to 20 percent without recommendation of the Committee and the order of Hon''ble the Chief Justice. (iv) The quota of Section Officers of General Office was fixed at 70 percent by the Committee, but the same has been raised to 80 percent in the notification. (v) The word "permanent has been added before "Section Officers" though the Committee recommended "Section Officer" for promotion.

(b) Principal Private Secretary to the Hon''ble Chief Justice/ Head Private Secretary (i) The Committee recommended the appointment to the post of Principal Private Secretary to the Hon''ble the Chief Justice/Head Private Secretary by way of promotion from the Assistant Registrar, but the notification has completely changed the system by providing for appointment to those posts by promotion of permanent Private Secretaries including Assistant Principal Private Secretary to Hon''ble the Chief Justice. (ii) That apart, the same channel for appointment has been provided to the post of Private Secretary, even though no such recommendation was made by the committee.

(c) Deputy Registrar (i) The Committee recommended by promotion from the Assistant Registrar, but "Permanent Private Secretary including Assistant

Principal Private Secretary (2.0 percent)" has been added while the quota of Assistant Registrars has been shown at 80 percent though by implication the same would be 70 percent. (ii) Although the Committee recommended 15 percent quota to the Bench Secretaries Grade I for promotion by transfer to the post of Deputy Registrar, but the notification has deleted the same and there does not appear to be any order of Hon''ble the Chief Justice, justifying the said deletion. (iii) The Committee recommended promotion of Principal Private Secretary/Head Private Secretary, provided that the post is available in his quota. But in the notification "Private Secretary in the same pay scale as Principal Private Secretary" has been included though not recommended by the Committee.

(d) Joint Registrar Proviso has been added to Clause (d) of Rule 20 pertaining to the promotion to the Post of Joint Registrar without there being any recommendation of the Committee and the order of Hon''ble the Chief Justice to that effect.

(e) Additional Registrar No amendment was recommended for the post of Additional Registrar by the Committee, but the proviso has been added to Rule 20(e) pertaining to the Additional Registrar without any recommendation of the Committee and order of Hon''ble the Chief Justice. The Registry, therefore, has to explain the reasons for addition/deletion in the notification and it has also to produce the report of the Committee and the order of Hon''ble the Chief Justice permitting such drastic changes. We, therefore, direct the Registrar to file an affidavit within three weeks explaining the inconsistency between the Committee's report as accepted by Hon''ble the Chief Justice and the notification. He will also file the further recommendation of the Committee and the order of Hon''ble the Chief Justice, if any, authorising the aforesaid changes in the notification.

We also permitted the Petitioner to amend the writ petition by making proper pleadings in support of the first contention raised on his behalf. Thereafter the Registry has filed supplementary counter-affidavit. Affidavits have also been filed by other Respondent and the Petitioner has filed rejoinder-affidavit in reply thereto. Thereafter we have heard the learned Counsel for the parties again. We also heard Sri. A.K. Yog who for the first time appeared before us on behalf of the High Court.

6. In view of the provisions contained in Article 229 of the Constitution, the Chief Justice is the appointing authority of the officers and servants of the High Court. Under Article 229(2), the Chief Justice has been empowered to frame Rules regulating conditions of service of the officers and servants of the High Court subject to the condition that so far as they relate to the salary, allowances, leave or pension, approval of the Governor has to be obtained. Under the said provisions, the Chief Justice has framed Rules known as the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976.

7. Rule 20 has laid down the source of recruitment of various class I posts in the establishment of the High Court. The Principal Private Secretary to the Hon''ble the Chief Justice, Deputy Registrar, Joint Registrar, Additional Registrar and the Registrar are the posts mentioned in the said Rule 20. Rule 20 as it stood before its amendment on 1st November, 1986. was as under:

20. The source of recruitment to the various class I posts in the establishment shall be as follows:

(a) Principal Private Secretary to Chief Justice By promotion of Permanent Private Secretary, including Assistant Principal Private Secretary to Chief Justice.

(b) Deputy Registrar (i) By promotion from amongst Permanent Section Officers of General Office and Permanent Bench Secretaries Grade I and Permanent Private Secretaries, including Assistant Principal Private Secretary; and (ii) By transfer of Principal Private Secretary: Provided that the promotion shall be so regulated that at no time more than 30 percent of the total number of the posts of Deputy Registrars are held by persons promoted from amongst Private Secretaries including Assistant Principal Private Secretary and Principal Private Secretary.

(c) Joint Registrar By deputation of an officer of the U.P. Higher Judicial Service.

(d) Additional Registrar By deputation of an officer of the U.P. Higher Judicial Service.

(e) Registrar By deputation of an officer from amongst District and Sessions Judges.

According to the aforesaid Rule, Permanent Bench Secretaries Grade I, Permanent Private Secretaries and Permanent Section Officers of General Offices were eligible for promotion to the post of Deputy Registrar. This Rule was amended from time to time, but in all those amendments Permanent Bench Secretaries Grade I continued to remain eligible for promotion to the post of Deputy Registrar. The Hon''ble Acting Chief Justice, vide order dated 23.12.1993 amended Rule 20(c) which relates to the appointment/promotion to the post of Joint Registrar, so as to make the Principal Private Secretary, Head Private Secretary and Private Secretaries eligible for promotion to the post of Joint Registrar. Rule 20(c) as amended with effect from 23.12.1993, is reproduced below:

2 (c) Joint Registrar By deputation of an officer of the U.P. Higher Judicial Service and by promotion from amongst the Deputy Registrars including Principal Private Secretary/Head Private Secretary in the same pay scale as Principal Private Secretary purely on merit.

8. After the aforesaid amendment was published, the employees of various categories of this Court raised serious objections against it and requested the Chief Justice for its deletion. Hon''ble the Chief Justice appointed a Three-Judges

Committee consisting of Hon''ble U.P. Singh, Hon''ble A.K. Banerji and Hon''ble I.P. Vashishtha, JJ., for considering the whole matter and recommending the amendment of Rule 20, if found necessary. The Committee heard the representatives of various categories of the employees of this Court including certain individuals In connection with the appointment/promotion to the posts referred to in Rule 20. The representatives of Bench Secretaries also submitted their detailed representation and they were also heard by the Committee. The Committee considered the whole matter in details and submitted its report dated 6.10.1994 consisting of 21 pages. The Committee noted in its report that although the Hon''ble Chief Justice has the authority under Article 229 of the Constitution to frame Rules, but various incumbents holding the said high office had always adopted consultative process and have acted in accordance with the principle of equity, fair play and good conscious while handling sensitive issues of Service Rules. The Committee, therefore, did not appreciate the amendment of Rules made in December, 1993 by Hon''ble the Acting Chief Justice, without consulting the representatives of the other employees. In this connection, the Committee observed as under:

Power and competence of Hon''ble Chief Justice in formulating service rules for the employees of the High Court establishment by virtue of Article 229 of the Constitution of India needs no emphasis. In a manner of speaking, he enjoys unqualified and exclusive authority. But as the patriarch of the Institution, he is also conscious of the time-honoured conventions, practice and prudence and generally abides by the principles of equity, fair play and good conscience with the object of streamlining the administrative aspect of the High Court. Thus, while dealing with the employees, he is usually committed to the ethos and high ideals of his calling; after all this Institution has a public accountability and is, therefore, required to be transparent in its conduct. It is unacceptable that any Chief Justice did or would ever exercise his powers in an arbitrary manner and that, perhaps, explains the consultative process adopted by the various incumbents in handling the sensitive issue of Service Rules.

In the instant case also, even though the Rules were initially formulated in the year 1975 and were updated by way of amendments, including additions and deletions, at various stages to meet the competing and ambitious claims of different categories of employees, yet the cardinal principle of equity and fair play was always kept in view. It would not be wrong to say that there has been a consistent practice of examining the proposed amendments with all their possible ramifications before acceptance by the Hon''ble Chief Justice. Such scrutiny was either done in the Registry or by consultative Committees comprising of the Hon''ble Judges. But somehow or the other, the December, 1993 amendment appeared on the Statute Book all of a sudden in late February, 1994. It was neither examined in the office nor ever placed before any Hon''ble Judge for his views. To put it in plain words, some employees made direct approach to the then Hon''ble Acting Chief Justice who in his magnanimity and wisdom ordered for the amendment, probably without appreciating that it had for reaching effects

and could even Jeopardize the service careers of a large number of employees. The direct beneficiaries of this amendment were the Secretaries.

It may be worthwhile to mention here that the earlier Rules which were thus tampered with by this amendment, were devised and incorporated on the recommendations of a Judges Committee and were ultimately sustained on the Judicial side after being challenged by a section of the disgruntled employees.

9. The Committee proposed some amendments in Rule 20. In this connection, the last paragraph of its report containing the proposed amendment is reproduced below:

To sum up our aforesaid exploration on the various aspects of the issue, we, therefore, propose to amend and substitute the existing Rule 20 in the following terms:

1. (a) Assistant Registrar By promotion from amongst Section Officers of General Office (70 percent), Permanent Bench Secretaries Grade 1 (15 percent) and Permanent Private Secretaries including Assistant Principal Private Secretary (15 percent). In case of a fraction of a post, the matter as to whom it should go, shall rest with the Chief Justice.

(b) Principal Private Secretary to Chief Justice/Head Private Secretary. By promotion from the Assistant Registrars.

(c) Deputy Registrar (i) By promotion from the Assistant Registrars: (ii) By transfer of Principal Private Secretary/Head Private Secretary Provided that the Post is available in his own quota. Bench Secretaries Grade I (15 percent) and Permanent Private Secretaries including Assistant Principal Private Secretary (15 percent).

(d) Joint Registrar By deputation of an officer of the U.P. Higher Judicial Service or by promotion from amongst the Deputy Registrars on merit-cum-seniority basis.

Notwithstanding anything contained hereinbefore, the Incumbent to the post of Joint Registrar must be a law graduate of a recognised University.

The new Rule 20 which would come in force on its publication In the Official Gazette governs only the future appointments.

Sd./I.P.V.,J., Sd./A KB. J., Sd./ U.P.S.J., 6.10.94.

The Hon''ble Chief Justice vide Order dated 14.11.1994 accepted the said report of the Committee with a light modification regarding the appointment to the posts of Assistant Registrar and the Joint Registrar. So far as the report of the Committee regarding the promotion to the post of Deputy Registrar was concerned, it was accepted by the Hon''ble Chief Justice without any modification. The order of the Hon''ble Chief Justice dated 14.11.1994 is reproduced below:

The posts of Assistant Registrar as mentioned in Clause (a) Rule 1 have to be

created by the Government. This clause will, therefore, come into operation only after requisite sanction regarding creation of such posts is received from the Government

The proviso to Clause (d) prescribing degree of law to be the minimum "A" qualification for the post of Joint Registrar will come into operation after expiry of three years, that with effect from January 1, 1998.

With these two modifications, this report is accepted. Let it be implemented accordingly.

Sd./

14.11.94

Hon"ble the Chief Justice passed the aforesaid order regarding the posts of Assistant Registrars, because these posts were not available till then. In paragraph 23 of the writ petition, it has been stated that the State Government sanctioned ten posts of Assistant Registrars in February, 1995. The earlier order of Hon"ble the Chief Justice dated 14.11.1994 regarding date of enforcement of the proviso to Clause (d) as proposed by the Judges Committee was modified by him subsequently by the following order dated 18.12.1994. Making it effective from the date of the Notification:

Now in view of the amended rule, the proviso to Clause (d) as mentioned at A" shall come into effect from the dale of notification.

10. For enforcing the aforesaid amendments of Rule 20, a notification containing the said amendment was required to be published in the U.P. Gazette. This was the Ministerial Act and was to be performed by the Registry of the Court. The Registry prepared the Notification dated 13.12.1994 containing amended Rule 20 and the same was published in U.P. Gazette Extraordinary dated 16.12.1994. The said notification is reproduced below:

Substitute the following for the existing Clauses (a) to (e) of Rule 20: (a) Assistant Registrar-By promotion from amongst Permanent Section Officers (General Office), Permanent Officer-on-Special Duty, Permanent Public Relation Officers and Permanent Section Officers (Cash) (80 per cent), Permanent Bench Secretaries Grade I (20 per cent).

In case of fraction of a post, the matter as to whom it should go shall rest with the Chief Justice.

(b) Principal Private Secretary to Chief Justice/Head Private Secretary-Private Secretary in the same pay scale as Principal Private Secretary and Joint Principal Private Secretary-By promotion of a Permanent Private Secretary including Assistant Principal Private Secretary to the Chief Justice.

(c) Deputy Registrar-

(i) By promotion from the Assistant Registrars (80 per cent), Permanent Private

Secretary including (20 per cent) and

(ii) By transfer of Principal Private Secretary, Head Private Secretary or Private Secretary in the same pay scale as Principal Private Secretary provided that the post is available in his own quota.

(d) Joint Registrar-By deputation of an Officer of the U.P. Higher Judicial Service or by promotion from amongst the Deputy Registrars on merit-cum-seniority. Notwithstanding anything contained hereinbefore, the incumbent to the post of Joint Registrar must be a Law Graduate of a recognised University.

(e) Additional Registrar-By deputation of an Officer of U.P. Higher Judicial Service:

Provided that appointment to the post of Additional Registrar created and sanctioned by the Government, vide its G.O. No. 2693/VII-Nyay-1-60/90, dated December 31, 1993, for High Court Staff may be made from amongst the Joint Registrars of High Court's establishment purely on merit by the Chief Justice.

(f) Registrar-By deputation of an Officer from amongst District & Sessions Judges.

Note:

(A) These amendments will come into force with effect from the date of publication in the Official Gazette.

(B) The amended Clauses (a) and (c) to Rule 20 will come into operation only after requisite sanction regarding creation of the posts of Assistant Registrars is received from the Government.

By order of Hon"ble the Chief Justice. Sd./ Illegible Registrar.

11. But the amended Rule 20 contains many things including the various posts which were neither proposed by the Judges Committee nor was there any order of Hon"ble the Chief Justice for their inclusion. The said Rule has also excluded the Bench Secretaries from the list for appointment to the post of Deputy Registrar. The Chart below indicates the difference between what was proposed by the Judges Committee on 6.10.1994 as accepted by Hon"ble the Chief Justice and what is contained in the amended Rule 20 published by the Notification:

Rule 20: Amendment of Rule 20 proposed by the Judges Committee as accepted by Hon"ble the Chief Justice. Amendment of Rule 20 as contained in Notification dated 13.12.1994. The underlined portions of Rule have neither been proposed by Judges Committee nor approved by Hon"ble the Chief Justice.

(a) Assistant Registrar By promotion from amongst Section Officers of General Office (70 per cent), Permanent Bench Secretaries Grade I (15 per cent) and Permanent Private Secretaries including Assistant Principal Private Secretary (15 per cent). In case of a fraction of a post the matter as to whom it should go, shall rest with the Chief Justice. By promotion from amongst Permanent Section Officers (General Office) Permanent Officer-on-Special Duty, Permanent Public Relation Officers and Permanent Section Officers (cash) (80 per cent). Permanent

Bench Secretaries Grade I (20 per cent). In case of a fraction of a post the matter as to whom it should go, shall rest with the Chief Justice.

(b) Principal Private Secretary to Chief Justice Secretary By promotion from the Assistant Registrars. Private Secretary in the same pay scale as Principal Private Secretary and Joint Principal Private Secretary. By promotion of a Permanent Private Secretary including Assistant Principal Private Secretary to the Chief Justice.

(c) Deputy Registrar (i) By promotion from the Assistant Registrars. (ii) By transfer of Principal Private Secretary/Head Private Secretary: Provided that the Post is available in his own quota. Bench Secretaries Grade I (15 per cent) and Permanent Private Secretaries including Assistant Principal Private Secretary (15 per cent). (i) By promotion from amongst the Assistant Registrars (80 per cent). Permanent Private Secretaries including Assistant Principal Private Secretary (20 per cent). and (ii) By transfer of Principal Private Secretary/head Private Secretary or Private Secretary in the same pay scale as Principal Private Secretary provided the post is available in his own quota.

(d) Joint Registrar By deputation of an Officer of the U.P. Higher Judicial Service or by promotion from amongst the Deputy Registrars on merit-cum seniority basis. Notwithstanding anything contained herein before the incumbent to the post of Joint Registrar must be a Law Graduate of a recognised University. By deputation of an officer of the Higher Judicial Service or by promotion from any of the Deputy Registrars on merit-cum seniority. Notwithstanding anything contained herein before the incumbent to the post of Joint Registrar must be Law Graduate of a recognised University: Provided, however, that in an appropriate case the Chief Justice may relax the qualification of a degree in Law.

(e) Additional Registrar By deputation of an Officer of U.P. Judicial Service: Provided that appointment on the post of Additional Registrar created and sanctioned by the Government vide its G.O. No. 2692-WI. No. 1- (9)90, dated December 31, 1993 for High Court staff may be made from amongst the Joint Registrars of High Court's establishment purely on merit by the Chief Justice.

(f) Registrar By deputation of an Officer from amongst District and Sessions Judges. Note. (A) These amendments will come into force with effect from the date of publication in the Official Gazette. (B) The amended Clauses (a) and (c) to Rule 20 will come into operation only after requisite sanction regarding creation of the posts of Assistant Registrars is received from the Government.

The new Rule 20 which would come in force on its publication in the Official Gazette governs only the future appointments.

12. Under Article 229(2) of the Constitution of India, the Rules regulating the conditions of Service of the officers and servants of the High Court, can be framed by the Chief Justice or by some other Judge or Officer of the Court authorised by him. There is no dispute that in this Court, Rules have been

framed by Hon''ble the Chief Justice and he has not authorised any Judge or the Officer of the Court to make or amend the Rules. The Hon''ble the Chief Justice merely constituted the aforementioned Committee of three Hon''ble Judges to submit its proposal for amendment of Rule 20. The said Committee submitted its proposal dated 6.10.1994 which was accepted by Hon''ble the Chief Justice on 14.11.1994. Hon''ble the Chief Justice vide order dated 18.12.1994 modified his order dated 14.10.1994 providing for enforcement of the proviso to Clause (d) relating to the post of Joint Registrar. The original file neither contains any other report of the Judges Committee nor Is there any order of Hon''ble the Chief Justice permitting/ approving the amendments underlined by us, the detail of which Is contained In our order dated 27.9.1996, the relevant extract of which has been quoted before. The unauthorised amendment, therefore cannot be sustained.

13. In paragraphs 9 and 17 of the counter-affidavit filed on behalf of the High Court, it has been stated that Hon''ble the Chief Justice appointed a Committee comprising of three Hon''ble Judges, which submitted their report dated 6.10.1994 proposing the amendment of Rule 20 which was accepted by Hon''ble the Chief Justice vide orders dated 14.11.1994 and 18.12.1994. Copies of the said report and the orders of Hon''ble the Chief Justice have been filed as Annexures 1 and 2 to the affidavit. It has further been stated therein that the Rule which has been amended in accordance with the report of the Judges Committee dated 6.10.1994, has excluded the Bench Secretaries from the eligibility list for promotion to the post of Deputy Registrar. When this case was taken up for hearing an earlier occasion, we pointed out to the learned Counsel for the High Court and Sri. Rakesh Dwivedi learned Additional Advocate General, U.P. about the Inconsistency between the Judges Committee report as accepted by Hon''ble the Chief Justice and Rule 20 as published vide Notification dated 13.12.1994. Thereafter, as mentioned before, an opportunity was given lo the Registry of this Court by our order dated 27,9.1996, to explain and Justify the inconsistency between the two. Thereafter a supplementary counter-affidavit has been filed on behalf of the High Court in which the Registry has changed its stand. The said affidavit contains the following averments:

After Hon''ble the Chief Justice on 14.11.1994 has accepted the Judges Committee's report dated 6.10.1994, Sri. Sushil Kumar, the then Officer-on - Special Duty (hereinafter referred to as O.S.D.) submitted a proposal on the next date, i.e., 15.11.1994 before the Registrar for selecting two out of twelve Deputy Registrars for promotion to the post of Joint Registrars on merit-cum-seniority basis. The Registrar on 15.11.1994 itself forwarded the said report to the Hon''ble the Chief Justice. On the same date, Hon''ble the Chief Justice passed the following order on the last page of O.S.D.'s report: Lay before Hon''ble U.P. Singh, A.K. Baneiji and I.P. Vashishtha, JJ.

15.11.1994.

On 10.12.1994 the Judges Committee recommended the following proposal

regarding promotion to the post of Joint Registrar:

Hon"ble Chief Justice.

Proposal for promotion will now be taken up in accordance with the amended Rules enclosed herewith.

On the said report of the Judges Committee, the Hon"ble the Chief Justice on 10.12.1994 passed the following order on page 22 as no space was available on page 24 which is the last page of O.S.D's. report:

Now in view of the amended Rule, the proviso to Clause (d) as mentioned at "A" shall come into effect from the date of notification. Sd./- 10.12.1994

The High Court record contains typed copy of the amended Rule 20, each page of which has been initialled by Hon"ble U.P. Singh, J., who was senior Judge of the Three Judges Committee. In paragraph 14 of the said affidavit, It has been stated that "after obtaining approval (as indicated above) from the then Hon"ble Chief Justice (in accordance with the subsequent recommendation of the Committee), copies of the notification (under the signature of Shri S. Kumar, O.S.D.) appears to have been prepared and number (60) and date (Le., December 13, 1994) was put on them." In paragraph 15 of the same affidavit, it has further been stated that some official of the Registry dealing with file of Amendment Section has un-authorisedly put the number and the date in the draft which was initialled by the senior member of the Committee.

14. According to the Registry, the aforementioned proposal of the Judges Committee dated 10.12.1994 given on the report of O.S.D. dated 15.11.1994 for promotion of the post of Joint Registrar is the recommendation for making further amendments in Rule 20, because the said proposal states that the proposal for promotion will be considered "in accordance with the amended Rules enclosed herewith" and the Rules enclosed therewith were the impugned Rules contained in the Notification which was also approved by Hon"ble the Chief Justice. This stand of the Registry has to be rejected for the following reasons:

(i) O.S.D. had no business to mutilate or alter the draft or to suggest any amendment while forwarding the draft notification of the amendment of Rule 20. He was to perform only ministerial part for publishing the amended Rule 20. This is also not an accepted procedure for proposal or suggestion to amend the Rule. After 14.11.1994, there was no proposal or suggestion for further amendment of Rule 20 before Hon"ble the Chief Justice or the Judges Committee. There could not be, in such circumstances, any occasion for applying heir mind to any such proposal either by the Judges Committee or Hon"ble the Chief Justice.

(ii) The Judges Committee has given its proposal dated 10.12.1994 on the O.S.D's. report dated 15.11.1994 relating to the promotion to the post of Joint Registrar. Therefore, the Committee's report has to be confined to the matter regarding which recommendations have been made by the O.S.D., viz., promotion to the post of Joint Registrar. It cannot be construed so as to cover

the amendment of the Rules. Even the Judges Committee does not say anything about the further amendments of Rule 20.

(iii) There was no occasion for the Judges Committee" to consider the question of further amendment of Rule 20, because Its proposal dated 6.10.1994 for amending Rule 20 has already been accepted by Hon"ble the Chief Justice on 14.11.1994. Moreover, there was neither any such proposal before the Committee nor was it seized of such a question. On 10.12.1994 only the proposal for promotions of two out of twelve Deputy Registrars to the post of Joint Registrar, was there before it.

(iv) Although the O.S.D's. report dated 15.11.1994 for promotion to the post of Joint Registrar mentions that "the draft amending the said Rule 20(c) is also placed below for kind approval." but neither such a draft was placed below the said report nor was it enclosed along with it. Such a draft is also not in the original record and it has also not been filed along with the counter and supplementary counter-affidavits filed by the Registry. In fact neither any reference about it has been made by the Registry in the aforesaid affidavits nor has it been relied upon by the learned Counsel for the High Court during the course; of arguments. Therefore, even the alleged draft for amending Rule 20(c) was also not there before the Committee. In any case, O.S.D's. alleged proposal was for amendment of Rule 20(c) which, at that time related to the post of Joint Registrar. The question of consideration of further amendments of Rule 20 by the said Committee did not arise.

(v) In paragraph 13 of the supplementary counter-affidavit, it has been stated that in the record of the High Court there is typed copy of the amended Rule 20 which has been initialled by Hon"ble U.P. Singh, J., senior Member of the Committee. But the original record does not contain the amended Rule 20 and what it contains is only a typed copy of the impugned Notification No. 60 dated 13.12.1994 containing the amended Rule 20, each page of which has been initialled by Hon"ble U.P. Singh, J. The said Notification has been signed by the Registrar of tills Court and it also contains forwarding note, signed by Shri Sushil Kumar, the then O.S.D. forwarding the same for information and necessary action to the Director. Printing & Stationery, U.P., Allahabad, for publication in the Gazette and all the officers of the Court including the Lucknow Bench. It is this Notification which has been published in the U.P. Gazette dated 13.12.1994. According to paragraph 14 of the supplementary counter-affidavit, copy of the said Notification was prepared, numbered and dated after the order of Hon"ble the Chief Justice dated 10.12.1994. According to the same affidavit Hon"ble the Chief Justice passed the order dated 10.12.1994 after the proposal of the same date of the Judges Committee. If that is so, the question of said Notification "being enclosed" along with Committee's proposal dated 10.12.1994, does not arise, because till then it did not exist. For the same reason the question of its approval by Hon"ble the Chief Justice also did not arise. There is no averment that Hon"ble the Chief Justice approved the impugned Rule thereafter. The

averment in paragraph 15 of the supplementary counter-affidavit to the effect that some official of the Registry has unauthorisedly put the number and the date on the Notification is an afterthought and cannot be believed. In fact, what appears to us is that the amended Rule, draft of which was prepared in accordance with Judges Committee's report dated 6.10.1994, as accepted by Hon''ble the Chief Justice, has been replaced subsequently by the typed copy of the impugned Notification on which initials of the senior Member of the Committee have been obtained by some official of the Registry on some false pretext. May be, that the initials of the Senior Judge were obtained under the pretext that the Notification should contain the signature of the Senior Judge before sending it to the Government press for publication.

Whenever, Judges Committee submits any report/proposal to Hon''ble the Chief Justice its last page is always signed by all the member-Judges. The last page of the Committee's earlier report dated 6.10.1994 containing the proposal for amendment of Rule 20, was signed by all the three member-Judges. In the instant case, the Notification containing the amended Rule 20 has not been signed by all the three Hon''ble Judges.

(vi) It is admitted that the amendments in Rule 20 contained in the Notification have been made without adopting the consultative process, i.e., without hearing the representatives of various categories of the employees. It is not possible to believe that same Judges Committee which has criticised in its report dated 6.10.1994 (relevant extract of which has been reproduced before) the amendment of Rule 20 made in December, 1993 by Hon''ble the Acting Chief Justice on the ground that the same was done without adopting consultative process, will itself recommend the amendment of the same Rule 20 without consulting and hearing the representatives of various groups of the employees of this Court.

(vii) The Judges Committee's earlier proposal dated 6.10.1994 for amendment of Rule 20 consists of 21 pages and contains reasons as well as discussions of various aspects highlighted by the representatives of various groups of the employees of this Court. It cannot be believed that the same Committee will propose the further amendments of Rule 20 by a non-speaking proposal and that too without adopting the consultative process.

(viii) Presuming that the Judges Committee's proposal dated 10.12.1994 consisting of one and half lines can be treated to be a proposal for drastic amendments of Rule 20, there is no order of Hon''ble the Chief Justice accepting/approving the same. The only order which Hon''ble the Chief Justice passed after 14.11.1994 (whereby the Judges Committee's report dated 6.10.1994 was accepted) is an order dated 18.12.1994 which is again reproduced below:

Now in view of the amended rule, the proviso to Clause (d) as mentioned at "A" shall come into effect from the date of notification.

This order has been passed by Hon''ble the Chief Justice on page 22 of the

original record on which there is also his earlier order dated 14.11.1994. By the order dated 18.12.1994, the Hon"ble the Chief Justice has only modified his earlier order dated 14.11.1994 regarding enforcement of the proviso to Clause (d) marked as "A". The word "A" has been written in red ink by Hon"ble the Chief Justice himself in the margin, which we have already reproduced before. Therefore, the order dated 18.12.1994 cannot be co-related to the proposal dated 10.12.1994 of the Committee and cannot be construed as an order approving the further amendments of the Rule. In this connection. It may also be mentioned that in the supplementary counter-affidavit, it has been stated that the aforesaid order dated 18.12.1994 has been passed by Hon"ble the Chief Justice on page 22, because on page 24 which is the last page of the O.S. Ds." report dated 15.11.1994 on which the Judges Committee's proposal dated 10.12.1994 is there, no space was left. Such an inference is unjustified for two reasons, firstly, the earlier order of Hon"ble the Chief Justice dated 14.11.1994 was not passed on page 21 which was the last page of Judges Committee's report dated 6.10.1994, but was passed on a separate sheet of paper which was numbered as page 22. Why such a procedure was not adopted while dealing with the proposal of the Judges Committee dated 10.12.1994, has not been explained ; and secondly, the Chief Justice by order dated 10/18.12.1994 has only modified a part of his earlier order dated 14.11.1994 which is on page 22 and which relates to the enforcement of the proviso to clause Id) and has been shown by vertical line In red ink and marked as "A" by the then Hon"ble the Chief Justice himself. By no stretch of imagination, the latter order of Hon"ble the Chief Justice can be presumed to have approved the unauthorised amendments contained in the Notification. Here it may also be mentioned that the second order of Hon"ble the Chief Justice is dated 18.12.1994 and is not of 10.12.1994. In the counter-affidavit filed on behalf of the High Court, it has been stated that the latter order of Hon"ble the Chief Justice is of 18.12.1994. In the supplementary counter-affidavit, the Registry has changed its version by stating that the latter order is of 10.12.1994 and not of 18.12.1994. From perusal of the original record, to us it appears to be an order of 18.12.1994. But we need not express any final opinion on this question, because it is not necessary for us to decide this issue for resolving the controversy in this case.

15. It is quite apparent that Rule 20 has been amended in a manner and to the extent not authorised by Hon"ble the Chief Justice. The unauthorised amendments have been incorporated in Rule 20 by some officials of Registry for obvious reasons, because some of them could not have been considered for promotion to Class I posts if the Rule 20 was amended in accordance with Judges Committee's report as accepted by Hon"ble the Chief Justice. Sri. Rakesh Dwivedi, learned Additional Advocate General has frankly conceded while arguing on 19.9.1996, that it is not possible for him to justify the Notification containing the amended Rule 20, because there is neither any report of the Committee nor is there any order of Hon"ble the Chief Justice in support of many of the amendments incorporated in the said Rule. He has further stated that the short

proposal dated 10.12.1994 of the Judges Committee cannot be taken to be a proposal for amending Rule 20, because there was neither any such proposal before It nor has it considered or deliberated upon about such amendments.

16. The fact of this case as discussed above reveals a very grave situation in the administration. The Registry is supposed to carry out the order of Hon''ble the Chief Justice. The duty, in the present case, cast upon it was simply ministerial. It was its duty to prepare the draft strictly in accordance with the amendments accepted by the Hon''ble the Chief Justice. While performing ministerial part, the Registry should, delinquently and faithfully, prepare the draft. It had no business to deviate from the same. Any deviation or alteration would amount to mutilating the decision of Hon''ble the Chief Justice. It would be highly improper and impertinent for the Registry to undertake such a course of action. The sequence of events and the facts disclosed suggests a clever and deceptive manoeuvre to interpolate the amendment of Rule 20 master-minded by the Registry dressed in such a concealed manner so as not to attract the attention of Hon''ble the Chief Justice reposing absolute confidence in the Registry.

17. The system of administration, for the sake of efficient working, has evolved a method of division of labour. At the top of it are the people exercising the decision-making process and the taking of decisions. For the purpose of such exercises, they are dependent upon the ministerial staff for placing of the materials required for the decision-making and its process. It is the pivot on which the decision making and the process rests. The pivot is expected to be sound and dependable. It is also so accepted through the evolution and development of the system.

18. Similarly, after the process and making of the decision is over, the decision is implemented and translated into action, through the office of the Registry. The said part Is nothing but ministerial. There is no scope for the Registry to take any liberty. The decision-making authority reposes faith and confidence on the Registry that it would carry on the decision faithfully. The carriage on of the decision is duly of the Registry by reason of the order given to them in course of their performance of their duty. Any deviation is considered dereliction or disobedience or miscarriage of duty on the part of such officers.

19. Because of the high responsibility, such works are not done by through ordinary clerical process. In order to put a check and balance, the necessity of maintaining high officials with gazetted rank has been the accepted system. It is not possible for the decision-making authority to look into every detail of clerical and ministerial part. The decision-making authority could never dream of any deviation of their decision by the Registry when the same is reaching through the process of checks and balances undertaken by a number of responsible and high officials. These officials cannot escape their responsibility for the situation that has placed their high office in faithlessness. The Registry appears to have taken uncalled for liberty in the matter. By reason of such manoeuvre, largessee has been dolled out to many ineligible, persons to obtain wrongful gain, which they

could not have obtained if the draft was placed faithfully.

20. It is astonishing that even when the matter was challenged by means of this writ petition, the Registry had never come forward to disclose the deviation committed. On the other hand, it had sought to defend the same. It is only when the records were examined in detail by us that too with deep penetrating scrutiny that the deception could be deciphered and discovered. It is impossible to believe that the Registry was unaware of the deception. That is also not the case pleaded by the Registry. Even when Mr. Rakesh Dwivedi fairly conceded the fact in course of argument, the Registry sought to engage Shri A.K. Yog to support their action. This suggests of a terribly deplorable situation. The situation suggests that the Registry appears not to have come to its sense to realise the gravity of the situation. It is high time that a stock of situation is expected to be noted.

21. In the circumstances, if the Registry is allowed to go scot-free even after such a mess, it might have an encouraging effect, on the office to repeat the same in future coupled with a demoralising effect on the whole administration. It is desirable that, in order to create an instance about the consequence of such manoeuvre, appropriate steps or corrective methods are undertaken. The purity and transparency of the administrative machinery is a matter of accountability. It is to be accounted for because of involvement of the public duty at the cost of the public exchequer.

22. At the same time, some persons had obtained out of it some gain admittedly in a wrongful manner. They also, are not expected to flee with their harvest and reap the unlawful benefit obtained through a manipulated process. It is desirable that, they should also be made to account for and repay with Interest compensation whatever they had been able in fishing out of the situation.

23. Our above observations, however, are suggestions and subject to the decision that might be deemed fit by Hon"ble the Chief Justice.

24. For the aforementioned reasons, the unauthorised amendments of Rule 20 cannot be sustained. As the authorised and unauthorised amendments of Rule 20 contained in the Notification dated 13.12.1994 are inter-mixed, we consider it proper to quash the whole Rule with a direction to the Registrar to publish the amended Rule 20 fresh.

25. For the reasons given above, this writ petition is allowed with costs. Rule 20 contained in the Notification dated 13.12.1994 published in U.P. Gazette Extraordinary dated 16.12.1994 is declared ultra vires and is quashed. The Registrar of this Court is directed to get Rule 20 containing amendments proposed by the Judges Committee's report dated 6.10.1994 as accepted by Hon"ble the Chief Justice by orders dated 14.11.1994 and 10/18.12.1994, published forthwith. The Bench Secretaries will be entitled to their quota for promotion to the cadre of Deputy Registrar.

26. In view of the facts and circumstances of the case and the observations made above, Hon'ble the Chief Justice may consider propriety and desirability of taking appropriate action against the guilty officials of this Court who are responsible for preparing and publishing unauthorised amendments of Rule 20.