

(2014) 03 RAJ CK 0120

In the Rajasthan High Court

Case No : Civil Special Appeal Nos. 500, 6635 and 11663/2013

Lokendra Kumar Sharma and Another

APPELLANT

Vs

State of Rajasthan and Another
 Rajesh Kumar and
Others Vs State of Rajasthan and Others
 Umed Singh
Vs State of Rajasthan

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Constitution of India, 1950 — Article 309
General Clauses Act, 1897 — Section 8(1)
Rajasthan Panchayati Raj Act, 1994 — Section 102, 122, 2, 80, 89

Citation : (2014) 03 RAJ CK 0120

Hon'ble Judges : Amitava Roy, C.J.;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : Sandeep Taneja, Mr. S.S. Shekhawat, Mr. Tarun Choudhary, Mr. Sandeep Maheshwari, Mr. Raj Kumar Goyal, Mr. Tanveer Ahmed, Mr. Vijay Pathak, Mr. Gaurav Sharma and Mr. Arvind Sharma, Advocate for the Appellant; S.K. Gupta, Additional Advocate General assisted by Mr. Gaurav Tanwar for the State, Advocate for the Respondent

Judgement

Amitava Roy, C.J.—This cluster of appeal and petitions seek to invoke the extraordinary writ jurisdiction of this Court chiefly to annul the Rajasthan Rural Development and Panchayati Raj State and Subordinate Service Rules, 1998 (for short, hereafter referred as "1998 Rules"), the amendments inter alia to Rules 14 and 23 thereof occasioned by the Rajasthan Rural Development and Panchayati Raj State and Subordinate Service (Amendment) Rules, 2013 (for short, hereafter referred to as "2013 Rules") and corresponding clauses of the advertisement dated 25.3.2013 in conformity therewith. A broad spectrum of assailments has been projected encompassing the aspects of upper age limit and academic qualifications as conditions of eligibility and grant of weightage on experience of identified posts by way of bonus marks having the potential of excluding a host of candidates who claim themselves to be otherwise eligible to participate in the process of recruitment to the post of Junior Engineer in the

Rajasthan Subordinate Service under the Rural Development and Panchayati Raj Department of the State.

2. We have heard Mr. Sandeep Taneja, Mr. S.S. Shekhawat, Mr. Tarun Choudhary, Mr. Sandeep Maheshwari, Mr. Raj Kumar Goyal, Mr. Tanveer Ahmed, Mr. Vijay Pathak, Mr. Gaurav Sharma, Mr. Arvind Sharma, for the petitioners and Mr. S.K. Gupta, Additional Advocate General assisted by Mr. Gaurav Tanwar for the State.

3. It being patent on the face of the impugned advertisement dated 25.3.2013 that the exercise contemplated thereby is governed by the provisions of the 1998 Rules vis-?-vis the post involved herein i.e. Junior Engineer, it has been construed to be expedient to examine, at the threshold, the impeachment thereof having regard to the decisive bearing of the proposed determination on the issues raised. The learned counsel for the parties have also agreed to advance their arguments on this facet of the debate at the outset. To reiterate, the post involved is one of Junior Engineer. Pleading facts, on individual basis, though are distinguishable do cobble up to project the host of impugnments, as adverted to hereinabove, and thus, dilution thereof separately at this stage is inessential, in view of the singular legal perspectives demanding scrutiny. The competing arguments thus, would outline the contours of the instant adjudicative pursuit.

4. Mr. Taneja, leading the arguments on behalf of the petitioners, has urged that in the face of the Rajasthan Panchayati Raj Act, 1994 (for short, hereafter referred to as "Act 1994") and the Rajasthan Panchayati Raj Rules, 1996 (for short, hereafter referred to as "1996 Rules") framed thereunder, the 1998 Rules formulated in exercise of powers under Article 309 of the Constitution of India, pertaining to the areas already occupied thereby (Act 1994 and 1996 Rules), is clearly non est and is liable to be adjudged invalid and void ab initio. Referring to Article 309 of the Constitution of India, the learned counsel has urged that the 1998 Rules, in the teeth of the Act 1994 and 1996 Rules, dwelling on the same domain is wholly incompetent. According to Mr. Taneja, rules regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State, as the case may be, is comprehended, only in absence of an Act of the appropriate Legislature or any provision made thereunder and thus, the 1998 Rules flies in the face of Act 1994 and Rules 1996 framed thereunder, rendering it non-existent in law. Referring to Section 89 of the Act 1994 constituting the Rajasthan Panchayat Samiti and Zila Parishad Service and delineating, amongst others, the method of recruitment to various posts therein, in conjunction with Rules 258 to 277 under Chapter XII of the 1996 Rules, the learned counsel has insistently argued that the same do exclude the 1998 Rules framed subsequently, so far as the same pertain to the common field of operation. Adverting to, in particular, Rule 259(5) of the 1996 Rules providing for filling up of the posts of Junior Engineers in the concerned services inter alia by direct recruitment, as per the procedure prescribed by the 1998 Rules, Mr. Taneja has emphatically pleaded that it is a

clear instance of legislative maneuvering, impermissible in law thus, rendering the impugned advertisement, designed thereon, to be essentially invalid. As the 1998 Rules has neither any legal status nor existence, in the face of the Act 1994 and the 1996 Rules, incorporation of the provisions thereof for the purpose of direct recruitment to the post of Junior Engineer in the concerned service, is an act of legislative indiscretion, he urged. He insisted that as the 1998 Rules qua the Act 1994 and 1996 Rules is for all intents and purposes nonexistent, the provisions thereof could, by no means, have been incorporated in any of the provision of the 1996 Rules. According to Mr. Taneja, the process of direct recruitment to the post of Junior Engineer in the service as per 1998 Rules, is thus legally inconceivable. Defining the amendment to Rule 259(5) of the 1996 Rules enjoining direct recruitment to the posts of Junior Engineers as per the procedure prescribed under the 1998 Rules, to be a piece of legislation by reference, the learned counsel has urged that in the event of the 1998 Rules being adjudged to be invalid and non est, the impugned advertisement dated 25.3.2013 and the process initiated thereby would stand annihilated as well. To buttress his pleas, Mr. Taneja has placed reliance on the decisions of the Apex Court in *State of Tamil Nadu Vs. Hind Stone and Others*, *Rajasthan State Road Transport Corporation, Jaipur Vs. Smt. Poonam Pahwa and others*, and *Shri A.B. Krishna and Others Vs. The State of Karnataka and Others*, .

5. Assiduously controverting these contentions, Mr. Gupta has maintained that as the 1998 Rules do not trench upon the field covered by the Act 1994 and the 1996 Rules, the impeachment of its validity in the context of Article 309 of the Constitution of India is wholly misconceived. Contending that Rule 259(5) of the 1996 Rules, prior to the incorporation of the provisions of the 1998 Rules for direct recruitment to the post of Junior Engineer, did not outline any procedure therefor, the plea based on the "Doctrine of Occupied Field" is wholly untenable, he urged. Pleading that the assailment of the procedure for direct recruitment to the post of Junior Engineer as per the 1998 Rules is a legislation by incorporation, the learned Additional Advocate General argued that in absence of any challenge to Rule 259(5) of the Rules 1996 as a whole, the impugment of the 1998 Rules, in abstract, is wholly fallacious. Mr. Gupta insisted that as the sweeps of the two Rules are distinctly different, challenge to the validity of the 1998 Rules, supposing it to be in conflict with the Act 1994 and the 1996 Rules, is clearly bereft of any substance.

6. The rival arguments have been cautiously assayed. The parties are not at issue that the 1998 Rules have been framed in exercise of power conferred under the proviso to Article 309 of the Constitution of India. Apt it would be, as the genesis of the 1998 Rules, to extract hereinbelow this constitutional provision:-

309. Recruitment and conditions of service of persons serving the Union of a State.- Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union

or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

7. As would be evident from hereinabove, regulation of recruitment and conditions of service of persons to be appointed to public services and posts in connection with the affairs of the Union or of any State, have to be assuredly vide Acts of the appropriate legislature, subject to the provisions of the Constitution of India. The proviso empowers the President or Governor of a State or such person as may be so entrusted to make rules regulating recruitment and conditions of service of persons appointed to services and posts in connection with the affairs of the Union or of any State, as the case may be, until provision in that behalf is made by or under an Act of the appropriate Legislature with the predication that any such rule would have effect, subject to the provisions of any such Act. The proviso is thus, an enabling provision authorizing the President or the Governor of a State to make rules regulating recruitment and conditions of service of persons appointed to the services and posts in connection with the affairs of the Union or of any State, as the case may be till some provision in that regard is made by or under an enactment of the appropriate Legislature.

8. Not only, the unequivocal and imperative text of this constitutional provision stipulates that regulation of recruitment and conditions of service of persons appointed to the aforementioned service has to be obligatorily by enactments of the appropriate legislature, it is only in absence thereof and during the interregnum till such legislations are made, that the President or the Governor of a State or any person entrusted on their behalf is authorized to make rules regulating such recruitment and conditions of service however, to be subject to the provisions of such enactment of legislature to follow. Axiomatically therefore, having regard to the scheme of this constitutional provision, the rules made by the President or the Governor of a State would be of a transitory status filling a vacuum in absence of a law to be made in conformity with and in exercise of the legislative powers conferred by the Magna Carta.

9. In *A.B. Krishna (supra)*, the Apex Court was seized with an interface between Mysore Fire Force (Cadre Recruitment) Rules, 1971 framed u/s 39 of the Mysore Fire Force Act, 1964 and the Karnataka Civil Services (General Recruitment) Rules, 1971 amended in 1977 by the Rules made under Article 309 of the Constitution of India. Dwelling upon the purport of the rule-making power under Article 309 of the Constitution of India, their Lordships enunciated that this power cannot be exercised, if the legislature has already made a law and the

field is occupied. It was clarified that the rules made in exercise of the rule-making power given under an Act did constitute delegated or subordinate legislation, but the rules under Article 309 cannot be treated to fall in that category and therefore, on the principle of "Doctrine of Occupied Field", the rules under Article 309 cannot supersede the rules made by the legislature. Their Lordships propounded that under the scheme of Article 309 of the Constitution, once a Legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of "Doctrine of Occupied Field". It was explicated however, that if any matter is not touched by that enactment, it would be for the Executive to either issue executive instructions or to make a rule under Article 309 in respect thereof. This view found reiteration, in emphatic terms, in *Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others*, .

10. The Hon'ble Apex Court in *State of Tamil Nadu Vs. Ms. Hind Stone* (supra) while dilating on the aspect of primacy of a statutory rule had, in emphatic terms, propounded that while ever subordinate to the parent statute, the same is otherwise to be treated as part of the statute and as effective as it is. On this measure as well, the rules framed under Article 309 of the Constitution of India cannot be assigned a status at par with the statutory rules or superior thereto, in hierarchy or efficacy.

11. In the face of the consistent and pronounced judicial articulation on the settled orientations of these two classes of legislations, rules framed under Article 309 of the Constitution of India cannot be framed to operate on issues and/or in areas already occupied by an Act of the appropriate legislature or any rules framed in exercise of power conferred thereby. In the event of such rules under Article 309 being framed in absence of such statutory enactment, on the making of such legislation for the common field of operation, the same (rules under Article 309) would stand superseded and have to make way for the Act of the legislature and/or the delegated legislation authorized thereby.

12. The status of the 1998 Rules and the bearing thereof would have to be tested on this anvil qua the Act 1994 and the 1996 Rules. The Rajasthan Panchayati Raj Act, 1994 is an Act of State legislature to consolidate and amend the law relating to Panchayati Raj Institutions in the State of Rajasthan. Though it does not define "service" as such in Section 2, "Panchayati Raj Institution", as per clause (xvii) thereof, means an institution of self-government established under the Act for rural areas, whether at the level of a village or of a block or district. Section 89 constitutes the Rajasthan Panchayat Samiti and Zila Parishad Service and catalogues different categories thereof and enumerates as well the corresponding grades. Sub-section (3) of Section 89 empowers the State Government to encadre in the service any other category or grade of officers and employees of Panchayat Samitis and Zila Parishads and not included in Class IV services and also prescribes the duties, functions and powers of each grade and each category of officers and employees. Sub-section (5) predicates method of appointment to

the posts by (a) direct recruitment or (b) by promotion or (c) by transfer. Sub-section (6) provides that appointment by direct recruitment would be made by Panchayat Samiti or Zila Parishad, as the case may be, in accordance with the rules made in that behalf by the State Government, from out of the persons selected for the posts in a cadre or category in the district by the District Establishment Committee referred to in sub-section (1) of Section 90. In terms of sub-section 9, persons holding posts encadred in the service would also be eligible for appointment or promotion to posts in a State Service or under the State Government in accordance with the rules made in that behalf by the State Government and subject to the terms and conditions laid down in such rules, the persons so appointed or promoted shall count the period of their holding posts in the service constituted u/s 89 for the purposes of seniority and pension. Whereas Section 90 prescribes the constitution and functions of the District Establishment Committee, Section 102 confers the rule-making power on the State Government to make rules consistent with the Act to carry out the purposes thereof. Sub-section (2)(b) of Section 102 provides that rules be made to provide for any matter for which power to make provision is conferred, expressly or by implication, on the State Government by or under the Act. As per sub-section (3) thereof, all rules made under that section has to be laid, as soon as may be after those are made, before the House of the State Legislature, as enjoined therein, and would have effect, in case the State Legislature makes any modification, and in case however, the State Legislature resolves that such rule should not be made, the same would be of no effect.

13. For ready reference, Section 89 is extracted hereunder:-

89. Constitution of the Rajasthan Panchayat Samiti and Zila Parishad Service: (1) There shall be constituted for the State service designated as the Rajasthan Panchayat Samiti and Zila Parishad Service and hereafter in this section referred to as the service and recruitment thereto shall be made district wise:

[xxxx]

(2) The service may be divided into different categories, each category being divided into different grades, and shall consist of-

(i) Village level workers;

(ii) Gramsevikas;

(iii) Primary and Upper Primary School teachers,[xxxx]

(iv) Ministerial establishment (except Accountants and Junior Accountants) and

(v) Prabodhak and Senior Prabodhak.

(3) The State Government may encadre in the service any other category or grade of officers and employees of Panchayat Samitis and Zila Parishads and not included in Class IV Services.

(4) The State Government may prescribe the duties, functions and powers of each grade and each category of officers and employees encadred in the service.

(5) All appointments to posts in the service shall be made-

(a) by direct recruitment; or

(b) by promotion; or

(c) by transfer.

(6) Appointment by direct recruitment [xxxx] shall be made by a Panchayat Samiti or Zila Parishad, as the case may be, in accordance with the rules made in this behalf by the State Government, from out of the persons selected for the posts in a grade or category in the district by the District Establishment Committee referred to in sub-section (1) of section 90.

(6-B) Appointment on the posts specified in clause (v) of sub-section (2) shall be made by Additional Chief Executive Officer-cum-District Education Officer (Elementary Education) of the District concern in accordance with the rules made in this behalf by the State Government, from out of persons selected for the posts by the recruitment committee constituted by the Government in accordance with the rules made by the State Government in this behalf:

Provided in case of the posts reserved for widows and divorcee women, selection shall be made in such manner and by such screening committee as may be prescribed by the State Government.

(7) The Appointing Authority may, so long as selection is not made by the District Establishment Committee or selected persons are not available for appointment, make appointments in the prescribed manner on a temporary basis for a period not exceeding six months and the said period may be extended only after consultation with the District Establishment Committee:

Provided that no appointment on temporary basis shall be made on the posts specified in clause (iii) of sub-section (2).

(8) Appointments by-

(i) promotion shall be made by the Panchayat Samiti or the Zila Parishad, as the case may be, in the prescribed manner from amongst the persons whose names have been entered in the list prepared by the District Establishment Committee; and

(ii) transfer shall be made after consultation with the Pradhans or the Pramukhs as the case may be, of the Panchayat Samitis or the Zila Parishads from and to which such transfer is proposed to be made.

(8A) Notwithstanding anything contained in sub-section (8), the State Government may transfer any member of the service from one Panchayat Samiti to another Panchayat Samiti, whether within the same district or outside it, from

one Zila Parishad to another Zila Parishad, or from a Panchayat Samiti to a Zila Parishad or from a Zila Parishad to a Panchayat Samiti, and may also stay the operation of, or cancel, any order of transfer made under sub-section (8) or the rules made thereunder.

(9) Persons holding posts encadred in the service shall also be eligible for appointment or promotion to posts in a State Service or under the State Government in accordance with the rules made in that behalf by the State Government and subject to terms and conditions laid down in such rules, and the persons so appointed or promoted shall count the period of their holding posts in the service constituted under this section for the purposes of seniority and pension.

(10) Persons holding appointment in a state service shall also be eligible for appointment by transfer to a post encadred in the service constituted under this section in accordance with the rules made in this behalf by the State Government and on terms and conditions laid down in those rules.

(11) Every person holding a post encadred in the service constituted under this section shall be entitled to the payment of a pension by the State Government out of the consolidated fund of the State in accordance with rules made by it in that behalf.

14. As the 1996 Rules would disclose, on the face of it, that had been framed in exercise of powers conferred by Section 102 of the Act 1994 read, amongst others, with Section 89(4)(8) and 122 thereof, as well as of all other powers enabling the State Government to do so.

15. Noticeably, there is no dissension at the Bar that the panchayat samiti and zila parishad are the Panchayati Raj Institutions, as envisaged by the Act 1994 and 1996 Rules. That "Panchayat", "Panchayat Samiti" and "Zila Parishad" mean the institutions of self Government established be under the Act 1994 for the rural areas respectively at the level of a village, block and a district, is indeed apparent from Rule 2(xiii) of the 1996 Rules.

16. Chapter XII of the 1996 Rules is devoted to recruitment and other service conditions. Rule 257 refers to strength of service and Rule 258, the categories of posts. The post of Junior Engineer is lodged in the Subordinate Service. Rules 258 and 259 which stipulate methods of recruitment to the posts are quoted hereunder:-

258. Categories of posts.- (1) There shall be the following categories of posts to be appointed in Panchayat Samitis and Zila Parishads:-

(a) State Service posts:-

(i) Chief Executive Officer

(ii) Vikas Adhikari

(iii) Accounts Officers

(iv) Assistant Engineers

(v) and such other categories of posts as are prescribed by the Government from time to time.

(b) Subordinate Service:-

(i) Extension Officer (Panchayat, Education, Cooperative, progress.)

(ii) Assistant Accounts Officer

(iii) Accountant/Junior Accountant

(iv) Junior Engineer

(c) Ministerial Service:-

(Ministerial and subordinate posts in Panchayat Samiti and Zila Parishad service)

(i) Upper Division Clerks including UDC-cum Steno

(ii) Lower Division Clerks including Typists.

(iii) Drivers

(iv) Primary School Teachers

(v) Village level worker-cum-Secretary Panchayat

(vi) Fitter

(vi) Hand Pump Mistry

(d) Class IV Service posts

(2) Panchayat may however appoint part time persons on contract basis with prior permission of the Chief Executive Officer for management of properties and cattle pound etc. Out of own income and Class IV servant for Panchayat Office out of general purpose grant from the State Government.

259. Methods of Recruitment-(1) The posts of State service may be filled in by transfer on deputation from appropriate service.

(2) The posts of Vikas Adhikaris shall be filled in from appropriate cadres of the State Government as laid down in Act or Rules framed for this purpose.

(3) The post of Panchayat Extension Officer shall be filled in by 100% promotion From V.L.W.-cum-Secretary Panchayat.

(4) The posts of other extension officers shall be filled in by transfer on deputation from Education, Cooperative and Statistical Departments respectively.

(5) The posts of Junior engineers may be filled in either by transfer from other Government Departments on deputation or [by direct recruitment as per

procedure prescribed under the Rajasthan Rural Development and Panchayati Raj State and Subordinate Service Rules, 1998]

[(5A) The post of fitter shall be filled in, from Public Health Engineering Department, on deputation.

(5B) Post of Hand Pump Mistry shall be filled in, from hand pump mistries regularized in Panchayat Samitis as per Government order No. F.13(147/Vidhi/Gravipa/High Court/94/3882, dated 30.12.1995]

(6) Recruitment of posts en-cadred in Panchayat Samiti and Zila Parishad Services as per sub-section (2) of Section 89 shall be made district wise through District Establishment Committee as per provisions of Section 80 and 90 of the Act.

[xxx]

(7) Recruitment of class IV service may be done through Employment Exchange or in the manner laid down by the Government from time to time.

Sub-rule (5) of Rule 259, as originally framed, read as hereunder:-

259. Methods of Recruitment.-

(1).....

(2).....

(3).....

(4).....

(5) The posts of Junior Engineers may be filled in either by transfer from other Government Departments on deputation or may be appointed by direct recruitment through Manpower Department.

17. In terms thereof, the post of Junior Engineers could be filled up either by transfer from other Government Departments on deputation or by direct recruitment through Manpower Department. Vide G.S.R. 62 dated 2.12.2006 published in Rajasthan Gazette E.O. Part 4(Ga)(1) dated 6.12.2006, sub-rule (5) of Rule 259 stood amended as hereinbelow:-

(5) The posts of Junior Engineers may be filled in either by transfer from other Government Departments on deputation or by direct recruitment as per procedure prescribed under the Rajasthan Rural Development and Panchayati Raj State and Subordinate Service Rules, 1998.

18. It is worthwhile to mention, leaving aside the bearing of this event for the present, that the other provisions under this chapter deal comprehensively with the determination of vacancies and reservation for the Scheduled Castes and Scheduled Tribes, physically handicapped candidates etc., as well as the essential conditions of eligibility, including academic qualification and age.

19. The procedure for direct recruitment with the various stages assimilated in it, starting from the phase of inviting of applications and culminating in the preparation of merit list by the committee followed by appointment, is spanned over Rules 270 to 276. A comprehensive scheme thus, had been conceived of and outlined by the 1996 Rules, in conformity with corresponding framework of the Act 1994.

20. Indubitably, the 1998 Rules framed under Article 309 of the Constitution of India appeared in the scene thereafter. It defined "service" in Rule 2(h) as Rajasthan Rural Development and Panchayati Raj State Service and the Rajasthan Rural Development and Panchayati Raj Subordinate Service, as the case may be. Rule 4 prescribes the composition and strength of the service and catalogues posts in each cadre of service in Schedule I and Schedule II thereof. A plain perusal of these two schedules would demonstrate that the posts of Assistant Engineer, Instructor/Panchayat Extension Officer, Driver, Junior Engineer are common, amongst other, with those encadred under the 1996 Rules. The 1998 Rules, as per Rule 6, prescribes direct recruitment and promotion to be the methods of recruitment to the posts in the service governed thereby and similarly provides for determination and reservation of vacancies as well as academic and technical qualifications and experience and age, amongst others, as the condition of eligibility for direct recruitment. Part IV of the 1998 Rules incorporates the provisions enjoining the procedure for direct recruitment. Significantly, the parties are not at issue that the service, as contemplated by these two Rules with two components i.e. State Service and Subordinate Service is the same. Strikingly indeed, both the Rules provide for the manner of direct recruitment to the post of Junior Engineer. To reiterate, prior to the insertion made in the year 2006 under the 1996 Rules, as aforementioned, direct recruitment to this post was to be made through the Manpower Department. With the amendment of Rule 259(5), the 1998 Rules has thus, been sought to be applied to conduct the process for direct recruitment to this post. As this post is common in both the Rules otherwise prescribing the mode and manner of direct recruitment thereto, there is evidently an overlapping of the corresponding provisions in this regard. To this extent thus, irrefutably the 1998 Rules has to be construed to be non est. The 1996 Rules framed under the Act 1994, having provided for the recruitment to the post of Junior Engineer in the concerned service, the corresponding provisions of the 1998 Rules, having regard to their respective status, cannot be conceded any legally permissible existence. In that view of the matter, the amendment to the Rule 259(5) of the 1996 Rules purportedly incorporating the provisions of the 1998 Rules for direct recruitment to the post of Junior Engineer, is wholly inconsequential.

21. In U.P. Avas Evam Vikas Parishad Vs. Jainul Islam and Another, , the Hon''ble Apex Court, while elaborating on the notion of legislations by reference and incorporation, observed, in paragraph 17 thereof, in the following terms:-

A subsequent legislation often makes a reference to an earlier legislation so as to

make the provisions of the earlier legislation applicable to matters covered by the later legislation. Such a legislation may either be (i) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (ii) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. If it is a referential legislation the provisions of the earlier legislation to which reference is made in the subsequent legislation would be applicable as it stands on the date of application of such earlier legislation to matters referred to in the subsequent legislation. In other words, any amendment made in the earlier legislation after the date of enactment of the subsequent legislation would also be applicable. But if it is a legislation by incorporation the rule of construction is that repeal of the earlier statute which is incorporated does not affect operation of the subsequent statute in which it has been incorporated. So also any amendment in the statute which has been so incorporated that is made after the date of incorporation of such statute does not affect the subsequent statute in which it is incorporated and the provisions of the statute which have been incorporated would remain the same as they were at the time of incorporation and the subsequent amendments are not to be read in the subsequent legislation.....

22. In *Rajasthan State Road Transport Corporation, Jaipur Vs. Smt. Poonam Pahwa (supra)*, their Lordships recalled the observations made in *Mahindra and Mahindra Ltd. Vs. Union of India (UOI)* and *Another*, that if there is mere reference to a provision of statute in another without incorporation, then unless a different intention clearly appears. Section 8(1) of the General Clause Act, 1897 would apply and the reference would be construed as a reference to the provision as may be in force from time to time in the former statute. It was enunciated however that if a provision of an enactment is incorporated in another, any subsequent amendment in the former statute or even its total repeal would not affect the provision as incorporated in the latter statute.

23. While the distinctive features of legislations, by reference and incorporation, are unequivocal and no longer *res integra*, in the contextual facts, the proposition pertaining thereto is not of any decisive bearing. Suffice it to mention that the 1998 Rules, so far as the provisions thereof relate to the recruitment to the post of Junior Engineer in the service concerned, are non est, in the face of the Act 1994 and the 1996 Rules framed thereunder. Having regard to the schemes delineated by the Act 1994 and the 1996 Rules as well as the 1998 Rules for recruitment to the post of Junior Engineer in the service involved, the overlapping is not incidental but substantial and mutually militative.

24. The above narration, which essentially has been limited to the scrutiny of the validity of the 1998 Rules qua the post of Junior Engineer in the service involved, thus leads to the inevitable conclusion that those are non est being rendered thus on the Doctrine of Occupied Field and is thus adjudged to be so.

25. Consequently, the impugned advertisement initiating the process of direct

recruitment to the post of Junior Engineer in the service, on the basis of the 1998 Rules, is invalid. Axiomatically, the resultant steps consequent thereto pertaining to the process, are also void.

26. The assailment in the appeal and the petitions, to the above extent, is thus sustained. The appeal as well as the petitions are thus allowed accordingly. The stay applications stand disposed of.

27. A copy of this order be placed in all files.