(2000) 09 PAT CK 0005

In the Patna High Court

Case No : C.W.J.C. No''s. 2995/90, 8347/90, 11167/92, 1566/93 and 7421/93

Maheshwar Prasad Singh and Others APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 19-09-2000

Acts Referred:
Constitution of India, 1950 — Article 309

Citation : (2000) 4 PLJR 262

Hon'ble Judges : S.N. Jha, J;R.M. Prasad, J;Aftab Alam, J

Bench : Full Bench

Advocate : Farooque Moazzam and Sunil Kumar Tiwary in 8347, 1566 and 7421, M/s Abhay Kumar Singh and Sudhir Kumar Bijpuriar in 11167 and Mr. Siya Ram Shahi in 2995, for the Appellant; S.K. Ghose, Maya Nand Jha and A.K. Chougdar in 8347, 1566 and 7421, M/s Ashok Kumar Singh, Prabhat Kr. Singh, Ranjit Sinha, P.K. Verma and S.S. Mishra for State, for the Respondent

Judgement

S.N. Jha, J.—A common question of law arises for decision in all these writ petitions and, as such, they have been heard together. The question is whether the clerks working in the Muffasil offices are required to pass the departmental examination in accounts for promotion to selection grades. A Division Bench of this Court in Md. Shamsuddin & ors. vs. State of Bihar, 1983 PLJR 347, has answered the question in the negative. It has been held that after amalgamation of the posts of Lower Division and Upper Division clerks and creation of new cadre, the clerks are not required to pass the Accounts examination for promotion to the selection grades. When some of these cases came up for hearing on 25.2.94 the correctness of the said decision was doubted and the cases were referred to Division Bench. The Division Bench before which the cases were placed for hearing noticed that the point at issue had already been referred to Full Bench in C.W.J.C. No. 989 on 9.8.89. Accordingly, these cases were ordered to be heard by a Full Bench along with C.W.J.C. No. 989 of 1989. It so happened that C.W.J.C. No.989 of 1989 was withdrawn by the concerned petitioners and thus the cases in hand alone survived for decision. At this stage before noticing the nature and scope of the controversy it would be appropriate to briefly introduce the writ petitions. C.W.J.C. No. 2995/90 has been filed by the sole petitioner, a class III employee of the Deoghar Collectorate, for quashing the order dated 28.3.90 by which his representation for promotion to the selection grade was rejected by the Deputy Commissioner on the ground that he had not passed the accounts examination. C.W.J.C. No. 8347/90 on behalf of 7 petitioners has been filed seeking a writ of mandamus directing the respondents officials of Cooperative Department, to promote the petitioners to the selection grade and senior selection grade from the due dates, that is, the dates from which the private respondents had been promoted pursuant to the judgment in Md. Shamsuddin''s case, 1983 PLJR 347 (supra), and to restore their seniority in the selection grades from the due dates. The petitioners have, thus, though indirectly, also raised dispute regarding their inter se seniority vis-a-vis the private respondents.

It may be mentioned here that during the pendency of the above two cases, on 17.8.92 promotions granted to as many as 82 persons in the light of the aforementioned judgment of this Court in Shamsuddin''s case were cancelled or their effective dates were shifted on the ground that promotions had been given on wrong interpretation of the judgment of this Court and in ignorance of the statutory rules dated 29.4.85 making clerks ineligible for promotion to the selection grades without passing the accounts examination. Those who had passed the accounts examination were granted the promotion effective from the date of passing the examination while in respect of persons who had not passed the said examination promotion was cancelled.

The remaining three writ petitions i.e. C.W.J.C. Nos. 11167 of 1992, 1566 of 1993 and 7421 of 1993 have been filed for quashing the said order dated 17.8.92 as regards the concerned petitioners, and for direction to restore their promotions from the dates the same had been granted to them.

2. It would, thus, appear that the core of dispute is whether passing the accounts examination is essential condition without which the clerks cannot be promoted to selection grades. The case of the petitioners, in sum and substance, is that though there was such a requirement for promotion from Lower Division to Upper Division Rule 157(3)(J) of the Board''s Miscellaneous Rules, 1947, after amalgamation of the posts of L.D. and U.D. clerks and creation of a common cadre of clerks with effect from 1.5.80 the provision became inapplicable and the amendment made subsequently to the rule purporting to create similar bar with respect to promotion to selection grade by executive orders in the shape of ''correction slips'' inserted in the Board''s Miscellaneous Rules, do not have any legal effect, for, Rule 157(3)(J) as it originally stood in the 1947 Rules had statutory force which could not be modified by an executive order. Thus, there being no requirement of passing the accounts examination, after amalgamation of the posts of L.D./U.D. clerks, they could not be denied promotion to the selection grade which had been created in 1964 or the Senior Selection Grade

created in 1981 on the ground of non-passing the accounts examination.

3. The rules relating to examination in accounts are contained in Rule 157 of the Board''s Miscellaneous Rules, and the relevant provisions requiring the clerks to pass the examination as condition for his confirmation and promotion is contained in clause (J) of sub-rule (3) thereof. The said clause has undergone changes from time to time, and having regard to its importance it would be useful to quote the clause as it stood at different times in extenso. The rule/ clause, as it originally stood in the Board''s Miscellaneous Rules, 1947 (as the Rules were earlier called) was as under:-

No clerk who has not passed the preliminary examination will be allowed to cross the efficiency bar and no clerk who has not passed the final examination will be appointed in the Upper Division.

The rule was amended by correction slip no.5 dated 14.3.63 and correction slip no. 6 dated 23.8.63 and so amended, reads as under:-

No clerk who has not passed the preliminary examination will be allowed to cross the efficiency bar and no clerk who has not passed the final examination will be appointed in the Upper Division.

When no clerk having passed the final examination in accounts is avail able to fill up any Upper Division post the U.D. post may be kept in abeyance and a clerk in the Lower Division employed against it until a clerk having passed the final examination is available again when the Upper Division post should be revived." The rule was again amended via correction slip no. 30 dated 29.3.82 The English text of the said amended rule is not available in the records. As English text of the rule in its earlier forms has been quoted, I would give a translation of the Hindi text as under:-

It will be essential for the clerks to pass the preliminary examination in accounts for crossing the Efficiency Bar or confirmation and the final examination in accounts for promotion to the selection grade. When no clerk having passed the final examination in accounts is available to fill up any selection grade post, then the Selection Grade post may be kept in abeyance and a senior clerk may be kept on that post in his scale by the appointing authority until a clerk having passed the final examination is available. On such examination pass clerk becoming available he may be confirmed in the selection grade post.

The clause was amended yet again this time under proviso to Article 309 of the Constitution of India, vide Statutory Order 431 dated 29.4.85 as under:-

(a) Any clerk, who has not passed the preliminary examination in Accounts, will be neither confirmed nor be allowed to cross the efficiency bar;

(b) A clerk, who has not passed the final examination, will not be promoted to the Selection Grade;

(c) In case of non-availability of senior clerk, finally passed in Accounts

Examination, any junior clerk, having passed the final Accounts Examination may be temporarily promoted to the Selection Grade:

Provided that the junior clerk temporarily promoted to the Selection Grade shall be reverted to the post of clerk if the clerk senior to him passes the final Accounts examination within two years from the date of his first supersession and is promoted with effect from any date within the said two years, otherwise the senior clerk would be treated junior to all the clerks promoted to the Selection Grade prior to him.

Explanation.-Under proviso to (c), the date of passing the examination of Accounts would be the date on which the examination was held and the post of selection grade held by the junior clerk shall be deemed to be vacant from that very date for the purpose of promoting senior clerk. But, for the fixation of pay etc. the junior clerk shall be deemed to have been reverted from the date with effect from which the senior clerk will be promoted. The seniority of the reverted junior clerk shall be effective from the date on which he will again be promoted permanently to the Selection grade.

4. Before noticing the findings of this Court in Shamsuddin''s case (supra) it would be apt to make few observations regarding nature of the provisions of the Board''s Miscellaneous Rules. The Rules have been framed by the Board of Revenue and made applicable to all subordinate offices under the State Government to the extent they are not inconsistent with any particular instructions specially issued by the Department concerned in relation to any particular office. The Rules were originally framed in 1947 and called "Bihar Board''s Miscellaneous Rules, 1947". There is no dispute at the Bar that the said 1947 Rules were adopted as statutory under notification dated 26.4.50 as rules existing prior to 26.1.50. This was one of the premises on which submission was made on behalf of the petitioners that the rule as it originally stood in the 1947 Rules could not be modified by executive order. Though the submission as a proposition of law is well founded, the fact of the matter is that what we have now as "The Bihar Board''s Miscellaneous Rules 1958" is really the re-print of the "Bihar Board''s Miscellaneous Rules, 1947". This is evident from the Preface of the 1958 Rules, which runs as under:-

This edition is a re-print of the Bihar Board''s Miscellaneous Rules 1947, by re-arranging the rules properly with such addition as have been introduced upto the end of 1957; through correction slips, issued from time to time. It should be cited as the Bihar Board''s Miscellaneous Rules, 1958.

(2) Errors and omissions should be brought to the notice of the Board. Patna, R. Prasad the 22nd August 1958. Secretary Board of Revenue, Bihar.

However, though the 1958 Rules have thus to be read as being in continuation of the 1947 Rules, the fact remains that the amendments/ modifications made in the Rules by correction slips or otherwise subsequent to 26.1.50 cannot be regarded as statutory in nature. No doubt, as held by the Apex Court in the welt known case of Sant Ram Sharma vs. State of Rajasthan, AIR 1967 Supreme Court 1910, in the absence of statutory rules the government is competent to issue administrative instructions and thus if the statutory rule in force is silent on the particular subject, it is open to the Government to make orders and issue administrative instructions in order to supplement the rules, such orders/ instructions must not be inconsistent or repugnant to those rules. The point which, thus, immediately arises for consideration is whether there was any inconsistency between the rules i.e. Rule 157(3)(J) as it originally stood in the 1947 Rules, or as it stood later by virtue of correction slips in 1963 and 1982.

5. The rule, as it stood at different times, has been verbatim quoted above. It would appear that passing the Accounts examination has been treated as an essential qualification at all times-whether for the purpose of crossing the efficiency bar or confirmation or for the purpose of promotion. The only material difference which is relevant to the present controversy is that while earlier, as regards promotion, the requirement was applicable to promotion from Lower Division to Upper Division posts, after the amendment by correction slip no.30 dated 29.3.82, it was made applicable to promotion to the selection grade. There is no dispute at the Bar that a Lower Division Clerk who had not passed the final examination in Accounts could not be promoted to the post of Upper Division clerk. The contention of the petitioners is that after the two posts were amalgamated with effect from 1.5.80 promotion to Selection grade, which had come in existence in 1964 or Senior Selection Grade, which came in existence in 1981, could not be denied without suitably amending the rule and making the provisions applicable to Selection grade posts. In support of the contentions reliance has been placed on Rekha Prasad v. State of Bihar, 1984 BBCJ 833, apart from Shamsuddin''s case (supra).

6. In Shamsuddin''s case (supra) the petitioners had sought quashing of the orders of promotion of the private respondents to selection grade superseding the petitioners'' claim on the ground that they had not passed the final examination in Accounts, but from paragraph 6 of the judgment it appears that the challenge was confined to the validity of the amended Rule 157(3)(J) of the Board''s Miscellaneous Rules, 1958 on the ground that it had come into existence by executive order and not under any statute and, therefore could not over-ride the provisions of the Board''s Miscellaneous Rules 1947, and in the changed circumstances after amalgamation of the post of Lower Division and Upper Division clerks, the question of passing the Accounts examination for promotion to the Upper Division Clerks and/or Selection grade did not arise at all. From paragraph 7 of the judgment it appears that the counsel for the State conceded to the argument that in view of the amalgamation of the posts of Lower Division and Upper Division clerks and creation of new cadre the question of passing departmental examination "for promotion to the posts of Upper Division Clerk did not arise". This Court without going into the question of invalidity of Rule 157(3)(J) held that when the posts of Upper Division and Lower Division clerks did not exist "passing of departmental examination for the promotion to the posts of

Upper Division should not arise at all". Further, it held, as the posts of Selection grade did not exist when the Board''s Miscellaneous Rules, 1958 came in force "any direction by the Government to the effect that until and unless these petitioners passed examination in accounts they cannot be promoted to the Selection Grade posts is quite illegal". Accordingly, the respondents were directed to consider the cases of the petitioners on merit from due dates without requiring them to pass the examination in Accounts.

7. It is obvious that the amendment brought in the rule vide correction slip no. 30 dated 29.3.82 was not brought to the notice of this Court. This, according to the counsel for the petitioners, was of no consequence, for the amendment introduced by an executive order in the shape of correction slip did not have any legal effect. I do not find any substance in the argument. In view of the decision of the Constitution Bench of the Apex Court in Sant Ram Sharma Vs. State of Rajasthan and Another, , reiterated umpteen times in subsequent cases, the law is settled that in the absence of statutory rules it is open to the Government to issue administrative instructions to the extent of laying down principles for promotion to higher grades/posts. The only limitation is that it cannot amend, modify or supersede the statutory rules, if any, on the subject by administrative instructions. It would be useful to notice the relevant observations from the said decision as under:

We proceed to consider the next contention of Mr. N. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory Rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

The said decision was explained by another Constitution Bench in Lalit Mohan Deb and Others Vs. Union of India (UOI) and Others, , as under:

It is true that there are no statutory rules regulating the selection of Assistants to the selection grade. But the absence of such rules is no bar to the Administration giving instructions regarding promotion to the higher grade as long as such instructions are not inconsistent with any rule on the subject.

8. The question as to the legal effects of the amendment dated 29.3.82 has to be considered in the light of the law laid down by the Apex Court. When the

amendment was made on 29.3.82 the situation was that the posts of Lower Division and Upper Division clerks stood amalgamated with effect from 1.5.80 and 10% of the clerical posts had been earmarked as senior selection grade posts vide Government order dated 18.12.81 with effect from 1.4.81 in the light of the recommendation of the Fourth Pay Revision Committee, in addition to the selection grade created vide Government Order dated 24.1.69 with effect from 1.4.64. After the amalgamation of the L.D./U.D. posts the provision of rule 157(3)(J) had apparently become redundant, there was no question of any promotion to the Upper Division and, therefore, the question of the L.D. clerk passing examination in Accounts for his promotion to the Upper Division did not arise when the selection grade and senior selection grades had come into existence. By the said amendment the State Government simply made the erstwhile provisions meant for promotion to the Upper Division applicable to promotion to the selection grades. As I have observed above, though rule 157(3)(J) has undergone changes at different times, passing the Accounts examination has always been treated as an essential qualification for promotion of the clerical staff. In fact, when there were ''efficiency bars'' in the pay scales such a qualification was treated as essential even for crossing the efficiency bar. Thus, by amendment dated 29.3.82 nothing new was done. A provision which already existed, though in different terminology in the sense that it was applicable to the Upper Division posts, made applicable to selection grade posts which had come into existence in the meantime. With the amalgamation of the Lower Division and Upper Division posts the rule as it stood having become redundant, and there being no provision holding the field regarding promotion to the selection grades, the State Government was certainly competent to issue administrative instructions. Had the field been occupied by statutory rules it could not have done so as it might constitute encroachment upon an occupied field. The ratio of the decision in Sant Ram Sharma''s case is that if the statutory rule and the executive instruction can stand side by side, such instruction cannot be said to be invalid or illegal. The test thus would be whether the administrative instructions are inconsistent or repugnant to the statutory rule. In the instant case, the statutory rule having become redundant and inapplicable there was no question of repugnancy or inconsistency. As a matter of fact, as stated above, the amendment was to the same effect as the erstwhile rule, the only material difference is that the provision was made applicable to selection grades in place of the Upper Division posts. It must be pointed out, in fairness to the respondents, that no attempt was made on the side of the petitioners to submit that the amendment dated 29.3.82 was repugnant to or in consistent with the erstwhile rule, the thrust of their argument was that without framing statutory rules with respect to the selection grade posts, passing the Accounts examination could not be made essential for promotion to the Selection Grades by administrative instructions.

9. At this stage, I would like to point out the distinction between promotion to higher posts and promotion to selection grade. ''Promotion'' normally implies

promotion to the higher posts with a higher pay. The concept of ''selection grade'' was evolved by the Central Pay Commission "with the object of providing incentive to employees who have no out lets or very limited outlets for promotion to higher posts, carrying a "somewhat higher scale of pay without change in the duties. Such posts which were normally not to exceed 10% of the total posts were described as "selection grades" as distinct from higher posts in the hierarchy After noticing the recommendation of the Central Pay Commission the Supreme Court in the case of Lalit Mohan Deb v. Union of India (supra) observed, "It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency".

10. If passing the Accounts examination was an essential condition for promotion of the Lower Division clerks to the Upper Division, a higher post, I fail to appreciate as to how a similar qualification with respect to promotion to the "selection grade posts" laid down by amendment dated 29.3.82 can in any manner be said to be repugnant to or inconsistent with the rule as it stood earlier. Unfortunately, the distinction between Upper Division posts as a promotional post and selection grade was not pointed out to this Court in Shamsuddin''s case with the result that this Court treated both the posts at par. The concession of the State Government was limited to promotion to the Upper Division vide paragraph 7 of the judgment. The post of Upper Division clerks being no more in existence there was no question of a clerk passing any departmental examination in Accounts for his promotion to such post, but treating the post of Upper Division clerk at par with selection grade the Court gave a general direction (sic) the cases of the petitioners for their promotion to the "selection grade post" have to be considered on merits from the due date without requiring them to pass examination in Accounts. If the amendment dated 29.3.82 had been brought to the notice of the Court, perhaps, such a finding/ observation might not have been made.

11. The case of Rekha Prasad v. The State of Bihar & ors., 1984 BBCJ 833: 1985 PLJR (NOC)77, relied upon on behalf of the petitioners stood on different facts. The dispute related to appointment of clerk in Muffasil offices, to be precise, Collectorate of Darbhanga. As per rule 148 of the Board''s Miscellaneous Rules, as it originally stood, the candidate was required to be matriculation pass holding school leaving certificate from the High School, with good knowledge of Hindi in Devanagri script. As per Note II knowledge of type-writing was treated as "an additional but not indispensable qualification". By correction slip no. 27 dated 2.5.77 the type-writing test both in Hindi and English was made compulsory and the candidates were required to possess typing speed of less than 35 words in Hindi and 30 words in English were not eligible for appointment as Lower Division Clerk. The amended rule was, thus, clearly in conflict with the original rule. While

as per the erstwhile rule the knowledge of typewriting was an additional but not indispensable qualification, by amendment it was made an indispensable qualification without possessing which the candidate could not be appointed to the post. As the amendment impinged on the eligibility of the candidates and was in conflict with the original rule which had statutory force by reason of the notification dated 26.1.50 making the provisions of the Bihar Board''s Miscellaneous Rules, 1947 as existing on 26.1.50 statutory (as noticed above), this Court held that the rule could not be amended by administrative instructions. In this connection the Court observed,

It the executive instructions can co-exist with the statutory rules in the sense that nothing stated in the statutory rules are impaired or violated they may exist to achieve the desired purpose. But once it is found that the executive instruction or order tends to encroach upon the statutory rule the executive instruction must be treated to be non-existent." The decision in Rekha Prasad''s case rendered on different facts and in different context thus is of no help to the petitioners.

12. On the basis of the above discussion I have no hesitation in holding that the State Government was fully competent to amend rule 157 (3) (J) of the Board''s Miscellaneous Rules by executive instructions and the amendment made vide correction slip no. 30 dated 29.3.82 was a valid amendment. Thus, clerks were required to pass the final examination in Accounts as a condition for promotion to the selection grades after 29.3.82.

13. The above discussion, however, covers the period between 29.3.82 and 29.4.85. So far as the period between 1.5.80 and 29.3.82 is concerned, I am inclined to agree with the petitioners that after amalgamation of the posts of L.D. and U.D. clerks, in the absence of any provision requiring the clerks to pass Accounts examination for promotion to selection grade, and the erstwhile provision having become redundant or otiose, the promotion could not be denied to them on account of non-passing of the Accounts examination during that period. The amendment dated 29.3.82 was result of administrative instruction and could not have any retrospective effect. To that extent, I would also endorse the decision of this Court in Shamsuddin''s case.

14. As regards the period from 29.4.85; counsel for the petitioners fairly agreed that the amendment having been brought under Article 309 of the Constitution, the statutory nature of which cannot be doubted, the clerks could not be promoted to the selection grade posts without passing the Accounts examination. In view of the fair stand of the counsel for the petitioners it is not necessary to discuss the case with respect to the period from 29.4.85 onwards.

15. The result of the above discussion is that the clerks of the Muffasil offices could/can not be promoted to the selection grade posts without passing final examination in Accounts except during the period between 1.5.80 and 29.3.82. Any promotion due to the clerks during that period, thus, cannot be denied on the ground that they had not passed the said examination.

16. As noted above, during the pendency of CWJC Nos. 2995/90 and 8347/90 an order was issued with respect to 82 persons on 17.8.82 canceling then promotion to selection grade posts and/or shifting the effective date of such promotion from the date of passing the Ac counts examination, against which the other writ petitions i.e. C.W.J.C. Nos. 11167/92, 1556/93 and 7521/93 have been filed. As the promotion to selections grades has been cancelled on the ground of non-passing the Accounts examination or the dates of their promotion have been shifted with effect from the date of passing the Accounts examination, as the case may be, in view of my conclusions the impugned order dated 17.8.82 cannot be said to be illegal. However, if such cancellation or shifting relates to the period between 1.5.80 and 29.3.82. to that extent the order may require modification. It will be open to the concerned petitioners to make representation for correction/modification of the order dated 17.8.92 in the light of this judgment.

17. In the result, these writ petitions are dismissed but with the above mentioned observations. There will be no order as to costs.

Aftab Alam, J.

I agree with the judgment pronounced by brother S.N. Jha.

Radha Mohan Prasad, J.

18. Having the privilege of going through the judgment of brother S.N. Jha, J., I have some difficulty in agreeing that the Clerks of Muffasii officers could/can not be promoted to the Selection Grade posts without passing final examination in Accounts except during the period between 1.5.1980 and 29.3.1982. In fact, brother Jha has placed reliance on the so-called correction slip issued on 29.3.1982 which is shown as part of Annexure-A to the second supplementary counter affidavit filed on behalf of Respondent nos. 2 & 3 in C.W.J.C. No. 8347 of 1990 and the judgment passed in Sant Ram Sharma''s case to hold that the Clerks were required to pass final examination in Accounts for promotion to the Selection Grade after 29.3.1982. With due respect, I find it difficult to uphold the said view of brother Jha.

19. Learned counsel for the petitioners challenged the authenticity of the so-called correction slip, which, in fact, is not part of Annexure-A, but has simply been shown as part of Annexure-A without mentioning anything about it in the affidavit portion, and alternatively it was submitted that passing of the Accounts examination could not be made essential for promotion to the Selection Grade by administrative instructions. In view of the settled law that if the Rules are silent, Government can fill up the gaps and supplement the Rules and issue instructions not inconsistent with the Rules already framed, I do agree with brother Jha, but I find substance in the first submission of the learned counsel for the petitioners.

20. It is true that earlier passing of Accounts examination was treated as essential qualification for the purpose of crossing of efficiency bar or for the

purpose of promotion in the Upper Division and for the purpose of either confirmation or grant/promotion to the selection grade. I find it difficult to rely upon the said so-called correction ship about which the Government in its counter affidavit has not even whispered except that it has been attached to the notification no. 431 dated 29th April, 1985 (Annexure-A), whereby in exercise of the power under proviso to Article 309 of the Constitution amendment of Rule 157(3) of the Board''s Miscellaneous Rules, 1958 has been sought to be made by substituting the new Rule, about which only a mention has been made in paragraph 3 of the said counter affidavit, and nothing has been mentioned about the so-called correction slip, the authenticity of which cannot be accepted. This can also be borne out from the very fact that the State Government appears to have realised the problem, and thus, amended the very provision, contained in Rule 157 (3) by substituting it by notification dated 29th April, 1985 in exercise of the power under proviso to Article 309 of the Constitution. Moreso, as is also evident from the fact that the said so-called correction slip was not placed on the record of the case of Md. Shamsuddin, as has been noticed by brother Jha in paragraph 8 above, and also from the fact that despite repeated request, learned State Counsel failed to produce the original of it from the relevant file except that the alleged photo copy of it has been tagged with photostat copy of 1985 notification published in the Bihar Gazette, which does not at all talk of the said so-called correction slip nor the said so-called correction slip show as to which authority issued it.

21. I fully agree with brother Jha that by administrative instructions, the Government can fill up the gaps and supplement the Rules and issue instructions not inconsistent with the Rules already framed, but the said power is vested in the Government alone. But the said so-called correction slip does not show that it is administrative instruction based on Government decision. As such, in my opinion, there was no Rule or administrative instruction relating to grant/ promotion of either selection grade/junior selection grade as created vide Annexure-2 in C.W.J.C. No. 8347/90 and/or senior selection grade till the said amendment was brought in vide notification dated 29th April, 1985. Moreover, even the said Rule relates to only promotion in the selection grade and does not talk of senior selection grade.

22. Learned counsel for the State failed to show that the word ''selection grade'' has been defined and it includes senior selection grade also. However, even assuming that the selection grade will include senior selection grade, then requirement of finally passing any Accounts examination under the said Rule is the requirement only at the initial stage. However, in the present case, we are not concerned with the said question, but since the Full Bench has been constituted to deal with the scope of the provisions relating to the requirement for finally passing of the Accounts examination for the purpose of promotion to selection grade and senior selection grade, I considered it proper to explain the above position in law.

23. I find that the requirement for finally passing the Accounts examination for promotion to the selection grade was for the first time introduced on 29th April, 1985 and thus, I am of the view that any promotion of a Clerk which became done in the selection grade, which had he created in 1964, the junior selection grade created vide Annexure-2 and the (sic) selection grade created in the year 198(sic) cannot be denied on account of not passing finally in Accounts examination to framing of the said amended Rule in the year 1985, and thus, the petitioners an also entitled for consequential fixation of their inter se seniority vis-a-vis the private respondents. From the above discussions, come to the conclusion that the petitioners whenever became entitled to grant of selection grade/junior selection grade and senior selection grade since after its creation with effect from 1.4.1964 vide memo dated 20th September, 1982 (Annexure-A) and 1.4.1981 respectively are entitled to get said promotions from due date subject to fulfillment of other requirements in law and consequently also for fixation of their inter se seniority vis-a vis the private Respondents. Vide order dated 9.8.1999 passed in C.W.J.C No. 989 of 1989 this Court made it clear the order impugned therein shall remain operative to abide by the ultimate (sic) of the application. Accordingly, the Respondent-authorities are obliged to give relief to the petitioners in the light to the above on their approaching the concerned authority by filing representation.

