

(1990) 11 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3663 of 1990

Rajvendra and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-11-1990

Acts Referred:

Rajasthan Panchayat Samitis and Zila Parishad Act, 1959 — Section 79, 86
Rajasthan Panchayat Samitis and Zila Parishads Service Rules, 1959 — Rule 11, 17

Citation : (1990) 2 RLW 398 : (1991) 2 WLC 439 : (1990) 2 WLN 446 : (1990) WLN 404

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Mathur. J.

1. All the batch of writ petitions mentioned in Schedule a appended to this order are disposed of by this common order as the basic questions involve in all these writ petitions arc common.
2. For the convenient disposal of all these writ petitions, the facts contained in S.B. Civil Writ Petition No. 3663 of 1990: Rajvendra and Ors. v. "State of Rajasthan and Ors. arc taken into consideration.
3. The petitioners in this writ petition are trained teachrs and they applied for selection to the posts of primary school teachers in pursuance of the advertisement No. 1 of 1988 issued by the Zila Parishad, Sri Ganganagar. The Selection Committee held selections in the month of October 1989 and the petitioners were interviewed by the selection Committee. Thereafter, the respondent No. 2 issued selectlists in which the names of the petitioners find mention. The petitioners were allotted to Panchayat Samities, Nohar and Bhadra. The Panchayat Samities, Nohar and Bhadra issued appointment orders in the cases of some of the candidates. However, the appointment orders in favour of

the petitioners were not issued. Some of the petitioners submitted representations to the respondents and the petitioners were informed that the Slate Government by order dated 7.3.1990 has directed that till further order no appointment should be made and all the selections should be stayed. A copy of the Slate Government's order dated 7.3.1990 has been placed on the record as Annex. 4. The order dated 7.3.1990 (Annex.4) reads as under:

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dzekad ,Q 139 14-15 xk fo"k@f"k{k@89@436 t;iqj fnukad 7 ekpZ okLrs eq[; vf/kdkjh]

ftyk ifj"kn]

v/;kidks dh fu;qfDr ij jksd yxk, tkus lECU/kh dy fnukad 8 ekpZ 1990 dks Hkstk x;k rkj vkidks izkIr gks x;k gksxk A bl lECU/k es funsZ"kkulkj vkidks lwfpr fd;k tkrk gS fd v/;kidks dh fu;qfDr gsrq izfd;k dk iqujkoyksdu fd;k tk jgk gS A o vr% vkxkeh vkns"k rd fdlh v/;kid dh fu;qfDr ugh dh tkos Aftu ftyk ifj"knks es lk{kRdkj ugh fd;s x;s gS mues vc p;u dksbZ lk{kRdkj ugh fy;k tkos A ;fn lk{kRdkj ys fy;s x;s gks ,oa lwph vHkh tkjh ugh dh xbZ gks rks fu;qfDr gsrq p;u lwph iapk;r lfefr;sk dks u Hksth tk; A;fn fu;qfDr gsrq p;u lwph iapk;r lfefr;ks es fHktoknh gks rks p;u lwph ds vk/kkj ij vc fu;qfDr ugh nh tkos A

bl vkns"k dk mYya?ku es ;fn dksbZ fu;qfDr vc ns nh tkrh gS rks vogsyuk ds fy, mRrjnk;h vf/kdkjh ds fo:) dk;Zokgh dh tk;sxh A

bl i= dh izkfIr dh lwpuk fHktokos ,oa fu;qfDr;ka ,oa fjfDr;ks dks Hkh fnukad 18-3-90 rd layXu izi= es vo"; gh fHktok;s A

lgh@& layXu ? izi? ??eZohj? funs"kd ,oa "kklu fof"k"B lfpo izfrfyfi ? 1- leLr izeq[kks dks lwpuk?Z 2- leLr fodkl dks lwpuk?Z ,oa voyksduk?Z lgh@& funs"kd ,oa "kklu fof"k"B lfpo

4. The petitioners have challenged this order filing the present writ petition and the principal submission of the learned Counsel for the petitioner M/s. M.S. Singhvi and Ors. is that the Slate Government has no power to issue the order dated 7.3.1990 directing the Panchayat Samitis not to make selections and if selections have been made then not to issue the select lists and if select lists have been issued then appointment orders should not be issued. It is submitted that these directions are without jurisdiction and are contrary to the provisions of the Rajasthan Panchayat Samitis and Zila Parishads Service Rules, 1959 (referred to hereinafter as the Rules of 1959)

5. In a subsequent writ petition, namely, S.B. Civil Writ Petition No. 4475 of 1990 Jayexh and Ors. v. State of Rajasthan and Ors. which has been filed, where in some appointment orders were issued in spite of the order dated 7.3.1990, then the Government issued an order dated 14.9.1990 (Annex. 4) terminating the services of the such candidates which have been appointed in pursuance of the

selections made by the Zila Parishads. The order dated 14.9.1990 is reproduced below:

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dzekad ,Q 139@14&15?xzkeh.k? f''k{kk@90@1972 t;iqj fnukad-14-9-90 ifji=

jkt; ljdkj }kjk fy;s x;s fu.kZ; ds vuqlkj foHkkxh; i= dzekad ,Q-139 14&15 xzk-fo-Ik- f''k{kk fodkl 89 ?436 fnukad 7-3-90 }kjk v;/;kidks dks ubZ fu;qfDr gsqrq p;u izfdz;k dk iqujkoyksdu fd;k tkus rd fu;qfDr ugh nh tkos A v;/;kidks ds fjDr inks ds fy, p;u izfdz;k bl foHkkx ds vkns''k la[;k ,Q@139@14&15?xzk foi@f''k{kk 89? 1252 ,oa 1253 fnukad 11-7-90 }kjk fu/kkZfjr dj nh x;h gS A

jkt; ljdkj ds /;ku es yk;k x;k gS fd mDr jksd ds ckn Hkh dqN ftyk ifj''knks o iapk;rks lfevr;ks }kjk fu;qfDr;ka ns nh x;h gS Ajkt; ljdkj dh vksj ls jksd gksus dh fLFkfr es fcuk jkt; ljdkj dh vuqefr ds tks fu;qfDr;ka nh x;h gS ;g vfu;fer dk;Z gS vr% 7-3-90 ds ckn jksd vof/k es dh xbZ fu;qfDr;ks dh lwpuk foHkkx dks vfofEc fHktok;s fjDr inks ds fo:) ubZ fu;qfDr;ka ubZ p;u izfdz;k ds vuqlkj dh tkos A

,l- Mh- of''kf''B ''kklu lfpo] jktLFkku] t;iqj

6. On account of these two orders these batch of writ petitions have been filed in this Court.

7. Apart from this, other grievances have also been made in these batch of writ petitions i.e. in spite of various decisions given by this Court in the matters of appointment of primary school teachers in Panchayat Samitis & Zila Parishads, the same are not complied with and driving the teachers to court by filing writ petition for compliance of those orders.

8. If the State Government has cared to look into the provisions of the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 and the Rules of 1959 perhaps this needless litigation could have been avoided. This is unfortunate that this lot of petitioners are being driven to this needless litigation by filing these writ petitions, in spite of the fact that by a number of decisions of this it has been categorically Laid down the parameters in which the Government, Zila Parishad and Panchayat Samities should act. But those decisions and the ratio Laid down have not been complied with. A Division Bench Of this Court in Chanda Tamboli v. Panchayat Samili, Mandal (D.B Civil Writ Petition No. 2795/87) gave a detail direction for deciding the fate of trained and untrained teachers serving in various Zila Paris had, Panchayat Samitis and it is brought to my notice that the State Government has issued instructions in pursuance of that judgment and subsequent judgments incorporating all the guidelines as directed by this Court. But these guidelines have not been followed resulting in filing of a number of writ petitions before this Court by these poor lowly paid teachers. My attention was also drawn to the instructions issued by the State Government by a circular dated 29.8.1990. The circular dated 29.8.1990 reads as under:

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dzekad %& ,Q- 13?1? fof/k@fjV@xzk foi@90@1513 t;iqj fnukad 29-8-80 ifji=

,slk ns[kus es vk;k gS fd xr dqN le; ls iapk;r lfefr;sk ds v/khu dk;Zjr v/;kidks us
vusdkusd fjV okfjdk;s ekuuh; mPp U;k;ky;@t;iqj@tkS/kiqj es nk;j dh vkSj mues
vLFkbbZ fu"ks/kkKk Hkh izkIr dh A fofHkUu fjV ;kfpdkvsk es ekuuh; mPp
U;k;ky;ks us fu.kZ; Hkh ikfjr djok fn;s gS A bu fu.kZ;ks es dqN ewwyHkwr fl)kUr
izfrikfnr fd;s x;s gS A leLr v/khuLFk vf/kdkjh;ks dks lwpuk ,oa ekxZn"ku gsrq
ekuuh; U;k;y;sk }kjk izfrikfnr fl)kUrks dks ladfyr dj fuEukuqlkj voxr dj;k tk jgk
gS %&

pUnk rEcksyh ,oa vU; cuke jkT; ljdkj ,oa vU;

?;s fjV ;kfpdk;s vizf"kf{kr@vp;fur v/;kidks }kjk nk;j dh xbZ FkhA?

izfrikfnr fl)kUr%&

?1? tc rd izf"kf{kr@p;fur v/;kid miyC/k u gks] vizf"kf{kr@vop;fur v/;kidks dks
lsok ls eqDr u fd;k tkos A

?2? pwfd iapk;r lfefr;ka ?^^m|ksx^^ dh ifjHkk"kk es vkrh gS blfy, vkS|ksfxd
fookn vf/kfu;e 1947 ds izko/kkuks ds vUrZxr fdLh deZpkjh dks lsok eqDr fd;k
tkos ? bl laca/k es foLr`r funsZ"k foHkkxh; ifji= dzekad 1247 fnukad 21-7-90 }
kjk izlkfjr fd;s tk pqds gS?

?3? rnFkZ fu;qDr O;fDr;ks ij Hkh ^^leku dk;Z leku osru^^ dk fl)kUr ykxw gksrk
gS A vr% rnFkZ fu;qDr O;fDr;ks dks Hkh osrueku dk U;wure osru ,oa ml ij ns;
vU; leLr Hkr~rs fn;s tkus pkfg, rFkkfi ,sls fu;qDr O;fDr;ks dks okf"kZd osru o`f)
dk ykHk ns[k ugh gksxk A

?4? ;fn rnFkZ fu;qDr O;fDr fujUrj dk;Z dj jgs gS rks mUgs xzh"ekodk" dk osru
Hkh ns; gksxk A

2- ekuoh; mPpre U;k;ky; es ,l- ,y- ch- &jkelq[k ,oa vU;

cuke jktLFkku jkT; ,oa vU;

?;g ,l-,y-ih- ekuuh; mPpre U;k;ky; es vizf"kf{kr v/;kidks us nk;j dh Fkh?

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?1? pUnk rEcksyh dh fjV ;kfpdk es ekuuh; mPp U;k;ky; tks/kiqj }kjk fn;s x;s
fu.kZ;ks dks gkykafd c/kkor j[kk x;k ijUrq mPpre us ;g fl)kUr Hkh izfrikfnr fd;k
fd vizf"kf{kr v/;kid dHkh Hkh izf"kf{kr v/;kid dk LFkku ugh ys ldrk gSS Ablfy,
uUgs eqUuks dk Hkfo"; vizf"kf{kr v/;kidks ds gkFkks es ugh NksM+k tkuk pkfg, A

?2? ;"kksnk jkuh ,oa vU; cuke jktLFkku jkT; ,oa vU; ?;g fjDr ;kfpdk vp;fur ijUrq
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?1? tc Hkh fu;qfDr nsus dk iz"u gks p;fur v;/kidks dks igys fu;qfDr nsuh pkfg,A

?2? ;fn p;fur v;/kidks dks fu;qfDr djus ds mijkUr Hkh in fjDr jgrs gS rks izf"kf{kr ,oa mPp ;ksX;rk /kkfjr O;fDr dks fu;qDr fd;k tkos A

?3? tc ,sls rnFkZ fu;qDr O;fDr;sk dks Isok Is eqDr djuk gks rks ^^okn^^ es fu;qDr fd;s gq, O;fDr;ks dks igys Isok eqfDr ^^ ds fl)kUr ds vuqlkj gh Isok Is eqDr djuk pkfg, A

?4? jkT; ljdkj }kjk izlkfjr jksLVj fu;esk dk iw.kZr;k ikyu fd;k tkuk pkfg, A

4 cstukFk ,oa vU; cuke~ jktLFkku ljdkj ,oa vU;

?og fjV ;kfpdk ekuuh; mPp U;k;ky; t;iqj csp es p;fur v;/kikdsk us nk;j dh Fkh ?

izfrikfnr fl)kUr %

?1? vp;huLFk v;/kidks dks Isok es fujUrj j[ku ds fy, fu;qDr fd;s gq, p;fur v;/kidks dh Isok;s lekIr ugh dh tkuh pkfg, A

?2? ;fn mijksDr fl)kUr ds izfrdwy dskbZ vkns"k izlkfjr fd;s tk pqds gS rks og fujLr fd;s tkus ;ksX; gSA

?3? ;fn fdLh izdj.k fo"ks"k es fdLh U;k;ky; us dksbZ vLFkbbZ fu"ks/kkKk nh gqbZ rks ml izdj.k es U;k;ky; dh vkKk ds vuqlkj gh dk;Zokgh dh tkuh pkfg, A

mijksDr ifji= izlkfjr djus dk dsoy ek= mn~ns"; ;g gS fd leLr lEcU/kr v/khuLFk vf/kdkjh;ks dks fofHkUu U;k;ky;ks }kjk izfrikfnr fl)kUrks dh tkudkj gh gks lds rkfd os Hkfo"; es ,slh fu;qfDr;ka ugh gks ftlds dkj.k yxsxks dks U;k;ky; dh "kj.k es tkuk iM+s A bl ifji= dk ;g vFkZ dnkfi ugh gS fd v;/kidks ds lEcU/k es iz"kkIfud vkns"k tks fd foHkx dh f"kk{kk "kk[kk }kjk ,oa fu;qfDr ds lEcU/k es dksbZ izfrcU/k yxk;k tk;s rks mldh ikyu dh tkuh gS AfdUrq tc Hkh fu;qDr ,oa Isok eqfDRk ds vkns"k izlkfjr fd;s tkus gks rc U;k;ky; }kjk izfrikfnr mijksDr fl)kUrks ds vuqdwy gh dk;Zokgh dh tk;s A

g0 funs"kd ,oa fof"k"B "kklu lfpo xzkeh.k fodkl ,oa iapk;rh jkt foHkx jkt- t;iqj A

9. But in spite of that various Panchayat Samitis are still not following the instructions issued by the State Government and drawing these poor teachers to further litigation. The judgment in Chanda Tamboli's case (supra) has already been upheld by their Lordships of the Hon "ble Supreme Court in Ram Sukh and Others Vs. State of Rajasthan and Others, and the observations made in Chanda Tamboli's case have been quoted with approval, which reads as under:

In We result, all these writ petitions are allowed and we direct that all the petitioners whose services have been terminated shall be entitled to one month's salary in the minimum pay scale admissible to the cadre with dearness allowance of Additional Dearness Allowance admissible in accordance with law but will not be entitled to grade increment and they will be re-employed in the next academic session to continue till the regular selections take place (of course

subject to availability of vacancies). Amongst these class of persons if trained teachers are available then priority shall be given to the trained teachers. These teachers who are already serving shall be paid the minimum of pay scale admissible to the particular cadre concerned with Dearness Allowance or Additional Dearness Allowance admissible according to law. They will continue till regular selections take place. They will not be entitled to any grade increments. However, they will be entitled to salary for the vacation period as well. The State Government is also directed to get the untrained teachers trained in view of the communication referred to above so that these lowly paid teachers may improve their prospects for the employment in phased programme. No orders as to costs.

10. I shall advert to this aspect later. First, I shall examine the validity of orders dated 7.3.1990 and 14.9.1990.

11. Mr. Dave and other learned Counsel appearing for the respondent Panchayat Samitis and the State have also submitted that the orders dated 7.3.1990 and 14.9.1990 are not contrary to the rules, but it is supplementary to the Act/Rules. It is submitted that the State Government is competent to issue such directions to Zila Parishads and the Panchayat Samitis.

12. In order to appreciate the controversy involved in these writ petitions, it would be proper to refer the various provisions of the Rajasthan Panchayat Samities and Zila Parishads Act, 1959 (referred to hereinafter as "the Act of 1959"). Section 86 which is relevant for our present purpose relates to the constitution of Rajasthan Panchayat Samiti and Zila Parishad Service, Section 86 of the Act of 1959 reads as under

86. Constitution of Rajasthan Panchayat Samiti and Zila Parishad Service, (1) There shall be constituted for the State a 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.

(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) Gram Sevikas,
- (iii) Primary school teachers,
- (iv) Ministerial establishment except accounts clerks,
- (v) Fieldsmen,
- (vi) Stockmen, and
- (vii) Vaccinators.

(3) The State Government may encadre in the service any other category or grade of officers and employees of Panchayat Samitis and Zila Parishads 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) Except for first appointments to posts in the Service-referred to in Sub-section (5) of Section 31, all appointments to posts in the service shall be made in accordance with the provisions of Sections 31 and 60

(a) By direct recruitment, or

(b) By promotion, or

(c) By transfer

(6) Appointment by direct recruitment 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 88.

(7) Omitted by Raj. Act 14 of 1987, w.e.f.21.4.1987.

(8) 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 only after consultation with the District Establishment Committee.

(8-A) Notwithstanding anything contained in Sub-section (5), Sub-section (6) or Sub-section (8), all persons who were appointed temporarily before the commencement of the Rajasthan Panchayat Samitis and Zila Parishads (Amendment) Act, 1976, to posts encadred in the service and who have completed at least two years temporary service on commencement of this Sub-section shall be substantively appointed to the posts on which they were temporarily appointed with effect from the date of such commencement.

(9) 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

(9-A) Notwithstanding anything contained in Sub-section (9), 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, and may also stay the operation of, or cancel, any order of transfer made under Sub-

section (9) or the rules made there under.

(10) Persons holding posts enacted in the Service shall 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 court the period of their holding posts in the service constituted under this Section for purposes of seniority and pension.

(11) Persons holding appointment in a State Service shall also be eligible for appointment by transfer to a encadred in the Service constituted under this Section in accordance with rules made In this behalf by the State Government and on terms and conditions Laid down In those rules.

13. Section 88 relates to the constitution and functions of the District Establishment Committee-Section 88 reads as under:

88. Constitution and Functions of the District Establishment Committee:

(1) For each district, there shall be a District Establishment Committee consisting of the following.

(i) Zila Paramukh, as the Chairman,

(ii) Collector

(iii) Additional/Deputy District Development Officer; and

(iv) Senior Deputy District Education Officer (where the matter before the said committee related to the appointment of, or disciplinary proceeding-against, a teacher of a primary school).

(2) The District Establishment Committee shall

(a) Make selection for the posts in different grades and categories existing in the service in the Panchayat Samitis and the Zila Parishad in the district in accordance with the rules made by the State Government in this behalf:

(b) Regulate the mode of temporary appointment and recommend the names of persons for extending such appointment beyond six month:

(c) Prepare lists of persons for promotion in the prescribed manner; and

(d) Advise the Panchayat Samitis and the Zila Parishad of the district on all disciplinary matters affecting the officers and other employees thereof, other than those referred to in Sections 26 and 55, which way arise u/s 89.

14. Sub-section (1) of Section 88 says that for each district there will be a District Establishment Committee and Sub-section (2) lays down that the District Establishment shall make selection for the posts in different grades and categories cixsting in the service in the Panchayat Samits and the Zila Parishad in

the district in accordance with the rules made by the State Government in this behalf.

15. The State Government has framed the Rules in the purported exercise of its powers u/s 79 of the Act. Section 79 reads as under:

79. Power to make rules.--(1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) All rule made under this Section shall, as soon as may be after they are made, be Laid for not less than fourteen days before the House of the State Legislature and shall be subject to such modification whether by way of repeal or amendment, as the said House may make during the session in which they are so Laid.

16. In the purported exercise of the powers conferred by Section 79 the State Government has framed the Rules known as the Rajasthan Panchayat Samities and Zila Parishads Service Rules, 1959. Rule 3 lays down the strength of service. Rule 4 lays down the categories of posts which the service shall consist of. This includes at item No. 3 the primary school teachers. Rule 6 lays down the sources of recruitment i.e. by direct recruitment and by promotion from a lower to a higher grade in the same category. Rule 7 deals with the reservation of vacancies for the Scheduled Castes and Scheduled Tribes. Rule 8 Provides for determination of the vacancies. Rule 10 deals with age for direct recruitment to the service. Rule 11 deals with academic qualifications and qualifying service. Rule 11 reads as under:

11. Academic qualifications and qualifying service.--A recruit to the various categories of service must possess the minimum educational qualification or technical qualification and experience detailed in schedule to these Rules.

17. In the Schedule appended to the Rules of 1959 the qualification for appointment to the post of the primary school teacher appear at item No. 2, the qualification prescribed is Mairic trained. The procedure has been given for direct recruitment from Rule 15 onwards i.e. post shall be advertised. Rule 17 lays down that the Commission shall sprulinise the applications received from the candidates for direct recruitment. Rule 17 reads as under:

17. Scrutiny of applications.--The Commission shall scrutinise the applications received by them and require as many candidates qualified for appointment under these rules as seem to them desirable to appear before them for interview:

Provided that for direct recruitment to the posts of Panychayat Primary School teachers for the year 1973-74 the Commission may assess the suitability of the candidates of the basis of their qualifications, experience etc. without requiring them to appear before them for interview.

18. The Commission (District Establishment Committee shall scrutinise the applications received by them from the qualified candidates for appointment

under these Rules.

19. In the present case, by the order dated 7.3.1990 directions have been given to the Zila Parishads not to make recruitment as the change in selection procedure is under contemplation. The principal submissions of the learned Counsel is that the State Government's orders dated 7.3.1990 and 14.9.1990 are absolutely illegal and beyond the scope of the rules of 1959. Such kind of direction is not permissible under the rules of 1959. By the order dated 7.3.1990 (Annex.4) the State Government directed that no appointments shall be made and if interviews were not held by the Zila Parishads then no interviews for selection should be held and if interviews have been undertaken and select list has not been issued then the select list shall not be sent to the Panchayat Samitis for appointments shall not be made. By the order dated 14.9.1990 it has been directed that in spite of the stay by the State Government vide order-dated 7.3.1990 if any appointments have been made then all these appointments should be cancelled. It is further observed that now procedure for selection has been specified by the order dated 11.7.1990 and now appointments should be made in accordance with the new procedure of selection issued by the Government vide order dated 11.7.1990. and now appointments should be made in accordance with the new procedure of selection issued by the Government vide order dated 11.7.1990. A copy of the order/circular dated 11.7.1990 has already been placed on the record as Ex. Rule 1 in S.B. Civil Writ Petition No. 1495/1990 Taj Singh and Ors. v. State of Rajasthan and Ors. I need not to reproduce this circular here. However, I will deal with the validity of this circular at later stage.

20. So far as the controversy regarding both these orders i.e. order dated 7.3.1990 and 14.9.1990 is concerned, it is absolutely clear that these orders are contrary to the provisions of the Act of 1959 and the Rules of 1959. It is a trite proposition that once the statutory provisions governing the service conditions of the employees of the Panchayat Samitis and Zila Parishads have been framed by the Government, thereafter no administrative or executive instructions can be issued inconsistent with the provisions of those Act/Rules. In the present case, the orders dated 7.3.1990 and 14.9.1990 of the State Government are not traceable to any provisions of the Act and the Rules. Under the scheme of the Act and the Rules the Selection Committee is the District Establishment Committee (in place of a Commission). The recruitment has to be made by the District Establishment Committee on the basis of the qualifications laid down in the Schedule appended to the Rules of 1959. Rule 17 clearly lays down that the District Establishment committee shall scrutinise the applications received by them and require as many candidates qualified for appointment under these rules as seem to them desirable to appear before them for interview. Therefore, the District Establishment Committee is a creature of the Statute and it has to follow the Rules governing the subject. Once the District Establishment Committee acting under the provisions of the Rules i.e. in terms of Rule 17 and according to the qualifications Laid down for the posts make selections then

those selections cannot be stayed by the State Government or cannot be cancelled by the State Government as this is beyond the power of the State Government. In the present case, large number of candidates were selected by the District Establishment Committees in pursuance of the selections held in October, 1989 onwards and in some of the cases appointments have been given then that process cannot be interfered with by the State Government by such kind of executive direction as quoted above. It has been brought to my notice that, an anomalous situation has been created that in some cases selections have been made and appointments have been issued and in some cases selections have been made but appointments have not been given on account of the order dated 7.3.1990 and to above all an order dated 14.9.1990 came to be issued that the appointments made after 7.3.1990 should be cancelled. This kind of direction is absolutely unjust, arbitrary, and inconsistent with the provisions of the Rules.

21. In this connection my attention was drawn to *Guman Singh and Others Vs. State of Rajasthan and Others*, a celebrated judgment from Rajasthan. In that case the selection to senior scale of R.A.S. came to be challenged and the circular issued by the Government that the selection committee should regulate its business in terms of that circular. That came to be challenged before this court and ultimately the case went to the Hon'ble Supreme Court and the Hon'ble Supreme Court examined the scope of the circular vis-a-vis the Rajasthan Administrative Service Rules, 1954 and it was categorically laid down that the State Government cannot amend or supersede the statutory rules by administrative instructions. It was observed as under by the Hon'ble Supreme Court:

Again, under the Rules the Committee concerned, has a discretion if it deems necessary to call for interview any person, whose claims are being considered by it. But this exercise of discretion is drastically curtailed by paragraph 6 of the circular laying down the circumstances under which a person, should or should not be called for interview. The Committee under the said paragraph has only to mechanically apply the directions contained therein. The provision is again a serious inroad on the powers conferred on the Committees by the Rules.

Similarly in Para 53, it was observed as under:

The object of the circular may be to bring about uniformity in the award of marks, But the directions contained therein do offend the rules. This is not a case of the Government filling up the gaps or of giving executive instructions on matters not provided for by or not inconsistent with the rules. The learned Judges of the Division Bench of the High Court, have by and large, upheld the validity of the marking system as well as the other instructions contained in the circular of 1966 on the ground that the marking system as pointed out by the State has been in vogue from 1960, on the basis of a previous circular, dated August 31, 1960, issued by the State Government. Reliance placed upon this circular of 1960 by the High Court, in our opinion, is not justified. We have gone through the circular

of 1960, which is No. F. 1 (6) Appts. (D)/60, dated August 31, 1960, That circular was issued by the State to clarify the misapprehension that appears to have been caused in the application, for promotion of the principle of merit-cum-seniority or seniority-cum-merit. For the purpose of having uniformity, the State Government had Laid down certain principles in the said circular to be borne in mind by the Promotion Committees. No doubt there is a marking system indicated therein. But there are two features, which distinguish the circular of 1960 from that of the 1966 circular. In paragraph 3 of the former circular, it is specifically Laid down that the principles mentioned therein are only in the nature of executive instructions to be kept in view by the Committees when marking promotions. It is made clear that those Committees "should, however, exercise their own discretion while applying the above principles in view of the fact that occasionally the Confidential Rolls may not have been written with full sense of responsibility. Moreover, some of the rules permit interview before selection and in such cases the Selection Committee will have to assess suitability of the officer as a result of the interview also." Under the circular of 1966, we have already indicated, no such discretion is left to the Selection of Promotion Committees to adopt any method other than that indicated in the circular. In fact, it is emphasized that the Statutory Service Rules and the instructions contained in the circular are to be treated as a complete code by the Committees. Another point to be noted is that in 1960 the question of promotion on the basis of merit alone had no place. That principle was adopted only, as pointed out by us earlier, in 1965 which led to the amendment of the rules. Therefore, the principles mentioned in the circular of 1960 cannot be relied on when considering the validity of the present circular, when promotion by merit alone has been recognized by the rules from 1965. We have already indicated that the instructions in the 1966 circular contravene the Rules. Therefore, we are of the opinion that the circular dated August 27, 1966, is bad and accordingly it is struck down. We make clear that we express no opinion on the validity or otherwise of the circular of August 31, 1960. We have only referred to that circular to show that the High Court has committed an error in placing reliance on the same.

22. Similarly, in *P.D. Aggarwal and Others Vs. State of U.P. and Others*, , their Lordships of the Supreme Court in some what identical circumstances observed as under:

The office memorandum dated December 7, 1961 which purports to amend the United Provinces Service of Engineers (Buildings and Roads Branch) Class II Rules, 1936 in our opinion cannot override, amend or supersede statutory rules. This memorandum is nothing but an administrative order or instruction and as such it cannot amend or supersede the statutory rules by adding something therein as has been observed by this Court in *Sant Ram Sharma Vs. State of Rajasthan and Another*, Moreover, the benefits that have been conferred on the temporary Assistant Engineers who have become members of the service after being selected by the Public Service Commission in accordance with the service rules are entitled to have their seniority reckoned in accordance with the

provisions of Rule 23 as it was then, from the date of their becoming member of the service, and this cannot be taken away by giving retrospective effect to the rules of 1969 and 1971 as it is arbitrary, irrational and not reasonable.

23. Similarly, in *State of Maharashtra v. Jagannath Achyut Karandikar* AIR 1989 SC 1133 their Lordships of the Supreme Court observed as under:

Executive instruction-May supplement but not supplant statutory rules

Govt. cannot restrict operation of Statutory rules by issuing executive instruction.

Executive instruction-cannot restrict operation of statutory rules.

24. Mr. Dave, learned Counsel for the respondents has invited my attention to Section 85 of the Act of 1959 in support of his argument that the State Government has a revisional Power. I regret to say that Section 85 of the Act of 1959 has no relevance in the present context. Section 85 of the Act of 1959 confers a power of revision and review on the State Government and that too in a particular given situation which comes to its notice that certain irregularities or illegalities have been committed by the Panchayat Samiti or a Zila Parishad then it can either of its own motion or on an application any person interested call for and examine the record of a Panchayat Samiti or a Zila Parishad or of a standing Committee or sub-committee thereof in respect of any proceedings to satisfy itself as to the correctness, legality or propriety of any decision or order passed therein and it can modify, annul, reverse or remit for reconsideration after hearing the affected parties, This is a provision in regard to an individual action if certain irregularities or illegalities came to the notice of the State Government but no such irregularity or illegality has been pointed out in the present case for invoking of the State Government's power u/s 85. The power u/s 85 is a solitary power which can be exercised in a given case and not by overriding the provisions of the Act and the Rules by orders like 7.3.1990 and 14.9.1990.

25. Mr. Dave has also invited my attention to the observations made by a Division Bench of this Court in *State of Rajasthan v. Ram Pratap etc. etc.* 1988 (2) RLR 186. In this case, after reviewing the provisions of the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959 it was observed that the State Government has a plenary power. But the question before me is that whether in exercise of such a power can the State Government override the statutory provisions of the Act and the Rules by issuing orders like 7.3.1990 and 14.9.1990. The answer is in negative. Once the State Government framed the Rules u/s 79 of the Act of 1959 the power of the State Government has already been exhausted in view of the framing of the Rules of 1959. Subsequently, they cannot issue administrative or executive instructions. If the State Government wants to change the procedure of selection all over Rajasthan in the matter of appointment to the posts of primary school teachers in the Panchayat Samities then the only course open to it is to amend the Rules of 1959 accordingly. But by no stretch of imagination such kind of administrative or executive instructions cannot take the place of the statutory rules and put the statutory rules on

functional. The statutory bodies have been given power under the Rules and they have to act in exercise of their powers in accordance with the Rules of 1959.

26. Therefore, the proposition is well settled that once the Rules have been framed by the Government in the purported exercise of its powers then subsequently the State Government cannot issue such inconsistent directions, which are contrary to the provisions of the Act and the Rules. In the present case, the District Establishment Committee which is a creature of the statute it can Only regulate its functions and no direction can be given to it by administrative orders. Therefore, I am of the opinion that the order dated 7.3.1990 and 14.9.1990 cannot be sustained and they are quashed.

27. Now, another circular dated 11.7.1990 was issued by the State Government. The circular is a very detailed on laying down the procedure as to how the selection committee shall allot the marks and recruit the teachers for appointment to the Panchayat Samities and Zila Parishads. Suffice it to say that this circular is also beyond the power of the State Government. As already Quoted above their Lordships of the Supreme Court in the case of, Guman Singh (supra) have already observed that the State Government cannot lay down the service condition by the executive instructions superseding the statutory provisions. In the present case the circular dated 11.7.1990 in Para 7 lays down the mode by which the recruitment should be made. Para 7 of the aforesaid circular reads as under:

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gksxs A nwljs izR;k"kh us eku yhth, 60 izfr"kr rks ml izR;k"kh dks 60 ds vuqikr es 36 vad izkIr gksxs A vFkkZr ftrus izfr"kr vad izkIr gksrs gS ml la[;k dks 6@10 ls Hkkx fn;k tkuk gS ftlls 60 ls izkIr vad fudy vkosxs Abl izdkj tk la[;k vkrh gS A ml la[;k dk vadu jftLVj ds ;ksX;rk vadks ds [kkus es dj fn;k tkuk gS Amnkgj.k Lo:i ij fn;s x;s ds nks izR;k"kh;sk ds laca/k es igys izR;k"kh ds ;ksX;rk vad [kkus es 48 ntZ gksxsA A,oa nwljs izR;k"kh ds ;ksX;rk vad [kkus es 36 vad vafdr gksxs A

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28. According to this Circular marks have to be allotted under various heads and the District Establishment Committee has to give such marking. But there is no such provision under Rule 17 of the Rules of 1959 that the Commission shall award marks as mentioned in the Circular. Therefore, this circular directing the District Establishment Committees to act in a particular manner is also inconsistent with the provisions of the Rules of 1959. Since the matter has come

up before me and number of writ petitions have been filed in which this circular has also been challenged as such for the reasons mentioned in Guman Singh's case (supra) and other judgment of the hon'ble Supreme Court this circular also cannot survive and it also deserves to be quashed.

29. Apart from this by various writ petitions mentioned in the Schedule appended to this order a grievance has been raised that notwithstanding the selections already made, the temporary teachers are being allowed to continue and the teachers are not being paid the minimum pay of the scale and still they are being paid Rs. 400/-per month and this have not been paid salary for vacation period. Such grievances should not have come up. Once a Division Bench of this Court in Chanda Tamboli's case has already issued directions in this respect and the State Government has already issued the circular dated 29.8.1990 in compliance of the order of this Court, still the Panchayat Samities and the Zila Parishads are not abiding the circular and the Division Bench Judgment. All the Panchayat Samities are directed to comply with the direction given by this Court in Chanda Tamboli's case (supra) as quoted above. In case they do not comply with the directions within a period of two months from today then all the office bearers i.e. Zila Poamukh, Poradhan, Chief Executive Officer, Vikas Adhikari, as the case may be, shall be personally responsible and they will be hauled up for committing contempt of this Court and the cost of litigation will be recovered from their salary.

30. it has also been brought to my notice that in some cases the select list could not be implemented on account of the stay order of State Government dated 7.3.1990. Since now the order dated 7.3.1990 has been quashed the select lists may be implemented. If any list is sought to be expired on account of the stay granted by the State Government by the order dated 7.3.1990, then that period shall be condoned and the currency of list shall be upto the academic session. The time spent during the stay shall be excluded from counting the period of academic session.

31. In the result, the writ petitions mentioned in the Schedule appended to this order along with this writ petition are allowed, the order dated 7.3.1990, 14.9.1990 and the Government circular dated 11.7.1990 whereby the State Government Laid down the mode of selection are quashed. All the persons selected in pursuance of the selections made under the Rules of 1959 as it stood and the select lists prepared should be implemented and appointments may be made. If the select lists are not issued then they may now be issued and the period sent on account of the stay granted by the State Government by the order dated 7.3.1990 shall be excluded. If after appointing these selected persons vacancies remain then all the Panchayat Samities will act in accordance with the directions given by this Court in Chanda Tamboli's case as quoted above.

32. It is also made clear that if out of the teachers who were working temporarily some are to be retained then the authorities Should follow the principle of last come first go.

33. All other question regarding seniority fixation etc. will be open for the petitioners to raise as and when the situation arises.

34. The parties are directed to, bear their own costs.