

(2004) 11 AHC CK 0198

In the Allahabad High Court

Case No : Writ Petition No"s. 5211 (S/S) , 5459 (S/S) , 5460 (S/S) , 5462 (S/S) , 5464 (S/S) , 5500 (S/S) , 5505 (S/S) and 5794 (S/S) of 2004

Ram Chhabila Rai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-11-2004

Acts Referred:

Uttar Pradesh Horticulture and Food Processing Group A Service Rules, 1991 — Rule 4
Uttar Pradesh Horticulture and Food Processing Rules, 1993 — Rule 4
Uttar Pradesh Reorganisation Act, 2000 — Section 2, 73, 73(2), 74, 75

Citation : (2005) 1 UPLBEC 331

Hon'ble Judges : Devi Prasad Singh, J

Bench : Single Bench

Advocate : Y.K. Mishra and S.K. Kalia, for the Appellant; Anil Saran and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Devi Prasad Singh, J.—Heard learned Counsel for the parties. Since these Bunch of writ petitions involves common question of law and facts, I proceed to decide these writ petitions by passing a present common judgment. The controversy under the present Bunch of writ petitions relates to transfer of petitioner employees by the impugned order to State of Uttaranchal in pursuance to provision contained in U.P. Reorganization Act, 2000 (Act No. 29 of 2000) (hereinafter referred as Act). The Act was promulgated by Parliament on 25th August, 2000 and it was notified in the Official Gazette on 9.11.2000 which is the "appointed day" for the purpose of bifurcation of State of U.P. into two States, other one is State of Uttaranchal.

2. In the State of U.P. the Department of Horticulture and Food Processing was created sometime in the year 1974. Admittedly, petitioners were appointed on the different post of Group 2 and Group 1 in the hill area of State of U.P. At that time there was only one Horticulture Department in the State of U.P. However, by

Government Order dated 3.2.1984 the Directorate of Horticulture Hill Region and Directorate of Plain Region merged into one Directorate. Thereafter, again by means of another Government Order dated 4.9.1989 the State Government had created two separate Directorate for Hill Region as well as Plain Region know as "Directorate of Horticulture and Food Utilisation (Hill U.P.)" which was having its Head Office at Chhaupati Ranikhet (now within the State of Uttaranchal and Directorate of Horticulture and Food Processing (plain U.P.) having Head Office at Lucknow respectively. A copy of Government Order dated 6th April, 1989 has been filed as Annexure 5 to the writ petition. The Director of both the wings were having independent powers to function within their respective jurisdiction subject to Government Order issued from time to time. Separate funds were allocated for both the wings. All the employees working in the hill area as well as plain area were under the administrative control of respective Directors with separate cadres under the technology of service. By Government Order dated 17th September, 1990 different terminology was adopted for both the wings viz. Directorate of Horticulture and Food Processing (Hill Region) and Directorate of Horticulture and Food Processing (Plain Region). The service condition of the employees of Group A category were governed by service Rule namely the U.P. Horticulture and Food Processing Group A Service Rules, 1991 (in short hereinafter referred as 1991 Rule), a copy of which has been filed as Annexure CA-5 to the counter-affidavit. According to Rule 4 of 1991 Rule two separate cadres were created viz. Plain cadre and Hill cadre. Rule 4 further provides that transfer of officer working in plain region to hill region or hill region to plain region shall not be permissible. For convenience Rule 4 of the Service Rule is reproduced as under:-

"4. Cadre of Service.-(1) The strength of the service and of each category of posts therein shall be such as may be determined by the Governor from time to time.

(2) The strength of the service and of each category of posts therein shall, until orders varying the same are passed under Sub-rule (1), be as given in Appendix A(1) and Appendix A(2) in respect of Plains Cadre and Hill Cadre respectively:

Provided that-

(a) The appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post without thereby entitling any person to compensation;

(b) The Governor may create such additional permanent or temporary posts, from time to time as he may consider proper;

(c) The Governor may merge two or more sections or subsections or create new sections or sub-sections in the cadre with a view to promoting efficiency.

(3) The various categories of posts in the service shall be divided into the following sections:

PLAINS CADRE

Section A : Direction and Administration. Section B : Horticulture Development. Section C : Food Processing. Section D : Experiment and Training. Section E : Statistics. HILL CARDE

Section A : Direction and Administration. Section B : Horticulture Development. Section C : Food Processing. Section D : Experiment and Training. Notes.-(1) Transfers of officers from plains to the hills and from hills to the plains shall not be permissible.

(2) Transfers of officers from one section and from one sub-section to another sub-section shall not be permissible."

U.P. Horticulture and Food Processing Rules, 1993 framed in pursuance to power conferred by Article 309 of the Constitution of India it was notified on 19.6.1993 (in short hereinafter referred as 1993 Rule) a copy of which has been filed as Annexure-CA-7 to the counter-affidavit. One another Rule was framed for Group B services namely U.P. Horticulture Food and Processing, U.P. Service Rule, 1993 filed as Annexure-6 to the counter-affidavit by the State. A perusal of 1993 Rule a copy of which has been filed as Annexure-7 of writ petition shows that Director is the appointing authority for employees of subordinate services. According to Rule 4 of 1993 Rule separate cadre was created for the hill area and plain area. A person working in one cadre were not entitled for transfer to other cadre i.e. from hill cadre to plain cadre or from plain cadre to hill cadre. For convenience Rule 4 of 1993 Rule is reproduced as under:-

4- Isok dh InL; la;k vkSj mlesa izR;sd Js.kh ds inksa dh la;k mruh gksxh] ftruh ljdkj }kjk le; ij vo/kkfjr dh tk;A

tc rd fd mifu;e ds v/khu ifjorZu djus ds vkns"k u fn;s tk;as] Isok dh InL; la;k vkSj mlesa izR;sd Js.kh ds inksa dh la;k mruh gksxh] ftruh ifj"V ^d** esa eSnkuh laoxZ ds fy, vkSj ifj"V ^d** esa ioZrh; laoxZ ds fy, nh x;h gSA

ijUrq

fu;qfDr izkf/kdkjh fdLh fjdR in dks fcuk Hkjs gq, NksM+ ldrk gS ;k jkT;iky mls vLFkfxr j[k ldrs gSa] ftlls dksbZ O;fDr izfrdkj dk gdnkj u gksxkA

jkT;iky ,sls vfrfjdR LFkk;h ;k vLFkk;h inksa dk l`tu dj ldrs gaS] ftUgSa og mfpr le>saA

fVIi.kh&&,d vuqHkkx ls nwljs vuqHkkx vkSj ,d mi&vuqHkkx ls nwljs mi&vuqHkkx esa O;fDr;ksa dk LFkkukarj.k vuqKs; u gksxkA^^

4. It is not disputed that all the petitioners were appointed in hill cadre and their service conditions were governed by 1993 Service Rules. Their initial appointment were done in the hill cadre and from the date of their appointment they have been continuing to discharge duty in the hill cadre till their services were transferred to State of UP. after coming into force of Act in the manner discussed hereunder. A copy of one such appointment letter has been filed as

Annexure-3 to the Writ Petition No. 5459/SS of 2004. At the face of record the appointment order was passed by the Additional, Director, Horticulture and Food Processing, Ranikhet. It appears that after enactment of the Act by the Parliament certain conversation took place at various level. After enactment of the Reorganization Act the Government of India had sent a letter dated 13.9.2000 to the State of U.P. alongwith certain guidelines containing the principles and modalities for handling the personal and service matters during the course of bifurcation of State of U.P. into two States. A copy of Government of India's letter dated 13.9.2000 has been filed as Annexure-2 to the supplementary affidavit in Writ Petition No. 5459/SS/ 2004. While issuing the guideline the Government of India had categorically provided that posts relatable to a territory which includes village, Tehsil, District, division or region including projects undertaking where such territories have been transferred in their entirety to the Successor State of Uttaranchal shall deem to be post of Successor State of Uttaranchal on or from the appointed day. The guidelines further provided that all recruitment against the vacancies in term i.e. till issuance of final allocation order shall be kept in abeyance. It further provides that all transfers which have been planned and within jurisdiction through out the State may be with held in pursuance till reorganization of the States is affected. Wherever transfer order has been issued but the same not executed may be cancelled. The guideline further provides that all persons working in the Successors State shall continue to work in the Successor State till final allocation is done. However, Reorganization Committee was directed to prepare a list of personnel for provisional allocation to Successor State of Uttaranchal. The State employees were further permitted to submit their option in designated proforma. The relevant portion of the guidelines as provided in circular dated 15.9.2000 meant for the purpose of allocation is reproduced as under:-

"Allocation of personnel.-State Cadre personnel should be allocated on the following lines-

(a) Those serving in village, Tehsil, District, division or region who are normally liable for transfer with in such area and are part of such territorial cadres, shall be deemed to have been appointed to such post by the Successor State of Uttaranchal on and from the appointed day in whose territory the area has been included.

(b) Those recruited specifically or projects or undertaking where such projects/ undertaking are part of the Successor State of Uttaranchal on and from the appointed day would be deemed to be working in connection with the affairs of the Successor State of Uttaranchal. However, those serving in the project or undertaking if they belong to an organized State cadre shall be dealt in the manner as indicated in para below.

(c) The list of personnel for provisional allocation to the Successor State of Uttaranchal against each cadre/category of posts may be prepared by the Reorganization Committee of the existing State of Uttar Pradesh keeping in view

the preference of such employees and other relevant factors like maintaining the balance within each cadre/category of post, Domicile States, ethnic affinity etc.

(d) In making allocations as indicated in the para above, the importance of ensuring in each case as far as possible a composite and balanced cadre with age and seniority groups evenly distributed should be born in mind.

(e) In cadres/categories where the composition and balance of the cadres have not been achieved, to the extent of shortfall, the list may be completed by including the names of the juniors most personnel of the respective cadres/category."

Option from employees.-(A) State Services employees whose services are transferable within the State may be asked to indicate their preference in the designed Performa to serve in either of the Successor State after the reorganization of States is given effect to Performa is enclosed as Annexure "A".

(B) However, it should be made clear to these employees that without prejudice to their rights it would be open for the Government to post them either provisionally or on final basis in any Successor State in administrative interest or in the exigencies or public service. The preference performance from may be got legally vetted before issue to the employees, so that this does not confer on them any right for allotment to any State or any post."

5. It appears that instead of preparing the list in the light of guidelines of the Government of India through Reorganization Committee the officers of Government of U.P. for reasons best known to them had proceeded ahead to obtain option from the Horticulture Department and settled their placement, without having a look to the Statutory provisions of the Act. Under the garb of Government of India Office Memorandum dated 13.9.2000 referred hereinabove options were invited from the employees. In consequence thereof by another Office Memorandum dated 18.10.2004 filed as Annexure-4 to the supplementary affidavit, it was provided that the persons working in the hill cadre may submit their option but in case option is submitted then service benefit available to them of hill cadre shall not be provided. By another letter dated 29th September, 2000, a copy of which has been filed as Annexure-SA-5 to the supplementary affidavit an employees under subordinate services were directed to submit their option up to 4.10.2000.

Under these facts and circumstances and after receipt of option by order dated 27.3.2001, a copy of which has been filed as Annexure No. 6 to the writ petition the Secretary, Horticulture and Food Processing Department had transferred the petitioner's services to the State of UP.

In compliance of order dated 3.9.2004 filed as Annexure-1 to the writ petition, the Secretary of the Horticulture Department of the State of Uttaranchal by his letter dated 4th April, 2001 filed as Annexure No. 7 to the writ petition relieved the petitioner to join in the Department of Horticulture and Food Processing of

the State of U.P. Thereafter, by order dated 28th April, 2001, a copy of which has been filed as Annexure No. 8 to the writ petition the petitioners were posted at various places in the State of U.P. by the Director, Horticulture and Food Processing Department. Accordingly, in pursuance to order dated 28th April, 2001 passed by Director petitioner have joined at various places in the State of U.P.

6. In the meantime, Government of India vide its order dated 11.9.2001, a copy of which has been filed as Annexure-2 to the writ petition directed that all those employees who were appointed and working on or before appointed day i.e. 9.11.2000 in the hill sub-cadre or those who are working in the hill sub-cadre of State of U.P. shall continue to serve the State of Uttaranchal and their posts shall not be transferable. The Government of India had further directed that all the employees working in the hill sub-cadre on or before appointed day are being allocated the State of Uttaranchal finally. Since the controversy hinges of the interpretation upon the Government of India's order dated 11.9.2001, for convenience it is reproduced as under:-

la[k 27-9-2001- ,l-vkj-,l- Hkkjr ljdkj] dkfeZd yksd f"kd;r rFkk isa"ku ea=ky;] dkfeZd vkSj izf"k{k.k foHkkx A

yksduk;d Hkou] rhjk ry] [kku ekfdZV] ubZ fnYyh 110003 fnukad 11-9-2001 vkns"k

mRrj izns"k iquxZBu vf/kfu;e] 2000 dh /kkjk 73 ds mi[k.M ?? }kjk iznRr "kfDr;ksa dk iz;ksx djrs gq, dsUnzh; ljdkj ,rr}kjk funsZ"k nsrh gS fd os lHkh vf/kdkjh vkSj deZpkjh----

?d? ftudk mRrj izns"k iquxZBu vf/kfu;e] 2000 dh /kkjk 73 esa fofufnZ"V 13 ftyksa esa ls ,d ftyk Lrj vf/kdkjh fu;qfDRk izkf/kdkjh ds vkSj tks fnukad 9 uoEcj] 2000 dks vkSj mlds ckn mRrjkapy jkT; esa vkrs gSa vFkok ftudh lsok,a mifjfufnZ"V ftyk {ks=ksa ds Hkhrj lkekU;r% LFkkukUrj.k gsrq v/khuLFk gS vFkok

?[k? ftudh fu;qfDr izkf/kdkjh fnukd 9 uoEcj] 2000 dks vkSj mlds ckn mRrjkapy jkT; ds x<+oky vkSj dqek? fMohtu dk ,d foHkkxh; Lrj dk vf/kdkjh gS vFkok ftudh lsok,a mi;qZDr fMohtu {ks=ksa ds vUnj lkekU;r% LFkkukUrj.k gsrq v/khuLFk gS vFkok

?x? tks 9 uoEcj] 2000 ls rRdky iwoZ fo|eku mRrjkapy jkT; ds fgy lc dkMj ls lEcU/kr gS ;k ftudh lsok,a 9 uoEcj] 2000 ls rRdky iwoZ fo|eku mRrj izns"k ds fgy lc dkMj ftyksa ds vUnj lkekU;r% LFkkukUrj.k gsrq v/khuLFk gS vFkok

??k? fnukad 9 uoEcj] 2000 dh vkSj mlds ckn mRrjkapy jkT; ds jkT; {ks= ds Hkkx esa---- ifj;kstuk vFkok mi?e gsrq fu;qDr gS vkSj ftudh lsok,a 9 uoEcj] 2000 dh vkSj mlds ckn mRrjkapy jkT; ds jkT; {ks= ds Hkkx HkkSxksfyd {ks= ds ckgj lkekU;r% LFkkukUrj.k ;ksX; ugha gS A

9 uoEcj] 2000 dks vkSj mlds ckn mRrjkapy jkT; dh lsok gsrqg vafre :i ls vkcafVr fd;s tkrs gSa A

The allocation of State of U.P. to petitioners was admittedly completed after appointed day by the State of U.P. Learned Counsel for the petitioner Shri S.P. Singh and Shri Y.K. Mishra submitted that in Writ Petition No. 5211 of 2004, 5500 of 2004, 5466 of 2004, 5500 of 2004 and 5794 of 2004 allocation of State of U.P. was done to the petitioners of those writ petition before the appointed day i.e. on 9.11.2004. However, it is admittedly the manner of allocation was same as discussed hereinabove.

7. Shri S.K. Kalia assisted by Shri Y.K. Mishra learned Senior Advocate while assailing the impugned order submitted that once the petitioner's services were permanently merged in the State of U.P. after inviting option, the opposite parties are not entitled to pass the impugned order. The further submission of the learned Counsel for the petitioner is that since, they were already absorbed in the State of U.P. they were not given opportunity to represent their cases, the impugned order is violative of Sub-section (b) of Section 76 of the Act. The further submission of the learned Counsel for the petitioner is that the impugned order has not been passed by Central Government, hence, suffer from jurisdictional error. Sri S.K. Kalia learned Counsel for the petitioner had relied upon two judgments of Apex Court reported in Ashwani Kumar and Others Vs. State of Bihar and Others, and M. Bhaskaran v. Union of India and Ors. and proceeded to submit that where an order has been passed in an arbitrary manner the principle of natural justice shall be attracted. Petitioner's Counsel had further proceeded to submit that Sub-section (2) of Section 73 of the Act is of ultra vires to the Constitution i.e. Articles 46(3) and (4) read with Entry 4 of the said List 3 of VIIth Schedule of Constitution coupled with Articles 1: 2: 3 and 4 of the Constitution. The controversy falls within the domain of State Legislature and not the Central Government. However, since, relevant provision of the Act has not been impugned in the present writ petition, I am not entering into the merit of this argument relating to the vires of provision and left it open for some other occasion.

8. Shri C.B. Pandey, learned Additional Advocate General for the State of Uttaranchal and Shri Anil Saran learned Standing Counsel for the Government of U.P. had submitted that allocation of State of U.P. by earlier order passed by the Government of U.P. was done in violation of statutory provisions contained in the Act. Accordingly, it was substantially illegal. Only Central Government has got power to finally allocate the Successor State in pursuance to provision contained in the Act either by special order or by general order. Principle of natural justice shall not be attracted. The further submission of the learned Counsel for the respondents is that after "Appointed Day" the Government of U.P. was having no jurisdiction to transfer the employees from State of Uttaranchal to State of U.P. by final allocation after obtaining option. It was also submitted by learned Counsel for the respondents that petitioners were employees of hill cadre and their services were not transferable to plain cadre, in view of existing Rule at the relevant time. The further submission is that in view of guidelines of the Government of India and statutory provision contained in the act, petitioners

services shall deem to be settled in the State of Uttaranchal. Shri C.B. Pandey, learned Additional Advocate General proceeded to submit that since earlier allocation done by the State of U.P. was illegal and without any authority the jurisdiction under Article 226 of the Constitution of India should not exercise to restore an illegal order. The further submission of the learned Counsel for the respondent is that the impugned order is a consequential order and not the original order. Accordingly, the writ petition is not maintainable.

Shri C.B. Pandey had also submitted that Government Order dated 27.3.2001 contained in Annexure-6 to the writ petition does not have got force of law. No option is required, to transfer an officer to Successor State neither it is necessary to consider their representation or follow the principle of natural justice. The impugned order has been passed in pursuance to policy decision taken by Central Government, hence, not amenable to writ jurisdiction. Shri Anil Saran, learned Standing Counsel had also submitted that in view of Government of India's circular dated 13.9.2000 the services of petitioner's shall deem to be absorbed in the State of Uttaranchal. Accordingly, the subsequent action taken by the State of U.P. right from obtaining option to the allocation or absorption in the State of U.P. is an act which suffer from jurisdictional error.

Learned Standing Counsel relied upon the Government Order dated 22.10.2002, a copy of which has been filed as Annexure-CA 4 to the counter-affidavit and submitted that principle of natural justice shall not attracted in the present case.

Shri C.B. Pandey learned Additional Advocate General for the State of Uttaranchal had relied upon the judgment of Hon''ble Supreme Court reported in:-

Government of Maharashtra and Others Vs. Deokar's Distillery, .

(2004) 3 ESC 1629, Ashok Pratap Singh v. State of U.P. and Ors.

State of U.P. and Another Vs. Johri Mal, .

Union of India (UOI) Vs. Naveen Jindal and Another, .

Mallikarjuna Mudhagal Nagappa and Others Vs. State of Karnataka and Others, .

(2004) 22 LCD 1002 , Rakesh Kumar Sharma and Ors. v. State of U.P. and Anr. .

AIR 2003 (53) SC 376, Kedar Nath Mishra v. State of U.P. and Ors.

State of Uttranchal through Collector, Dehradun and Another Vs. Ajit Singh Bhola and Another, .

RELEVANT STATUTORY PROVISION OF THE ACT :

9. Before proceeding ahead with the present controversy it is necessary that certain statutory provisions of the Act should be taken into consideration. Under Sub-section (a) of Section 2 of the Act appointed day means the day which Central Government may by notification under Official Gazette publishes.

Admittedly 9.11.2000 is the appointed day. Definition clause further provides that existing State of U.P. means "State of U.P. as existing immediately before is appointed day". Successor State means in relating to existing State of U.P. means the State of U.P. or Uttaranchal. Sub-section (f) of Section 2 of the Act defines "law". For convenience Sub-sections (a), (e), (f), (j), (m) of Section 2 of the Act reproduced as under:-

"2. Definitions.-In this Act, unless the context otherwise requires,-

(a) "appointed day" means the day which the Central Government may, by notification in the Official Gazette, appoint;

(e) "existing State of Uttar Pradesh" means the State of Uttar Pradesh as existing immediately before the appointed day;

(f) "law" includes any enactment, ordinance, regulation, order, bye-law, Rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole or in any part of the existing State of Uttar Pradesh;

(j) "Successor State", in relation to the existing State of Uttar Pradesh means the States of Uttar Pradesh or Uttaranchal;

(m) any reference to a district, Tehsil or other territorial division of the existing State of Uttar Pradesh shall be construed as a reference to the area comprised within that territorial division on the appointed day."

Chapter 8 of the Act deals with provisions relating to service. Section 73 relates to service other than all India services. Section 74 provides that the service condition of persons allocated State of U.P. or Uttaranchal shall not be less than what they were getting on the Appointed Day. Section 75 relates to continuance of officer on the same post as was held by them on the Appointed Day in the Successor State. Section 76 relates to Constitution of Advisory Committee by Central Government. u/s 77 of the Act Central Government has been authorised to issue appropriate direction to the both the States i.e. State of U.P. and State of Uttaranchal as it deems fit to meet out administrative exigencies. For convenience Sections 73, 74, 75, 76 and 77 of the Act are reproduced as under:-

"73. Provision relating to other services.-(1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and from that day provisionally continue to service in connection with the affairs of the State of Uttar Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttaranchal:

Provided that every direction under this sub-section issued after the expiry of a period of one year from the appointed day shall be issued with the consultation of the Government of the Successor States.

(2) As soon as may be after the appointed day, the Central Government shall by

general or special order, determine the Successor State to which every person referred to in Sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of Sub-section (2) to a Successor State shall, if he is not already serving therein be made available for serving in the Successor State from such date as may be agreed upon between the Governments concerned or in default of such agreement, as may be determined by the Central Government.

74. Other provision relating to services.-(1) Nothing in the section or in Section 73 shall be deemed to affect on or after the appointed day, the operation of the provisions of Chapter I of Part XIV of the Constitution in relation to determination of the conditions of service of persons serving in connection with the affairs of the Union or any State :

Provided that the conditions of service applicable immediately before the appointed day in the case of any person deemed to have been allocated to the State of Uttar Pradesh or to the State of Uttaranchal u/s 73 shall not be varied to his disadvantage except with the previous approval of the Central Government.

(2) All services prior to the appointed day rendered by a person-

(a) if he is deemed to have been allocated to any State u/s 73, shall be deemed to have been rendered in connection with the affairs of that State.

(b) if he is deemed to have been allocated to the Union in connection with the administration of the Uttaranchal, shall be deemed to have been rendered in connection.

For the purpose of the Rules regulating his conditions of service.

(3) The provisions of Section 73 shall not apply in relation to members of any All India Service.

75. Provisions as to continuance of officers in same post.-(1) Every person who, immediately before the appointed day is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Uttar Pradesh in any area which on that day falls within any of the Successor States shall continue to hold the same post or office in that Successor State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or any other appropriate authority in that Successor State:

Provided that nothing in this section shall be deemed to prevent a competent authority, on and from the appointed day, from passing in relation in such person any order affecting the continuance in such post or office.

76. Advisory Committee.-The Central Government may, by order, establish one or more Advisory Committee for the purpose of assisting it in regard to-

- (a) the discharge of any of its functions under this part; and
- (b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this part and the proper consideration of any representation made by such persons.

77. Power of Central Government to give directions.-The Central Government may give such directions to the State Government of Uttar Pradesh and the State Government of Uttaranchal as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this part and the State Government shall comply with such directions."

Section 93 of the Act. provides that the provision of the Act will have overriding effect over the other existing law and u/s 94 the President may pass appropriate order to remove the defects within a period of three years to give effect the Act. For convenience Sections 93 and 94 of the Act are reproduced as under:-

"93. Effect of provisions of the Act inconsistent with other laws.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in other law.

94. Power to remove difficulties.-(1) If any difficulty arises in giving effect to the provisions of this Act, the President may, by order, do anything not inconsistent with such provisions which appears to him to be necessary or expedient for the purpose of removing the difficulty :

Provided that no such order shall be made after the expiry of a period of three years from the appointed day.

(2) Every order made under this section shall be laid before each Houses of Parliament."

A perusal of the aforementioned statutory provisions as contained in the Act shows that the provisions of the Act shall have effect notwithstanding in consistent therewith contained in any other law.

10. According to Blacks Law Dictionary, VIIth Edition, page 1090 word "notwithstanding" has been defined as under:-

"Notwithstanding, Despite; in spite of notwithstanding the conditions listed above, the landlord can terminate the lease if the tenant defaults."

In view of above the provision contained in the Act will prevail over all other acts, statutes, Rules or regulations. Accordingly, after appointed day i.e. 9th November, 2000 every action for allocation of Successor State should have been done in pursuance to provision contained in the Act or order passed by the Central Government and not otherwise. Even prior to appointed day keeping in view the letter and spirit of Section 75 of the Act State Government of the Successor State should not have taken any decision to transfer the employees from one State to other State.

DISCUSSION ON STATUTORY PROVISIONS

11. Let us considered the statutory provision relating to the allocation of Successor State for the employees. Section 73 of the Act provided that every persons who is serving in the existing State of U.P. before appointed day shall continue in the State of U.P. unless he is required by general or special order of the Central Government to serve provisionally in connection with the State of Uttaranchal. Sub-section (2) of the Section 3 is quite specific relating to the allocation of Successor State to the employees. It empowers the Central Government to determine the Successor State by general or special order for allocation of service and a date from which allotment takes effect as provided by Central Government shall deem to have taken effect. The order passed by the Central Government in pursuance to provision contained in Sub-section (2) of Section 73 shall be enforced by the respective Successor State. In case an employee is not serving with the said State be made available to serve the Successor State from such date as may be agree upon between the Government concerned. However, in default of such agreement final decision shall be taken in this respect by the Central Government. Section 74 provided that service condition of the employees transfer to Successor State shall not be varied to his disadvantageous position. An employee transferred Successor State shall deemed to be serving in that State.

The provision contained in Section 75 is also relevant for the purpose of present controversy. It provides that every person who is serving a Successor State on a post in connection with affairs of existing State of U.P. in any area which on the appointed day falls within any of Successor State shall continue to hold the same post or office in the Successor State and shall be deemed to be appointed to the post or office by the Government or any other authority in that Successor State. However, continuance of such persons shall not prevent a competent authority on and from appointed day from passing in relation any order affecting the continuance on such post.

Obviously, all persons who were working in a Successor State on 9.11.2000 as a Government employee shall continue to discharge their duties in the said Successor State unless a competent authority under the Act transfer them to State of UP. or State of Uttaranchal in accordance to provision contained in the Act.

Since in view of provision contained in Section 75 read with provision contained in Sections 73, 75 and 77 the entire power vest in the Central Government to transfer an employee of existing State of U.P. to the successor, no decision could have been taken by State of U.P. i.e. to transfer employees directly or indirectly in any manner either to State of Uttaranchal or State of U.P. by inviting option or allocating the Successor State. Section 76 empower the Central Government to establish one or more Advisory Committee for assistance to enforce the provision of Act, while discharging duty Sub-sections (a) and (b) of Section 76 indicates the reason for creation of Advisory Committee by the Central Government.

According to Sub-section (b) of Section 76 it shall be duty of Advisory Committee to ensure fair and equitable treatment to all persons affected by the provision of Part 8 of the Act. Sub-section (b) of Section 76 further provides that the Advisory Committee while taking a decision for equitable treatment to all, persons shall also consider any representation made by such persons. A plain reading of Sub-section (b) of Section 76 shows that it shall not be necessary for the Central Government to invite option from the affected persons. However, in case a representation is submitted by the employees then such representations should be considered properly. The use of prefix "any" before the word representation canotes that the Government of India or the State Government shall not be bound to invite option. However, in view of provision contained in Section 77 of the Act the Central Government have got power to pass appropriate order or issue appropriate direction to State of U.P. as well as State of Uttaranchal for the purpose of giving effect to the foregoing provision contained in Part 8 of the Act. The creation of Advisory Committee u/s 76 of the Act does not seems to be mandatory. It is also not necessary for the Central Government to refer each and every dispute or matter to the Advisory Committee, particularly when a general order is passed in pursuance to provision contained in Sub-section (2) of the Section 73 of the Act.

A combined reading of provisions contained in Section 73 and Sections 76 and 77 of the Act shows that the final authority in the matter of allotment of Successor States to the employees of existing State of U.P. shall be Central Government.

12. Accordingly, any order passed by Successor State i.e. State of Uttaranchal or State of U.P. inviting option or allocating the Successor State in contravention of the provision contained in the Act purported to be passed under the garb of the special or general order or guidelines issued by the Central Government shall be substantially illegal and shall also suffer from jurisdictional error. In the absence of any general or special order passed by the Central Government all the employees working in the Successor States on appointed day shall liable to continue in their respective Successor States in view of provision contained in Section 75 of the Act.

A plain reading of Government Order dated 13.9.2000 sent by Government of India to existing State of U.P. which contains general guidelines shows that all those persons serving in a village, district, Tehsil, division or region who are normally liable to be transferred within the said areas and are part of such territorial cadre shall be deemed to have been appointed to such post by Successor State of Uttaranchal on and from appointed day in whose territory the area has been included. Admittedly, petitioner's belongs to Hill cadre of the Horticulture and Food Processing Department, their services were transferable only within 13 districts of hill cadre which now falls in the State of Uttaranchal. Accordingly the petitioner's were part of such territorial cadre whose services were not transferable to plain cadre and shall be deemed to have been appointed to such post by Successor State of Uttaranchal.

13. By the guideline of Central Government the existing State of U.P. was directed to prepare a provisional allocation list through its Reorganization Committee but it was subject to condition (a) of Part 6 under head Allocation of Personal. However employees of State services were only to indicate their preferences in a designed proforma under the provision contained in part (a) the order. In view of provision contained in Government of India circular dated 13th September, 2000 though an employee of Horticulture and Food Processing Department working in hill cadre were not required to submit option and their services could not have been transferred to existing State of U.P. but even they were transferred after inviting option by the State Government. But in any case the State Government was not entitled under law to accept the option and pass the order dated 27.3.2001 accepting option and permitting the petitioner to join in the State of U.P. Similarly the order passed by Successor State of Uttaranchal dated 4.4.2001 filed as Annexure-7 to the writ petition was also an act suffers from jurisdictional error. Both the orders dated 27.3.2001 contained in Annexure-6 passed by Successor State of U.P. and the order dated 4.4.2001 passed by Government of Uttaranchal filed as Annexure-7 to the writ petition suffer from lack of jurisdiction. Government of India had never directed or authorise the State Government of U.P. to invite option and allocate Successor State either before the appointed day or after appointed day. Moreover, neither existing State of U.P. nor the Successor States or the Government of India have got right to act in violation of statutory provisions contained in the Act. It is settled law that a decision taken by an authority in violation of statutory Rules and without jurisdiction shall be nullity and shall deem to be non-existing one. Under these facts and circumstances the argument advanced by the learned Counsel for the petitioner that the petitioners were already allocated the State of U.P. as Successor State and are not liable for transfer again to State of Uttaranchal shall not create a ground to assail the impugned order.

14, In the case of Government of Maharashtra v. Dewkar (supra), Hon"ble Supreme Court held that as consequential order can not be challenged unless a person challenge the original order or provision. For convenience Para 38 of the Government of Maharashtra"s case (supra) is reproduced as under:-

"This apart, the High Court was also not right in rejecting the writ petition of the respondents at the threshold. The High Court has failed to notice another important factor that the statutory provision under Article 309, namely, the notification dated 10.12.1998 and the consequential administrative instructions/orders issued for carry in out the executive function u/s 58-A of the Prohibition Act and Article 162, namely, the circular letter dated 30.7.1999 had not been challenged by the respondents herein and, therefore, they were not entitled to challenge the demand notice which was merely a consequential communication. The High Court, therefore, is not right in quashing the demand notice issued by appellant 4, namely the Sub-Inspector of State Excise, in charge of the manufactory of the respondent, without examining the validity of or quashing the Rule of 1998 and the consequential circular letter dated 30.7.1999 issued by

Appellant 2, namely, the Commissioner, since the demand notice was merely a consequential communication issued in furtherance of the Rules of 1998 and the circular dated 30.7.1999."

In the case of Ashok Pratap Singh (supra) after considering the various judgment of Hon''ble Supreme Court the Apex Court had proceeded to reaffirm the same principle laying down that a consequential order can not be challenged without challenging the basic order. For convenience Paras 11, 12 and 13 from the Ashok Pratap Singh's case is reproduced as under:-

"Para 11. Whatever may be the legal and factual position, it is certain that order dated 5.4.2004, which is sought to be quashed, is an order passed in consequence of the order dated 31st March, 2004. A consequential order cannot be challenged without challenging the basic order, nor its quashing will bear the fruits unless the principal order dated 31.3.2004 is quashed. In P. Chitharanja Menon and Others Vs. A. Balakrishnan and Others, , the Apex Court while dealing with the controversy of determining the seniority, held that the promotion of the respondents in the writ petition having been ordered as early as 13th February, 1962, without challenging that order a subsequent order which determined the date of their commencement of service cannot be challenged.

12. Similar view has been reiterated by the Apex Court in Roshan Lal and Others Vs. International Airport Authority of India and Others, and H.V. Pardasani and Others Vs. Union of India (UOI) and Others, .

13. In Government of Maharashtra and Others Vs. Deokar's Distillery, , the Hon''ble Supreme Court while dealing with the orders passed under the Bombay Prohibition Act, 1949 held that as the notification/circular issued under the Act, 1949 and Article 162 of the . Constitution "had not been challenged; they were not entitled to challenge the demand notice which were merely a consequential communications".

15. In the case of State of U.P. v. Johri Mal (supra), Hon''ble Supreme Court held that while deciding a controversy under Article 226 of the Constitution of India, the High Court should determine in each case having regard to the nature and extent of authority vested in the State. For convenience Para 24 of the Johari's case (supra) is reproduced as under:-

"Para 24. The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the actions of the authority need to fall in the realm of public law be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question is required to be determined in each case having regard to the nature of and extent of authority vested in the State. However, it may not be possible to generalise the nature of the action which would come either under public law remedy or private law field nor is it desirable to give an exhaustive list of such actions."

In the same judgment of *State of U.P. v. Johri* (supra), Hon"ble Supreme Court had further ruled that while exercising power of judicial review the Court is more concerned with the decision making process than the merit of decision itself and when there is serious disputed question of facts the Court should not exercise jurisdiction.

In the case of *Union of India v. Naveen Jindal* (supra), Hon"ble Supreme Court held that by executive instructions citizens statutory or fundamental right can not be abrogated. In the case of *Mallikarjuna* (supra) where certain students were admitted in educational institution in excess of the permitted seats and department disallowing them to appear in the examination, Hon"ble Supreme Court had approved the action and uphold the order of High Court on the ground that illegal admission done in inviolation of Rules will not create any statutory or fundamental right. No liberal attitude can be taken to protect the such persons who were admitted in violation of Rules and regulations. Relevant portion from *Mallikarjuna* (supra) is reproduced as under:-

"We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory Rules and regulations, in respect of admissions of students."

16. In the case of *Kedar Nath Mishra* (supra), Division Bench of this Court had held that right of personal hearing arises only in case there exists some right in favour of party. In the case of *State of Uttaranchal v. Apt Singh Bhola* (supra), Hon"ble Supreme Court had declined to interfere with the controversy on the ground that exercise of discretion will amount to revive another illegal order. For convenience relevant portion from the judgment of *State of Uttaranchal* (supra) is reproduced as under:-

"Having regard to the manner in which the District Magistrate took over possession of the premises, which appears to us as at present advised, to be high-handed, arbitrary and without any legal sanction we are not persuaded to exercise our discretion under Article 136 of the Constitution of India to set aside the interim order passed by the High Court, it is well settled that this Court will not exercise its discretion and quash an order which appears to be illegal, if its effect is to revive another illegal order."

17. On the question relating to applicability of principle of natural justice reliance have been placed by respondent's Counsel on three judgments of Supreme Court. In the case of *Rakesh Kumar Sharma* (supra), Apex Court had held that the legislative action, plenary or subordinate is not subjected to the Rules of natural justice. For convenience Paras 65, 66, 73 and 78 of *Rakesh Kumar Sharma*'s case (supra) are reproduced as under:-

"65. Again in the case of *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, , the Apex Court, while dealing with the provisions of Section 3(3) of Bombay Provincial Municipal Corporation Act,

1949 considered as to whether the power exercised is administrative or legislative in nature and the Apex Court held that the power to be legislative in nature which excluded the Rules of natural justice. In the said judgment, the Apex Court observed the Rules of natural justice are not applicable to the legislative action plenary or subordinate.

66. Lastly, in the case of *State of Punjab Vs. Tehal Singh and Others*, , the Supreme Court while considering the nature of power of the State Government while issuing a notification u/s 3 of Punjab Panchayati Raj Act, 1994 for constituting a Gram Sabha laid down the following principles of classifying the functions in Paragraph 7 which is extracted below:-

"7. The principles of law that emerge from the aforesaid decisions are (1) where provisions of a statute provide for the legislative activity, i.e. making of a legislative instrument or promulgation of general Rule of conduct or a declaration by a notification by the Government that certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into an action forthwith which provide for certain consequences. (2) where the power to be exercised by the Government under provisions of a statute does not concern with the interest of an individual and it relates to public in general or concern with a general direction of a general character and not directed against an individual or to a particular situation and (3) lay down future course of actions, the same is generally held to be legislative in character."

73. It is well settled that conditional legislation is a legislation which is completed in itself but its operation is made to depend on fulfilment of certain conditions and what is delegated to an outside authority is the power to determine according to its own judgment whether or not those conditions are fulfilled. In case of delegated legislation, some portion of the legislative power of the legislature is delegated to the outside authority. The distinction between conditional legislation and delegation of legislative power are quite distinct, conditional legislation which contains no element of delegation of legislative power where a delegated legislation does confer some legislative power of outside authority, In support of this conclusion, we may refer to and rely on a Supreme Court judgment in the case of *State of T.N. represented by Secretary, Housing Deptt., Madras Vs. K. Sabanayagam and Another*, ."

78. From a plain reading of this paragraph rendered in the aforesaid decision of the Supreme Court, namely, *Union of India v. Cynamide India Ltd.* (supra), it appears that the Supreme Court in that decision has clearly laid down the principles that the legislative action plenary or subordinate is not subject to Rules of natural justice. It was further laid down by the Supreme Court that in the case of subordinate legislation, it may happen that the Parliament may itself provide for a notice and for hearing, which right is in the nature of a concession, which is not to be detracted from the character of the activity as legislative. From the aforesaid observations of the Supreme Court, it can further be deduced that the

Supreme Court has laid down the principle to the extent that where the legislature had not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity."

So far as the case of M. Bhaskaran (supra) is concerned, the fact of the case relates to an employee who obtain employment by bogus and forged document. An employee was dismissed from service in violation of statutory provision contained in Rule, hence, Hon''ble Supreme Court had affirmed the judgment of Central Administrative Tribunal holding that dismissal of service without following the Rule which was consonance with the principle of natural justice was illegal.

In the case of Ashwani Kumar (supra) appointments were done against the sanctioned post in an unauthorised manner and also against non-existed vacancies. Hon''ble Supreme Court held that confirmation or regularization of such employees shall be nullity. The case of Ashwani Kumar (supra) relied upon by Shri S.K. Kalia, learned Senior Advocate does not extend any help but on the other hand it provides that the principle of natural justice can not be subjected to any strait jacket formula. Action taken in pursuance to decision of Committee after considering the entire facts and circumstances of the case and representation of an employees were found to be sufficient. In Ashwani Kumar's case (supra), Hon''ble Supreme Court ruled that the principle of natural justice can not be applied in each and every case and it shall be always subject to facts and circumstance of a particular case.

18. Apart from aforementioned cases cited by the parties in some other cases where the action were taken by the authorities in violation of statutory provisions for extraneous reasons and in a very arbitrary manner and also without jurisdiction, the Apex Court held that such order can be set aside without invoking principle of natural justice.

In a case reported in The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, , Hon''ble Supreme Court had proceeded to held as under:-

"The caution of associating Rule of natural justice with the flavour of flexibilities would not permit the Courts applying different standards of procedural justice in different cases depending on the whims or personal philosophy of the decision maker. The basic principles remain the same; they are to be moulded in their application to suit the peculiar situations of a given case, for the variety and complexity of situations defies narration. That is flexibility. Some of the relevant factors which enter the judicial process of thinking for determining the extent of moulding the nature and scope of fair hearing and may reach to the extent of right to hearing being excluded are;(i) the nature of the subject-matter, and (ii) the absence of legitimate expectation, (iii) by refusal of remedies in discretion, (iv) doctrine of pleasure such as the power to dismiss an employee at pleasure, and (v) express legislation. There is also a situation which Prof. Wade and

Forsyth term as "dubious doctrine" that right to a fair hearing may stand excluded where the Court forms, an opinion that a hearing would make no difference. Utter caution is needed before bringing the last exception into lay."

In one another case reported in Canara Bank and Others Vs. Shri Debasis Das and Others, , Hon"ble Supreme Court while considering the applicability of principle of natural justice proceeded to held as under:-

"12. Residual and crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice does not improve the situation, "useless formality theory" can be pressed into service.

27. It is to be noted that at no stage the employee pleaded prejudice. Both learned Single Judge and the Division Bench proceeded on the basis that there was no compliance with the requirement of Regulation 6(18) and therefore, prejudice was caused. In view of the finding recorded supra that Regulation 6(18) has not been correctly interpreted, the conclusions regarding prejudice are indefensible.

29. The inevitable result is that the judgment of the Division Bench confirming that of the learned Single Judge has to be quashed so far as it relates to the question of violation of principles of natural justice. But that is not the end of the matter. There was no consideration of the merits of the case as noted above. It would be in the fitness of things to direct examination of the documents by an expert in terms of learned Single Judge's order. The employee shall file originals of the documents on which he relied upon, of which copies were placed before the High Court. The appellant bank shall file originals of the documents on which reliance was placed, if not already done. If the Government expert is of the view that documents produced by the employee are forged/fabricated or not authentic the order of dismissal shall stand. If, however, the report of the expert is that the documents produced by the employee are genuine, the order of dismissal has to be vacated. In case the originals, as directed above, are not filed by the employee or the Bank, then the High Court shall pass necessary orders, upholding the order of dismissal or setting aside the order of dismissal, as the case may be. No other point shall be considered by the High Court. The matter shall be heard by the Division Bench by restoration of the writ appeal."

Under above facts and circumstances and provisions of law laid down by Hon"ble Supreme Court since order passed by the State Government was violative of the provisions contained in the Act and also without jurisdiction by transferring the petitioners to the State of U.P. from State of Uttaranchal, and by general order Central Government had allocated Successor State, the principle of natural justice

in may not come into picture to rescue the petitioner from joining at Uttaranchal pursuant to impugned orders.

19. There is one more reason why the principle of natural justice may not be attracted in the present case. The provision contained in Sub-section (b) of Section 76 of the Act is subject to provision contained in Section 73 of the Act. Section 73 empowers the Central Government to pass a special or general order for transferring the employees from one State to other. Sub-section (b) of Section 76 cannot be read in isolation. It is settled law that while reading a statutory provision, a portion should not be read in piecemeal. The object of interpreting the statute is to ascertain the intention of legislature by reading the entire statute as a whole. Hon"ble Supreme Court in a case reported in Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers and Ors., held as under:-

"It is well settled principle in law that the Court cannot read anything into a statutory provisions which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the legislature enacting it. The intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Crawford v. Spooner, Courts cannot aid the legislature defective phrasing of an Act, we cannot add or mend, and by construction made up deficiencies which are left there. It is contrary to all Rules of construction to read words into an Act unless it is absolutely necessary to do so. Rules of interpretation do not permit Courts to do so, unless the provisions as it stands is meaningless or of a Parliament unless clear reason for it is to be found within the four corners of the Act itself."

One Anr. case reported in Balram Kumawat Vs. Union of India (UOI) and Others, , Hon"ble Supreme Court held as under:-

"20. Contextual reading is a well-known proposition of interpretation of statute. The clauses of a statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject matter. The Rule of "ex visceribus actus" should be restored to in a situation of this nature.

23. Furthermore, even in relation to a penal statute any narrow and pedantic, liberal and lexical constraction may not always be given effect to. The law would have to be interpreted having regard to the subject-matter of the offence and the object of the law it seeks to achieve. The purpose of the law. is not to allow the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so."

Under above proposition of law the provision contained in Sub-section (b) of

Section 76 should not be read in isolation and it is subject to provision contained in Section 73 of the Act and other provisions. The Government of India has got power to pass special or general order for transferring the employees from the existing State of UP. to the Successor State i.e. to the State of Uttaranchal or the State of U.P. as the case may be. Benefit of Sub-section (b) of Section 76 may be made available to the employees in case Advisory Committee proceed to consider the individual matters while considering the names of employee for transfer to Successor State but in case a general order is passed laying down the guidelines for transfer of employees to the Successor State then the benefit of Sub-section (b) of Section 76 shall not be available to the employees. Meaning thereby, in case general order is passed by the Central Government to transfer the employees to Successor State then it shall not be necessary to consider individual representation. The impugned order has been passed in pursuance to a general order dated 11.9.2001 which categorically provide that all those employees who were part an parcel of hill cadre of erstwhile Uttar Pradesh shall be sent to the Successor State i.e. State of Uttaranchal. The order dated 11.9.2001 is quite specific and Rules out the applicability of principle of natural justice. Moreover, under relevant Rules of the hill cadre also the petitioners were not transferable to plain cadre of the existing State of U.P. Needless to say again that the entire areas of the erstwhile hill cadre of the State of U.P. falls within the State of Uttaranchal.

20. Under the above facts and circumstance of the case, since, Government of India had exercised power under Sub-section (2) of Section 73 of the Act and passed a general order laying down the criteria for transfer of employees to Successor State, the principle of natural justice or the provision contained in Sub-section (b) of Section 76 shall seems to be not attracted. As discussed hereinabove the benefit of Sub-section (b) of Section 76 may be available in case the Government of India proceeded to take a decision after considering individual case in pursuance to decision of Advisor}" Committee.

The language of Sub-section (b) of Section 76 speaks for equitable treatment to all persons affected by the provision contained in Para 8 of the Act. in the present case, the Government of India by passing an order dated 11.9.2001 had taken a uniform decision to allocate all persons working in the State of Uttaranchal who were appointed in the hill cadre of erstwhile Uttar Pradesh. Petitioner does not suffer from any discrimination or arbitrariness. Of course, instead of passing a general order in pursuance to Sub-section (2) of Section 73 of the Act in case the Government of India or the statutory Advisory Committee would have invited options from the similarly situated candidates of the erstwhile Hill cadre of the Uttar Pradesh then the petitioner could have a complaint for compliance of consideration of their representation in pursuance to provision contained in Sub-section (b) of Section 76 of the Act.

21. The Government of India's letter dated 13.9.2001 filed as Annexure-SA-2 to the supplementary affidavit shows that it was issued at initial stage directing the

State Government only to prepare the list but not to proceed further. But the Government of U.P. for the reasons best known to it proceeded to allocate Successor State of Uttar Pradesh though was not authorised to do so. Moreover, as settled by Hon"ble Supreme Court in the cases referred hereinabove the decision taken by the Government of India by laying down general criteria through the order dated 11.9.2001 possess legislative intent for proper running of the administration of Successor State, hence, the principle of natural justice shall not be attracted.

While interpreting the provision contained in Sub-section (2) of Section 73 the Government has got unfettered power to pass an order after considering the relevant facts and circumstances. General order means "an order which is being passed without considering the individual cases but passed on certain material relevant facts". Special order may be interpreted as an order passed after considering the merit of individual cases either at the level of Government of India or through the Advisory Committee constituted u/s 76 of the Act. For passing a general order it shall not be necessary to comply with the provision contained in Sub-section (b) of Section 76 of the Act i.e. to take a decision after "deciding the representation of an employee.

22. The creation of hierarchy of system to meet out the administrative exigencies in bureaucracy is a legislative act. It may be done either through a provision contained in the Act or statute or Rules or regulations or in accordance to statutory Government Orders. u/s 77 of the Act the Government of India has got power to issue directions for the purpose of giving affect to the provisions of part 8 of the Act which related to provision of services. Accordingly, the creating of infrastructure of the bureaucracy or service cadre is a legislative act exercised by the Government in pursuance to power conferred by Section 77 of the Act which is subject to other provision of the Act. Accordingly, a combined reading of Sections 73, 76 and 77 of the Act empowers the Central Government to pass appropriate order or direction to fill the vacancies of a particular cadre of the Successor State by general order. In such events the principle of natural justice shall not be applicable in view of law laid down by the Hon"ble Supreme Court discussed hereinabove.

23. Moreover, in view of provision contained in Section 75 of the Act all the petitioners were liable to be retained in the State of Uttaranchal till the appropriate order was not being passed by the competent authority in pursuance to power conferred by this Act.

But at the face of record no order for petitioner"s transfer was passed by either Central Government or Advisory Committee for petitioner"s transfer to Successor State of U.P.. Accordingly order of petitioner"s transfer discussed hereinabove to Successor State of U.P. and the consequential joining in the State was nullity in law and without jurisdiction. There is one more reason which comes in the way of petitioner. The power u/s 76 of the Act vesting in Advisory Committee is to assist Central Government. It reflects that Advisory Committee itself may not pass any

order but it concerned only to the recommend the Central Government for taking of cognizance on a controversy. The submission of the leaned Counsel for the petitioner raising grievance for breach of Sub-section (b) of Section 76 seems to be misconceived. The role of Advisory Committee is only to assist the Central Government and not to exercised any power itself and when the Central Government passes a general order no grievance can be raised claiming protection of Sub-section (b) of Section 76.

FINDING

24. In view of above discussion the impugned order does not seem to suffer from any illegality or impropriety for the following reasons:-

(1) The impugned order has been passed in compliance of a general order passed by the Government of India dated 11.9.2001 filed as Annexure-2 to the writ petition. It is a consequential order. Petitioners had not challenged the original order dated 11.9.2001. Accordingly in view of settled proposition of law discussed hereinabove present writ petition is not maintainable.

(2) Sub-section (2) of Section 73 of the Act the Government of India has got power to pass a general order or special order to allocate a Successor State in pursuance to provision contained in the Act. The order dated 11.9.2001 is a general order which provides that all those employees who were appointed prior to appointed day in any projects and whose services were not transferable from geographical region or area of State of Uttaranchal to Plain cadre of existing State of U.P., they were permanently allocated the Successor State of Uttaranchal. Petitioners were appointed in the Hill cadre of State of UP. before appointed day and their services were not transferable to plain cadre of State of U.P. They are liable to work in the State of Uttaranchal in pursuance to provision contained in Section 75 of the Act and in view of order of Government of India dated 11.9.2001 they are liable to be retained in the State of Uttaranchal.

(3) The order dated 11.9.2001 has got statutory force and is legislative in character in view of provision contained in Section 77 of the Act and accordingly it has got binding nature. It is a general order laid down further course of action. Hence principle of natural justice or Sub-section (b) of Section 76 shall not be attracted in view of Rakesh Kumar Sharma's case (supra).

Of course, a general order which is arbitrary, unreasonable or discriminatory may be impugned and may create a ground for interference by this Court but neither, it has been argued nor, a relief has been claimed against the general order dated 11.9.2001.

(4) In view of provision contained in Section 75 of the Act petitioners were liable to be retained in the State of Uttaranchal till an order was passed by the competent authority in pursuance to provision contained in the Act. Under the Act only Central Government is vested with power to allocate Successor State and not the Government of UP. Accordingly, the order dated 27.3.2001 followed

by the order dated 4th April, 2001 and 28th April, 2001 passed by the authorities of existing State of Uttar Pradesh allocating the petitioner the Successor State of Uttar Pradesh and their consequential joining in the same department was without jurisdiction and void ab initio. Only Central Government was having power to allocate a Successor State after "appointed day. No exercise could have been done by the State of U.P. or its officer to allocate the petitioner the Successor State of Uttar Pradesh.

(5) A protection under Sub-section (b) of Section 76 is subject to provision contained in Sub-section (2) of Section 73, Section 75 and Section 77 of the Act. The power of Advisory Committee is only to assist the Central Government. In case a general order is passed like order dated 11.9.2001 filed as Annexure-2 to the writ petition, provision contained in Sub-section (b) of Section 76 of the Act relating to consideration of a representation seems to be does not come in picture.

(6) Moreover, since Central Government had passed a general order for allocation of Successor State, a direction to consider the petitioner's representation in pursuance to provision contained in Sub-section (b) of Section 76 will be of no use. Accordingly, under facts and circumstances the provision contained in Sub-section (b) of Section 76 seems to be not attracted and will extend no help to the petitioner.

(7) Since petitioners were allocated the State of U.P. as Successor State by the authorities of existing State of U.P. and as held hereinabove that it was done without jurisdiction, the interference with the impugned order will amount to restoration of illegal order in view of settled proposition of law discussed hereinabove. Under these circumstance, I decline to interfere on this ground also with the impugned order.

CONCLUSION

Under the above facts and circumstances, I am not inclined to interfere with the impugned order which does not suffer from any impropriety or illegality. However, by an interim order State of U.P. was directed to pay salary for the month of September, 2004. Accordingly State of U.P. is directed to pay salary to the petitioners up to October, 2004 within a period of two weeks from the date of receipt of certified copy of this order. It is expected that petitioner shall join in pursuance to impugned order in the State of "Uttaranchal within a week from today.

Subject to above, writ petitions deviod of merit. Dismissed. No order as to costs.