

(2021) 01 SHI CK 0076

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2865 Of 2020

Shalini Thakur

APPELLANT

Vs

State Of H.P. And Another

RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 12, 14

Citation : (2021) 01 SHI CK 0076

Hon'ble Judges : Tarlok Singh Chauhan, J;Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Ramakant Sharma, Devyani Sharma, Ashok Sharma, Vinod Thakur, Shiv Pal Manhans, Bhupinder Thakur, Yudhbir Singh Thakur

Final Decision : Disposed Of

Judgement

Â Tarlok Singh Chauhan, J

1. On 26.10.2018 Respondent No.2 issued an advertisement for filling up of the posts of Veterinary Officer batchÂwise on contract basis in which 18

posts were reserved for General Category.

2. On 18.12.2018, the offer of appointment was given to 11 candidates of General Category to the post of Veterinary Officer and the petitioner was placed at serial No.

2 in the waiting list. As many as five candidates made requests for extension in joining time.

3. On 05.01.2019, the respondents granted extension in joining time to all such five candidates till 17.6.2019. Extension was granted in favour of Dr.

Sunil Kumar and Dr. Ashish Sharma on 9.1.2019. The father of the petitioner applied for information under Right to Information Act, 2005 and he was

supplied the copy of instructions dated 9.9.2016. On 10.7.2019 Dr. Nipuna Thakur and Dr. Apoorva Shekhar were granted second time extension by respondent No.1 to join duties till 16.12.2019. In August 2019 Dr. Deepika Sharma, who was as at serial No.1 in the waiting list was given appointment as Dr. Sunil Kumar did not join within the extended period.

4. On 17.12.2019 the petitioner approached respondent No.1 with the request to offer her appointment since Dr. Apoorva Shekhar had not joined within the extended period i.e. 16.12.2019. On 24.12.2019 further third time extension of 3 months and 15 days was granted to Dr. Nipuna Thakur for joining the post upto 31.03.2020. On 28.2.2020 the Department of Personnel on having received matter regarding appointment of Veterinary Officer, advised respondent No.1 to give appointment to the candidate in waiting list, in relaxation of rules. The petitioner sent request vide e-mail on 17.3.2020 to respondent No.1 to issue her offer of appointment. On 12.5.2020, the petitioner again sent request vide e-mail to respondent No.1 to know about the status of her offer application. On 14.5.2020 vide Annexure PÂ? 19, respondent No.1 rejected the claim of the petitioner for issuance of offer of appointment to the post of Veterinary Officer.

5. Aggrieved by the aforesaid communication dated 14.5.2020 (Annexure PÂ19), the petitioner has filed the instant writ petition for the grant of following substantive reliefs:

I) A writ in the nature of writ of certiorari may be issued thereby quashing and setting impugned communication dated 14.5.2020 (Annexure PÂ?

19) and directing the respondents to issue offer of appointment to the petitioner to the post of Veterinary Officer in the Animal Husbandry

Department, Himachal Pradesh without any further delay.

II) Writ in the nature of mandamus may be issued directing the respondent to grant all monetary as well as service benefits with effect from 18.6.2019

or in the alternative at least with effect from 17.12.2019 and all the arrears be ordered to be paid alongwith interest at the rate of 12% per annum.

III) Special costs may be awarded in favour of petitioner and against respondent No.1 who has denied legitimate claim of the petitioner without there

being any justification on his part.â??

6. The respondents filed their reply, wherein it is averred that the Departmental Selection Committee held selection interview for 18 posts of

Veterinary Officers (on contract) and selected 18 candidates and waiting list of 7 candidates was prepared. As per Government instructions, the

validity of the panel consisting of selection list and waiting list was to remain valid/operative for a period of one year which expired on 05.12.2019,

therefore, the representation of the petitioner was rightly rejected on 17.12.2019.

7. On 27.10.2020 this Court after hearing the case for a considerable time, passed the following order:

“It appears that some of the candidates namely Dr. Apoorva Shekhar and Dr. Nipuna were granted extension of time beyond what was stipulated

in the instructions issued by the Government on 9th September, 2016 (Annexure P11), wherein the maximum period of extension that can be

provided to a candidate for joining is only six months.

In the reply filed by the respondents, a specific stand has been taken that the respondents were well within their right to extend this period beyond six

months. We are at complete loss to understand as to the source of power available with the respondents for extending this period beyond six months in

teeth of the instructions dated 9th September, 2016 (supra).

What is more surprising is that both the persons namely Dr. Apoorva Shekhar and Dr. Nipuna, who have sought extension of one year and more,

ultimately did not join and when the petitioner, who was second in the waiting list, requested the respondents to give her joining, her case was rejected

only on the ground that the panel has since expired on 17.12.2019.

In such circumstances, the respondents are directed to explain as to how the joining period of the aforesaid two doctors was extended beyond the

maximum period of six months in teeth of the instructions dated 9th September, 2016 and whether extension upto one year or more could have been

granted, thereby defeating the rights of the candidates appearing in the waiting list from joining before the panel expired. The Additional Chief

Secretary (AH) to the Government of Himachal Pradesh to file his personal affidavit in this regard before the next date of hearing.”

8. In compliance to the aforesaid directions, the Additional Chief Secretary (Animal Husbandry) has filed her personal affidavit, the relevant portion

whereof reads as under:

“3. That Dr. Apoorva Shekhar and Dr. Nipuna Thakur vide their representation dated 20.12.2018 had requested to the respondent State to grant

them extension in joining time till 30.06.2019 and 10 months respectively on the ground that they are pursuing their Ph.D. IIIrd year from their

respective institutions, need more time to complete their research work. The representations of Dr. Apoorva Shekhar and Dr. Nipuna Thakur are

annexed as Annexures RAÂ?1 and RAÂ?2, respectively with this affidavit.

4. That the matter of Dr. Apoorva Shekhar and Dr. Nipuna Thakur was placed before the Honâ??ble MinisterÂinÂCharge for taking appropriate

decision. The Honâ??ble Minister had approved only six months extension in their favour and was conveyed to them vide letters dated 05.01.2019

(Annexure PÂ?8 (colly) annexed with the present petition).

5. That Dr. Apoorva Shekhar and Dr. Nipuna Thakur vide their representation dated 03.06.2019 and 01.06.2019 had again made representation to the

Department for seeking more time to join in the Department, the copies of the same are annexed as Annexures RAÂ3 and RAÂ4, respectively with

this affidavit.

6. That instructions governing the field are not clear about the further extension beyond six months before lapse of appointment automatically. The

representation at Annexure RAÂ3 and RAÂ4 which were preferred by Dr. Apoorva Shekhar and Dr. Nipuna Thakur were made before expiry of

six months period. As such the representations (Annexures RAÂ3 and RAÂ4) regarding further extension of time were placed before the

Honâ??ble Chief Minister, H.P. for taking appropriate decision in the matter and the Honâ??ble Chief Minister has approved the extension period

for next six months till 16.12.2019 and in the meantime the waiting list expired.

7. That Dr. Apoorva Shekhar on 16.12.2019 has informed that due to some unforeseen circumstances she was reluctant to joining her services as

required on 16.12.2019 and had submitted her No Objection Certificate (NOC) to the Department.

8. That Dr. Nipuna Thakur again third time vide her representation dated 28.11.2019 had requested that due to ill health and being severally jaundiced

for 3Â4 months her work was severally compromised and she could not finish the same within the stipulated time and as such she may be provided

further extension of eight months period upto August, 2020 to join her duty.

9. That approval to grant extension in joining time in favour of Dr. Nipuna Thakur on Medical ground upto 31.03.2020 as per her request as a special

case was given.

10. That after 31.03.2020 Dr. Nipuna Thakur has again requested for extension in joining time vide her representation dated 15.04.2020 (Annexure

RAA5) annexed with the present affidavit), but the request has been rejected by the respondent State and the Department vide notification dated

02.07.2020 (Annexure RAA6 annexed with the present affidavit) has terminated the services of Dr. Nipuna Thakur. The compliance affidavit may

kindly be taken on record in the interest of justice.â??

9. It would be evident from the perusal of paragraph 6 of the affidavit that the instructions governing the field are not clear about the further extension

beyond six months before lapse of appointment automatically. In order to trust the correctness and veracity, it would be necessary to reproduce this

notification in its entirety and the same reads as under:

â??No.Per (AP)A?CAB(2) A?2/2015

Government of Himachal Pradesh

Department of Personnel (APA?III)

Dated ShimlaA?171002, the 9th September, 2016

From

Additional Chief Secretary (Personnel) to the Government of Himachal Pradesh.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh.
2. All Divisional Commissioners in Himachal Pradesh.
3. All Head of Departments in Himachal Pradesh.
4. All Deputy Commissioners in Himachal Pradesh.

Subject: Candidates recommended by the PSC/SSC for appointment to State Services/PostsA? delay in joining revival of offer of appointment

after their cancellation A?determination of seniority thereof.

Sir,

I am to refer to the subject cited above and to say that it has come to the notice of the Government that in certain cases, the candidates

recommended by the PSC/SSC or any other recruiting authority for appointment take long time to join by seeking extension in joining time

and in spite of the long delay in joining the candidates are allowed the benefit of seniority on the basis of their initial selection. The

question whether in such cases it would not be desirable to depress the seniority of the candidates who are appointed on the result of the

selections by interviews/examination was considered and it has been decided that the following procedure may be adopted now. This

procedure will be applicable both in case of (a) selection through interview and (b) examinations.

(i) In the offers of appointment issued by different Ministries/Departments, it should be clearly indicated that the offer would lapse if the

candidates did not join within a specified period (which shall not normally exceed one month).

(ii) If, however, within the period stipulated, a request is received from the candidate(s) for extension of time, it may be considered by the

Ministries/Departments and if they are satisfied, an extension for a limited period of three months may be granted but extension beyond

three months should not be granted liberally and it may be granted only as an exception where facts and circumstances so warrant and in

any case only upto a maximum of six months from the date of issue of the original offer of appointment. An offer of appointment would lapse

automatically after the expiry of six months from the date of issue of the original offer of appointment. The candidates who join within the

above period of six months will have their seniority fixed under the seniority rules applicable to the service/post concerned to which they

are appointed, without any depression of seniority.

(iii) If, even after the extension(s) if any granted by the Ministry/Departments, a candidate does not join within the stipulated time (which

shall not exceed a period of six months), the order of appointment should lapse automatically.

(iv) An offer of appointment which has lapsed, should not ordinarily be revived later, except in exceptional circumstances and on grounds

of public interest. The Commission should in all cases be consulted before such offers are revived.

(v) In a case where after the lapsing of the offer, the offer is revived in consultation with the Public Service Commission as mentioned in

subÂ?para

(iv) above, the seniority of the candidates concerned would be fixed below those who have already joined the posts concerned within the

prescribed period of six months; and if the candidate joins before the candidates of the next selection/ examination join, he should be

placed below all others of his batch. If however, the candidate joins after some or all the candidates of the next selection/examination have

joined, he should be:

(a) in cases of selection through interview, placed at the bottom of all the candidates of the next batch.

(b) in the case of examination, allotted to the next years batch and placed at the bottom.

2. These instructions may also be brought to the notice of all concerned for strict compliance.

Yours faithfully,

Sd/Â?

(Tarun Shridhar)

Addl. Chief Secretary(Personnel) to the Government of Himachal Pradesh
Telephone No.0177Â?2622382.â??

10. A combined reading of the aforesaid notification reveals that the instructions on the subject are absolutely clear that maximum of six months from

the date of issue of the original offer of appointment can be granted to a candidate to join, which could not have in any condition been extended by any

person or authority as the same was not permissible in accordance with the notification dated 9th September, 2016.

11. A Bench of five Judges of the Honâ??ble Patna High Court has considered the binding effect of executive instructions in Satrudhan Sahani and

others vs. The State of Bihar and others AIR 1992 (Patna) 21 wherein it has been held that not only the statutory provisions are meant to be obeyed

or enforced, but even executive instructions issued by the State Government are expected to be followed and obeyed. The very object of issuance of

such executive instructions is to avoid arbitrariness in matters of grant of contracts, licence, quotas, mineral rights and rights in Jalkars so that there is

no element of personal bias or extraneous consideration. The difference between the violation of a statutory provision and an executive instruction is

that so far the procedures indicated in the statutes, which are integral parts thereof, are not followed in form but even in substance on the basis of the well known rules laid down by the Courts that if a statute provides a particular procedure for an act to be done it should be done in that manner or not at all. On the other hand, so far executive instructions are concerned, they are only meant to be followed, but if while complying such instructions, in relation to grant of contracts, licence, rights in minerals and Jalkars, there has some deviation, unless such deviation can be held to be hit by Article 14 of the Constitution, i.e. arbitrary, irrational or mala fide, the grant or the settlement ipso facto shall not become invalid. It shall be apposite to refer to the relevant observations as contained in paragraphs 8 to 18, which read as under:

â??8. It appears that the aforesaid view has not found favour with the Supreme Court in its later decisions in the cases of Ramana Dayaram Shetty

v. The International Airport Authority of India AIR 1979 SC 1628, Kasturilal Lakshmi Reddy, etc. v. The State of Jammu and Kashmir AIR 1980 SC

1992 and Ram and Shyam Company v. State of Haryana, AIR 1985 SC 1147. In the case of Ramana Dayaram Shetty v. The International Airport

Authority of India and others (supra), larger question was formulated by the Supreme Court as to what are the constitutional obligations of the State,

when it takes action in exercise of its statutory or executive power? Is the State entitled to deal with its property in any manner it likes or award a

contract to any person it chooses without any constitutional limitations upon it? What are the parameters of its statutory or executive power in the

matter of awarding a contract or dealing with its property? After pointing out that ""modern welfare State which is committed to egalitarian values and

dedicated to the rule of law"", it was held that ""having regard to the constitutional mandate of Article 14 as also the judicially evolved rule of

administrative law, the 1st respondent was not entitled to act arbitrarily in accepting the tender of the 4th respondent, but was bound to conform to the

standard or norm laid down in para 1 of the notice inviting tenders which required that only a person running a registered IInd Class hotel or restaurant

and having at least 5 years' experience as such should be eligible to tender"". It was further pointed out that the action of the Authority in accepting the

tender of the 4th respondent, even though they did not satisfy the prescribed condition of eligibility, ""was clearly discriminatory, since it excluded other

persons similarly situate from tendering for the contract"". It may be mentioned that the petitioner of that case had neither entered into any agreement

nor any registered document had been executed in his favour but that objection did not stand in his way while invoking the writ jurisdiction of the High

Court.

9. In the case of *Kasturi Lal Lakshmi Reddy, etc. v. The State of Jammu and Kashmir* (supra) again it was pointed out (at page 1999 of AIR):

.....unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided

by economic considerations of self. Again in any action taken by him, it is always open to him under the law to act contrary to his self interest or to

oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it likes in granting largess such as

awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints

inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or

capriciously or in an unprincipled manner, it has to be exercised for the public good..... If the Government awards a contract or leases out or otherwise

deals with its property or grants any other largess, it would be liable to be tested for its validity on the touchstone of reasonableness and public

interest and if it fails to satisfy either test, it would be unconstitutional and invalid.

10. Again in the case of *Ram and Shyam Company v. State of Haryana* (supra) it was said that Government is not free like an ordinary individual, in

selecting recipient for its largesse and it cannot choose to deal with any person it so pleases ""in its absolute and unfettered discretion"" and Courts can

examine such actions on the touchstone of reasonableness and public interest.

11. In yet another case *Shri Harinder Singh Arora v. Union of India*, AIR 1986 SC 1527 the tenders were invited for supply of fresh buffalo and cow

milk. The appellant before the Supreme Court was eligible for submitting tenders. Although his tender was lowest, the tender of Government Milk

Scheme was accepted. It was said (at page 1534 of AIR):

In the instant case, the instrumentalities of the State invited tenders for the supply of fresh buffaloes and cows milk and, therefore, this case has to be

decided on the basis of bid by the tenderers. There was no question of any policy in this case. It is open to the State to adopt a policy different from

the one in question. But if the authority or the State Government chooses to invite tenders then it must abide by the result of the tender and cannot

arbitrarily and capriciously accept the bid of respondent No. 4 although it was much higher and to the detriment of the State.

12. Recently, in the case of *Star Enterprises etc. etc. v. The City and Industrial Development Corporation of Maharashtra Ltd.*, (1990) 2 JT 401 ,it

was pointed out by a Bench of the Supreme Court (at page 403) : --

In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have

been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into the

commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social audit,

judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of rejection of

highest offers. That very often involves long stakes and availability of reasons for action on the record assures credibility to the action; disciplines

public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity for an objective

review in appropriate cases both by the administrative superior and by the judicial process.

13. In view of series of judgments of the Supreme Court, now it is not possible to dismiss a writ application filed on behalf of a person who feels that

he has been discriminated by the State Government or an Authority which can be held to be a 'State' within the meaning of Article 12 of the

Constitution in matters of settlement of fishery rights in tanks land jalkars belonging to the State, only on the ground that no registered document has

been executed in favour of such petitioner by the competent authority. When the Supreme Court, by the aforesaid order passed in connection with this

case itself, directed that the writ application be heard on merit after setting aside the earlier order passed by this Court, in my view, the decision of the

Full Bench in *Chetlal Sao's case* (supra) on the question of maintainability of a writ application in absence of a registered document stands overruled.

14. Now the question as to whether the other part of the decision in Chetlal Sao's case (supra) saying that administrative instructions and circulars

issued from time to time for the lease of fishery rights in tanks (sairats) vested in the State are not statutory in nature and binding on the Government

has also been overruled by the Supreme Court, needs to be examined. On behalf of the petitioners it was pointed out that as the earlier order passed

by this Court in this application was based on the Full Bench judgment in Chetlal Sao's case (supra), it will be deemed that the aforesaid Full Bench

judgment has been overruled even so far its view in respect of the nature of administrative instructions and circulars is concerned.

15. From a bare reference to the earlier order passed by this Court it shall appear that this application had been dismissed only on the ground that it

was not maintainable, as no registered instrument had been executed in favour of the petitioners which was necessary before the petitioners could

invoke the writ jurisdiction of this Court, in view of the judgment of the Supreme Court in the case of The Bihar Eastern Gangetic Fishermen

Cooperative society Ltd. v. Sipahi Singh (supra) and Full Bench judgment in the case of Chetlal Sao v. The State of Bihar (supra), This writ

application had not earlier been dismissed on the ground that the petitioners could not complain of the violation or contravention of the administrative

instructions issued by the State Government in respect of settlement of fishery rights, As such, by the aforesaid order passed in this case by the

Supreme Court, it shall not be deemed that even the view expressed by the Full Bench in the case of Chetlal Sao v. The State of Bihar (supra) in

respect of binding nature of the administrative instructions and circulars issued by the State has also been overruled.

16. Dr. Sadanand Jha, appearing for the petitioners, made reference to some judgments of the Supreme Court, where it has been pointed out that

when any order or circular has been issued by the State Government and if they are not followed, the persons aggrieved can move courts for a

direction to the State Government to follow their own bye-laws and executive orders. In the case of B.S. Minhas v. Indian Statistical Institute, AIR

1984 SC 363 : (1984 Lab 1C 15) it was said that ""if the bye-laws had been framed for the conduct of the affairs to avoid arbitrariness, respondent

No. 1 cannot, therefore, escape the liability for not following the procedure prescribed by bye-laws thereto"". Again in the case of Sadhu Singh v.

State of Punjab, AIR 1984 SC 739 : (1984 Cri LJ 404 it was pointed out (at page 743 of AIR):

.....any existing executive instructions could be substituted by issuing fresh executive instructions for processing the cases of lifers for premature

release but once issued these must be uniformly and invariably applied to all cases of lifers so as to avoid the charge of discrimination under Article

14.

It was said in the case of A.L. Kalra v. The Project and Equipment Corporation of India Ltd., AIR 1984 SC 1361 : (1984 Lab IC 961):

An administrative authority who purports to act by its regulation must be held bound by the regulation. Even if these regulations have no force of law

the employment under these corporations is public employment, and, therefore, an employee would get a status which would enable him to obtain a

declaration for continuance in service, if he was dismissed or discharged contrary to the regulations.

In the case of Shri Sachidanand Pandey v. The State of West Bengal, AIR 1987 SC 1109, while dealing with the West Bengal Land Management

Manual (1977), published under the authority of the Board of Revenue, it was observed that statutes and statutory orders, no doubt, are to be obeyed

but:

It does not mean that other orders, instructions etc. may be departed from in any individual case, if applicable to the facts. They are not to be ignored

until amended. The Government or the Board may have the power to amend these orders and instructions, but nonetheless they must be obeyed so

long as they are in force and are applicable.

Reference was also made to a recent judgment of the Supreme Court in the case of N.T. Bevin Katti etc. v. Karnataka Public Service Commission,

AIR 1990 SC 1233 : (1990 Lab IC 1009).

17. A Bench of this Court in the case of Man Singh v. The State of Bihar, 1982 BBCJ 392 : (1983 Lab IC 384) had to consider an order dated 1

11-1980 issued by the State Government laying down the policy and procedure for transfer and posting of Government employees in the State of

Bihar. A question arose as to whether the said circular was mandatory in nature and as such the principles and policies laid down therein had to be

followed to the letter; infraction of which in any respect will result in invalidity of

the order of transfer. It was held that the policy and procedure laid down in that circular amounted to an executive instruction. It was further said as follows (at page 389 of Lab IC) :
“

We should not (if legally permissible) allow administrative or executive efficiency to flounder on the rock of avoidable technicality. It is well to remember that administrative and executive efficiency or exigency should not be top readily sacrificed. But such would be the results if the instruction is given a mandatory force. State would be completely deprived of much needed 'play in its joints'.

In that very case, it was observed that even if the executive instructions are directory, it does not mean that they can be ignored because even

directory provisions are not meant to be violated. But it was held that breach of such instructions can be overlooked provided there has been

substantial compliance. In the case of *Bain Peanut Company of Taxes v. Pinsons* (1930) 75 L Ed 482 (491), Holmes, J. said:
“

We must remember that the machinery of the Government would not work if it were not allowed a little play in its joints.

That very observation was quoted with approval by the Supreme Court in the well-known case of *State of Jammu and Kashmir v. Triloki Nath*

Khosa, AIR 1974 SC 1 : (1974 Lab IC 1).

18. From the aforesaid judgments it shall appear that Courts have from time to time impressed that not only the statutory provisions are meant to be

obeyed or enforced, but even executive instructions issued by the State Government are expected to be followed and obeyed. Same will be the

position in respect of i the executive instructions issued relating to grant of licence or lease of the properties Of the State. It need not be pointed out

that the very object of issuance of such executive instructions is to avoid arbitrariness in matters of grant of contracts, licence, quotas, mineral rights

and rights in Jalkars so that there is no element of personal bias or extraneous consideration. Since last few decades the State Government is the

biggest landlord of the State. But within the framework of the Constitution by which it is bound, it cannot act as the old landlords. As such, to achieve

uniformity, remove arbitrariness and discrimination, executive decisions are taken from time to time laying down the procedure for the grant of

contracts, licences, rights in minerals and Jalkars, which have vested in the

State. The difference between the violation of a statutory provision and an executive instruction is that so far the procedures indicated in the statutes, which are integral parts thereof, have to be followed not only in form but even in substance on the basis of the well-known rule laid down by the Courts that if a statute provides a particular procedure for an act to be done, it should be done in that manner or not at all, *Nazir Ahmad v. King Emperor*, AIR 1936 BC 253 : (1936 All LJ 895). On the other hand, so far executive instructions are concerned, they are also meant to be followed, but if while complying such instructions, in relation to grant of contracts, licence, rights in minerals and Jalkars, there has been some deviation, unless such deviation can be held to be hit by Article 14 of the Constitution, i.e., arbitrary, irrational or mala fide, the grant or the settlement ipso facto shall not become invalid. If a grievance is made before a court of law in respect of contravention of such executive instructions or circulars, the Court has to test the alleged contravention on the touchstone of Article 14 of the Constitution. If the actions of the authorities are upheld in the light of Article 14 of the Constitution, then Courts have to condone deviations made if any. It is well settled that all provisions of even an Act or statutory rule are not mandatory in nature, unless they form the integral part thereof.

Reference in this connection may be made to Crawford on Statutory Construction where it has been said as follows:—

.....The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its design, and the consequences which would follow from construing it the one way or the other...." If some of the provisions which are statutory in nature on proper construction can be held to be directory, then, in my view, it is difficult to hold that all instructions contained in an administrative circular in respect of settlement of a Jalkar shall be mandatory in nature so as to vitiate the settlement in a case where there has been some deviation, which is not unreasonable, irrational, mala fide and as such hit by Article 14 of the Constitution.â??

12. Now advertent to the claim of the petitioner, it is not in dispute that her name appeared in the waiting list, which is prepared in service matters by

the competent authority of eligible and qualified persons who in order of merit are placed below the last selected candidate. How waiting list should operate and what is its nature may be governed by the rules. Usually, it is linked with the selection or examination for which it is prepared. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidate does not join for one or the other reasons or the next selection or examination is not held soon. Therefore, once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it.

13. A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. This is so held by a Bench of three Judges of the Honâ??ble Supreme Court in *Gujarat State Dy. Executive Engineersâ?? Association vs. State of Gujarat and others* 1994 Supp (2) SCC 591.

14. Similar reiteration of law can be found in the two recent judgments of this Bench rendered in CWP No. 3554 of 2019 titled *Dharmender Kumar vs. State of H.P. and others*, decided on 22.07.2020 and CWP No.3371 of 2019 titled *Robin Singh Mehta and others vs. State of H.P. and others*, alongwith connected matters, decided on 12.11.2020.

15. In the instant case, as noticed above, the respondentsâ??State illegally granted repeated extension, that too, beyond the permissible limits to the two doctors namely Dr. Apoorva Shekhar and Dr. Nipuna Thakur thereby depriving the rights, that too, for no fault of the candidates including the petitioner whose names were appearing in the waiting list from joining before the panel expired. These candidates had a right of consideration when the appointed candidates did not join and the extension given to these appointed candidates to join was otherwise illegal and contrary to instructions

issued by the Government.

16. At this stage, we are informed by the learned Advocate General that the petitioner has already been appointed on batch-wise basis and has also joined. We find no merit in this contention.

17. In view of the aforesaid discussion, we find merit in this petition and the same is allowed by quashing the impugned notification dated 14.5.2020

(Annexure P-19) and the respondents are directed to appoint the petitioner as a Veterinary Officer w.e.f. 17.12.2019 along with her seniority.

However, taking into consideration the peculiar facts and circumstances of the case, the petitioner shall not be entitled to any monetary claims in case

the appointment letter in her favour from the aforesaid date is issued on or before 31.01.2021, failing which, the petitioner shall also be entitled even to

the arrears along with interest at the rate of 12% per annum, which shall be paid at the first instance by the officials-respondents and then made

recovery from the erring officials.

18. The writ petition stands disposed of in the aforesaid terms, so also the pending application(s), if any.