

Before Rajesh Bindal & Harinder Singh Sidhu, JJ.

RAKESH KUMAR GOYAL—Appellant

versus

GURTEJ SINGH SAHOTA AND ANOTHER—Respondent

LPA No.28 of 2016

December 09, 2016

*Letters Patent Appeal—Clause X of Letters Patent—Service matter—Selection—Essential qualification—Rules kept in abeyance, not replaced—Can such Rules be applied?—Can there be a vacuum in law?—Post of Assistant Engineer (Electrical) advertised in Feb. 2012—Qualifications inter alia were B.E/B.Tech. degree with at least 60% marks and 5 years experience—Respondent No.1 applied but no selection was made—Another advertisement issued for the post in January 2013—Both appellant and Respondent No.1 applied—Appellant was selected and appointed—Respondent No.1 placed at No.2 in the merit list—Appointment challenged on the ground of ineligibility in not possessing the requisite 60% marks—Institute pleaded the qualifications were changed in the second advertisement by amendment in the Rules—Learned Single Judge held the amendment to Rules was never finalized, though a proposal had been made—Resultantly the appointment, being against the prescribed qualifications, was set aside—Direction issued to appoint Respondent No.1—Held, the Rules, based upon which the first advertisement was issued, were kept in abeyance vide Resolution dated 24.03.2012, and the amended Rules were not finally approved—The existing Rules were neither repealed nor replaced by another set of Rules—They remained part of the statute book—Supreme Court in *K. Kuppuswamy* case also held, till the rule is amended the existing rule will apply—Therefore, *Ld. Single Judge* rightly held the appellant's appointment was against the qualifications prescribed in the Rules—Further held, like Nature, Law abhors vacuum—The intention of the Management in keeping the existing Rules in abeyance could not have been to create a void—Till the approval of new Rules, the existing Rules would have to be held applicable to prevent a vacuum—As the question of experience possessed by Respondent No.1 was not an issue in the writ petition, the direction to appoint respondent no.1 was modified—The Institute was directed to consider his case for appointment subject to fulfilling the experience and other*

formal verification.

Held that thus, from this affidavit, it is clear that the stand of the respondent institute is that the recruitment rules approved on 24.1.2011, on the basis of which first advertisement was issued were kept in abeyance vide resolution dated 24.3.2012 of the Board of Management. Though the amended rules were proposed, they have not been formally approved so far.

(Para 31)

Further held that, the question is whether the selections pursuant to the second advertisement with the reduced minimum percentage can be considered to be valid in these circumstances?

(Para 32)

Further held that, the first point that needs to be noted is that vide resolution of the Board of Management the earlier recruitment Rules were only kept in abeyance. The rules were neither repealed nor have they been replaced by another set of rules. The amended rules were placed for approval before the Board of Management, which authorised the Chairman to take a decision. But no clear decision to approve the same was taken.

(Para 33)

Further held that, the word 'abeyance' means 'Temporary inactivity; suspension' {Black's Law Dictionary (Ninth Edition)}. This means that by the decision to keep the earlier Rules in abeyance they have not been erased out of existence. They remain as part of the statute book, only their operation was to remain suspended and they were not be enforced pending approval of new rules, which approval has not so far been accorded.

(Para 34)

Further held that, as the proposed rules were never approved, and the earlier rules were not repealed but only kept in abeyance, in our view, the Ld. Single Judge rightly basing his decision on the earlier rules, held the appointment of the appellant to be against the qualifications prescribed in the rules as it existed at the time of his appointment and selection.

(Para 36)

Further held that, it has been well said that like Nature, Law abhors a vacuum (***Rajasthan State Electricity Board v. Laxman Lal, 1991 Supp (2) SCC 531, Sundeep Kumar Bafna v. State of***

Maharashtra, (2014) 16 SCC 623).

(Para 38)

Further held that, the intention of the Board of Management in keeping the existing rules in abeyance (as distinct from repealing them right away) could not have been to create a void. In the interregnum, till the approval of the new rules, either because of the intent manifested in the resolution of the Board of Management, or of necessity or of law, if not of all of them, the earlier rules would have to be held to be applicable to prevent a vacuum.

(Para 39)

Further held that, as the question of experience of Respondent No.1 was not an issue in the writ petition and has been raised only in arguments, (barring a passing reference in para 14 of the written statement of the respondent-institute) we do not propose to opine on this question except only to reiterate the settled legal position that in the absence of any other date specified in the rules/advertisement the relevant date for reckoning experience would be the last date of receipt of applications.

(Para43)

Further held that, we feel that having found the appellant to be ineligible and his appointment having been set aside, the appropriate direction would have been to direct the respondent institute to consider the case of respondent No.1 (the writ petitioner) for appointment subject to his fulfilling the condition of experience and other formal verification.

(Para 44)

J.S.Puri, Advocate
for the appellant.

Aashish Chopra, Advocate
for respondent No.1.

Karan Singh Sandhu, Advocate
for respondent No.2 in LPA No.28 of 2016
and for the appellant in LPA NO.1816 of 2015.

HARINDER SINGH SIDHU, J.

(1) This judgment shall dispose of two appeals bearing LPA Nos.1816 of 2015 and 28 of 2016 as both arise out of the same judgment.

(2) For disposal of these appeals, the facts are being taken from LPA No.28 of 2016.

(3) This Intra- Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 10.8.2015 of the learned Single Judge, whereby Civil Writ Petition No.3032 of 2014 filed by Gurtej Singh Sahota – respondent No.1 was allowed. The appointment of Rakesh Kumar Goyal – appellant as Assistant Engineer (Electrical) in the Sant Longowal Institute of Engineering and Technology, Longowal (for short “the institute”) was set aside and respondent No.1 was ordered to be appointed as such with all consequential benefits.

(4) Briefly, the facts are that vide advertisement dated 23.2.2012, (hereinafter referred to as “the first advertisement”), the institute invited applications for filling up various posts including one post of Assistant Engineer (Electrical). The qualifications for the said post were specified in the advertisement, as per the then existing Rules as under:-

“B.E./B.Tech Degree in Electrical Engineering with at least 60% marks or equivalent with at least 5 years experience in Government Department/Public Undertaking/Construction Agency of national repute not below the rank of Junior Engineer or equivalent.”

(5) Respondent No.1 applied in response to the said advertisement. However, no selection was made pursuant thereto. Instead, the respondent institute issued another advertisement dated 15.1.2013 (hereinafter referred as “the second advertisement”), inviting applications for various posts including the post of Assistant Engineer (Electrical). The last date for receipt of the applications was 16.02.2013. It was specified in the advertisement that details of qualifications and other requirements for the posts were available on the website of the institute (www.sliet.ac.in). The appellant as well as respondent No.1 applied in response to the second advertisement. The appellant was selected, whereas, respondent No.1 was placed at Sr.No.2 in the merit list. (Respondent No.1 filed the writ petition challenging the appointment of the appellant on the ground that he was ineligible for consideration of his candidature as he did not have the requisite 60% marks as required under the Rules. Directions were also sought for appointment of respondent No.1 to the post as he was the most meritorious eligible candidate.

(6) The case of the respondent institute was that the

qualifications as prescribed in the first advertisement were changed in the second advertisement in view of the amendment in the Rules/Regulations.

(7) Ld. Single Judge after examining the record came to the conclusion that this stand of the respondent institute was not borne out from the record. In fact, the amendment to the Rules was never finalised. Though, a proposal had been made, but even after the passage of two and half years thereafter, no amendment was carried out. The stand of the respondent institute was false and contrary to the record. Accordingly, it was held that the appointment of the appellant was against the qualifications prescribed in the Rules, which existed at the time of his selection and appointment.

(8) Mr. J.S. Puri, Ld. Counsel for the appellant argued that admittedly the earlier Rules which prescribed minimum 60% marks in B.E/ B.Tech Degree in Electrical Engineering were ordered to be kept in abeyance as per the decision of the Board of Management of the respondent institute in its 10th Meeting dated 24.03.2012. The Ld. Single Judge had only concluded that the proposed Rules which prescribed minimum of 55% marks in B.E/ B.Tech in Electrical Engineering had not been finalized, but the Ld. Single Judge had not returned any finding as to which Rules were applicable. In the absence a specific finding as to which rules were applicable to the selection, it could not have been held that the appellant was ineligible.

(9) Secondly, he argued that even if it be assumed that the proposed Rules have not finally been adopted, then it would be a case where there were no Rules governing the post, the earlier Rules having been kept in abeyance. In the absence of any Rules, the qualifications as prescribed in the advertisement would govern. As the appellant fulfilled the said qualifications his appointment could not be held to be invalid.

(10) Thirdly, he argued that no direction to appoint respondent No.1 could have been issued as he did not have five year experience in Government Department/ Public Undertaking/ Construction Agency of national repute not below the rank of Junior Engineer or equivalent as stipulated in the advertisement dated 15.1.2013. The experience of respondent No. 1 from 1.6.2008 till 16.2.2013, which was the last date of submission of applications was only 4 years, eight and a half months. He argues that the period from 2.8.2007 to 30.5.2008 as a trainee could not be considered as experience for this purpose. He argued that in taking his experience to be five years and four months, (para 14 of the of the written statement of Col. Arun Kainthla, Registrar of SLIET) the

selection committee has erred in either not counting the experience till the last date of receipt of applications or has taken into account his experience as trainee. Either way the Selection committee has erred.

(11) Sh. Aashish Chopra, Ld. Counsel for respondent No.1 argued that the qualifications were not specified in the second advertisement. For knowing the qualifications the candidate was required to visit the web site of the respondent institute where the qualifications were the same as in the first advertisement. Even in reply to an application under the Right to Information Act, he was informed that the qualifications for the post of Assistant Engineer (Electrical) at the time of the issuance of the second advertisement were the same as at those given in the first advertisement. He thus submitted that the qualification for the said post remained the same as at the time of the first advertisement i.e., at least 60% marks in the qualifying examination, which the appellant did not possess. He further argued that as per the Agenda Item No.11.5 of the minutes of the meeting of the Board of Management held on 21.9.2012 the proposed Rules prescribed 55% marks in the qualifying examination with at least 2 years experience whereas, the qualifications prescribed by the respondent institute in the second advertisement required at least 5 years experience. As the advertisement could not be reconciled with the proposal for amendment, the Ld. Single Judge rightly concluded that the amendment as proposed was never carried out.

(12) He further argued that before the Ld. Single Judge the categoric stand of the respondent institute was that the Rules had been modified as per the proposal, but now in the additional affidavit dated 17.09.2016 the institute has taken a stand that the Rules have not been amended. He questioned the divergent stands taken by the respondent institute. At any rate he argued that the additional affidavit vindicated his position.

(13) He further stated that as per agenda item No.10.3 approved in the 10th Meeting of the Board of Management on 24.03.2012 the Recruitment Rules should be according to UGC/ AICTE/ MHRD whichever offers better quality. He states that the minimum qualifications prescribed by the UGC is 60% marks. He further claims that the stand of the respondent institute that the Rules had been kept in abeyance is not correct because the selections to some other posts advertised in the first advertisement namely Finance Officer, Audit and Accounts Officer and Dy. Registrar were made, which would not have been possible if the rules had been amended.

(14) He further states that the only grievance against the judgment of the Ld. Single Judge raised by the respondent institute in the grounds of Appeal in its LPA No.1816 of 2015 is against the direction to appoint respondent No.1. The institute has not chosen to contest the finding of the Ld. Single Judge on the point that as the proposed amendment was not carried out the qualifications laid down in the second advertisement were contrary to the Rules. In this regard the only grievance of the Institute is that the second advertisement having been held to be not proper, no one selected therein could have been directed to be appointed. Instead the Ld. Single Judge should have directed the respondent institute to initiate process of selection afresh by issuing a fresh advertisement on the basis of legally valid and proper qualifications.

(15) He disputed the argument of the Ld. Counsel for the appellant that he did not have the requisite five years experience as on the last date of submission of applications. He argued that the period of Executive Trainee was liable to be counted towards experience.

(16) We have heard Ld. Counsel for the parties and perused the record.

(17) As the dispute in the present appeal centres around the question whether the second advertisement was in accordance with rules as then existing, the Registrar of the respondent Institute was directed to file an affidavit as regards the Rules applicable for the post in question. Accordingly, an affidavit dated 17.9.2016 has been filed by the Registrar of the respondent Institute. To have a clear picture of the state of the Rules, it is necessary to refer to the affidavit in detail.

(18) In the affidavit, it has been stated that respondent No.2 institute is an autonomous body, fully funded by the Government of India. It is registered under the Societies Registration Act, 1860 and is governed by the Memorandum of Association and Rules of the Institute. As per the Memorandum and Rules, the Board of Management is the Principal Executive Body of the institute and has the power to create administrative, ministerial and other posts in terms of the cadre laid down or otherwise and to make appointments thereto in consultation with the Finance Committee. Further, the Board of Management has power to manage all the administrative affairs of the institute. The respondent institute invited applications vide first advertisement for 10 non-teaching posts including one post of Assistant Engineer (Electrical) as per the Recruitment Rules approved by the Board of Management in its 6th meeting held on 24.1.2011. The

educational qualifications and eligibility conditions as mentioned in the advertisement for the post were as under:

Sr.No.	Name of the Post	Qualifications and experience
6.	Assistant Engineer (Electrical)	B.E./B.Tech. Degree in Electrical Engineering with at least 60% marks or equivalent with at least 5 years experience in Government Department/ Public Undertaking/ Construction Agency of national repute not below the rank of Junior Engineer or equivalent.

(19) An Agenda Item Number 10.3 for considering amongst others, the issue of Recruitment Rules according to UGC/AICTE/MHRD whichever offers better quality, and for Non-Teaching positions as per the Eligibility Criteria as prevalent in other Government Institutes was placed for appraisal and ratification of the Board of Management in its 10th Meeting held on 24.03.2012:- The relevant extract from the agenda is as under:

“... .. For Teaching staff, Institute is following UGC Guidelines along with CCS Rules. For Non-Teaching Staff, Institute is following CCS (RP) Rules of GOI, Pay Scales, allowances and Service Conditions of SLIET Employees are identical with Central Government Employees. Institute is fully funded by Central Government.

No formal approval of Government of India has been received for approval of any kind of draft rules followed by the Institute. Keeping in view for the smooth functioning of the Institute, Policy Decision Regarding this Full implementation of CCS Rules & GF Rules of Central Government be followed where SLIET Rules are Silent.

Recruitment Rules according to UGC/AICTE/MHRD which ever offers better quality be followed. Similar practice be followed in Non-Teaching posts also. Non-Teaching positions as per the Eligibility Criteria as prevalent in other similar Government Institutes.

Matter is placed for Appraisal and Ratification by the Board of Management.”

(20) The Board of Management in that meeting decided as

under:-

“ Policy Decision Regarding Full Implementation of CCS, SPR, HAR of Central Government to be taken. All SLIET Rules will be kept under Abeyance. This will also be in accordance with the GOI, MHRD, F.No.2331/2006-IFD, dated: 30/11/2006 and No.19-17/2005-IFD, dated: 07/06/2010.

. Recruitment Rules according to UGC/AICTE/MHRD which ever offers better quality.

. Non-Teaching positions as per the Eligibility Criteria as prevalent in other similar Government Institutes.

. The 11 sets of Rules, which are being followed in the Institute, haven't been updated for a long time and hence aren't serving purpose.

. The comments on the Agenda item No.10.03 have also been received from MHRD, New Delhi vide its letter No.5-2/2009-IFD dated 23rd March, 2012. The comments of the MHRD are reproduced below:

“Since, SLIET Longowal is a Centrally Financed Technical Institution various service rules applicable to the employees of Government of India shall also be applicable to the employees of SLIET, Longowal. The Institute may frame specific rules based on the rules framed by the Government of India. The Rules framed by the Institute should be in accordance with the rule framed by the Government and should be duly approved by the BOG.

. After deliberations and going through the comments of the MHRD, the Board unanimously decided to follow CCS, GFR, SPR, HAR, applicable to Central Government Civil Employees for the employees of the Institute. The Board further resolved that all SLIET rules will be kept in abeyance until the 11 sets of rules are updated in consonance with the rules framed by the Government and are approved by the Board.

. As regards recruitment rules for the teaching and non-teaching staff and employees, it is stated that recruitment rules of UGC/AICTE/MHRD whichever offers better quality

will be followed by the Institute.”

(21) As the Recruitment Rules had undergone change since the first advertisement having been issued, the second advertisement dated 15.1.2013 having revised eligibility conditions, was issued. It was stated in the advertisement that details of qualifications and other requirements for the posts are available on the web-site of the institute (www.sliet.ac.in).

(22) Vide Agenda Item No.11.5 for the 11th Meeting of the Board of Management held on 21.9.2012, the amended Recruitment Rules for non- teaching staff, on the basis of which advertisement dated 15.1.2013 was issued were placed before it for approval. The details of the Recruitment Rules approved in the 6th meeting held on 24.1.2011 and those proposed for the 11th Meeting of the Board held on 21.9.2012 were as under:-

Recruitment Rules approved in 6th Board of Management Meeting held on 24.1.2011	Recruitment Rules proposed in 11th Board of Management Meeting held on 21.9.2012
Education and other qualifications for the post of Assistant Engineer (Electrical)	Education and other qualifications for the post of Assistant Engineer (Electrical)
B.E./B.Tech. Degree in Electrical with at least 60% marks or equivalent with at least 5 years experience in Government Department/ Public Undertaking/ Construction Agency of national repute not below the rank of Junior Engineer or equivalent.	B.E./B.Tech. Degree in Electrical with at least 55% marks or equivalent with at least 2 years experience in Government/Public Undertaking /Construction Agency of repute not below the rank of Junior Engineer or equivalent. Or Diploma in Electrical/ Instrumentation and control Engineering with at least 60% or equivalent with and at least 08 years of experience in Government Institution /Public Sector Undertaking/Autonomous bodies, construction agency of national repute not below the rank of JE or equivalent.

(23) The Board of Management considered the Agenda Item No.11.5 in its meeting held on 21.9.2012. The relevant extract of the decision is reproduced below:-

ITEM NO.11.5	Amendments in Recruitment Rules of Non-Teaching Staff and Convening of Departmental Promotion Committee (DPC) meetings accordingly: Board considered the proposal, after deliberations, it was decided that detailed comparison of existing and amended rules be put up before the Honorable Chairman, BOM. BOM authorize the Chairman to give final approval of the rules.
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(24) Meanwhile, the Ministry of Human Resource Development vide its communication dated 9.1.2013 forwarded to the Director of the respondent institute a copy of the Sarangi Committee Report on Recruitment Rules of Faculty and Non-faculty for consideration and adoption by the Board of Governors of the respondent Institute. The matter regarding adoption of the Sarangi Committee was placed as Agenda Item No.12.4 for the 12th meeting of Board of Management on 16.2.2013. In the said meeting, the Board decided in principle to adopt the Sarangi Committee Model Recruitment Rules. It was also decided that a committee would be constituted for smooth implementation of the provisions of the recommendations in the Sarangi Committee Report. Any serious deviation from the current norms will be taken to the Board of Management at the appropriate time. The relevant extract of the minutes of the 12th Meeting of the BOM is as under:-

ITEM NO.12.4	Adoption of SArnagi Committee Report as per directions of MHRD BOM adopted the Sarangi committee report in principle on the directions of the MHRD, New Delhi, for faculty and non-faculty positions in the institute. Ms. Padmaja Saxena, Under Secretary, MHRD, New Delhi has desired SLIET to adopt the Sarangi Committee Report for faculty and non-faculty positions. A committee will be constituted for smooth implementation of the provisions of the recommendations in the report. Any serious deviation from the current norms will be taken to the BOM at the appropriate time.
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(25) The case was put up before the Chairman of the Board of

Management on 30.3.2013. The operative part of the noting is as under:-

“In view of the above position, it is suggested that the Chairman may approve the draft recruitment rules for non-faculty positions at SLIET as approved in the BOM meeting held on 21.09.2012 and as clarified later so that DPC may be held for giving promotion to the eligible employees. **This will not affect the future application of Sarangi Committee Model Recruitment Rules.** In due course, the report of the proposed committee on the issue of adoption of Sarangi Committee Model Recruitment Rules for the non-faculty staff will be processed and brought before the BOM for appropriate orders.”

(26) The Chairman gave his opinion on the proposal on 6.04.2013 as follows:-

“My opinion is that to expedite the recruitment/ promotion of key positions which can affect the working of the Institute, decision can be taken specifically & General Policy of Sarangi Committee may continue to the future functioning.”

(27) An Agenda Item No.13.10 on the subject of Recruitment Rules for non-faculty positions and conduct of the departmental committee meetings was prepared for consideration of the Board in its 13th meeting on 12.7.2013.

Recruitment Rules for non-faculty positions and conduct of Department Promotion Committee (DPC) Meeting.

ANNEXURE “VIII” {Page 112}

The promotion policy for non-faculty members of SLIET has been under process for quite some time now. The draft recruitment rules for various posts in the non-faculty category were prepared and placed before the BOM in the meeting held on 21.09.2012. The Board authorized the Chairman to approve the draft rules after obtaining certain clarifications from the office. When the clarifications were submitted in file, the Chairman desired that the rules be submitted before the Board. The recruitment rules were accordingly again brought before the Board in the last meeting held on 16.2.2013.

In the meantime, the MHRD had forwarded the Sarangi Committee Report with the recruitment rules for faculty and non-faculty members in the NITs for consideration of adoption in SLIET. In the BOM

meeting held on 16.2.2013, the Board decided in principle to adopt the Sarangi Committee Model Recruitment Rules. It was further decided that a committee will be constituted for smooth implementation of the provisions of the recommendations in the report. Any serious deviation from the current norms will be taken to the BOM at the appropriate time.

The committee is yet to be constituted. In the absence of approved recruitment rules, no promotion has been made in SLIET in respect of non-faculty staff although vacancies are existing since long. The non-faculty members are quite aggrieved that promotions are not being given despite the fact that Government sanction for higher posts are available. There are many anomalies in the Sarangi Committee Model Recruitment Rules vis-a-vis SLIET. There are many posts in the Sarangi Committee Recruitment Rules which are not available in SLIET and vice versa. The pay scales for certain posts are also different. Further, in the Sarangi Committee Model Recruitment Rules, every promotion is after prescribed trade test and interview while the details of trade tests for different posts have not been prescribed. In Government instructions, there are no provisions for trade test/interview for normal promotion in Ministerial posts.

The proposed committee will have to study the various implications in adopting the Sarangi Committee report and in the case of adoption of the report, the approval of MHRD may also be required for changes in the Pay Scales of the relevant post. It is also not clear as to whether all the NITs have fully adopted the Sarangi Committee Model Recruitment Rules.

In view of the above position, the Chairman was requested to approve the draft recruitment rules for non-faculty positions at SLIET as approved in the BOM meeting held on 21.09.2012 and as clarified later so that DPC may be held for giving promotion to the eligible employees.

The Chairman, Board of Management has approved the Recruitment Rules for non-faculty positions. The decision taken by the Chairman, Board of Management may be ratified by the Board of Management. Since the Chairman had earlier asked to bring up the draft recruitment rules before the Board, the Board of Management is requested to approve the Recruitment Rules for non-teaching posts so that DPC can be held.

It is also mentioned that as per Ministry of Finance, Govt. of India instructions, a post will deem to have been lapsed if the same remained

vacant for more than one year. In SLIET, the promotional higher posts have remained unfilled due to non- finalization of Recruitment Rules. Now, with the approval of the Board of Management for the Recruitment Rules the higher promotional posts may be filled up as existing vacancies

(28) The decision of the Board of Management at item No.13.10 is reproduced below:-

“The decision taken by the Chairman, BOM for conducting DPC on the basis of the Existing Recruitment Rules is ratified. However, the Chairman, BOM pointed out, since the Sarangi Committee Report has been implemented for non-faculty position, so it will be a onetime measure. After this, the cadre restructuring on the basis of Sarangi Report shall be prepared, and will be put up to the Board of Management at the earliest.”

(29) It is affirmed in the affidavit that it is clear that this decision dated 12.07.2013 of the Board of Management applies only to promotional posts as the reference there is to conduct DPC, which has no relevance in case of direct recruitments.

(30) After giving these details, it has been affirmed in the affidavit that the recruitment Rules as approved by the Board of Management resolution dated 24.1.2011 relating to the post of Assistant Engineer (Electrical) were resolved to be kept in abeyance by the decision of the Board of Management dated 24.3.2012. The position has not changed since 24.3.2012 for the posts required to be filled by direct recruitment.

(31) Thus, from this affidavit, it is clear that the stand of the respondent institute is that the recruitment rules approved on 24.1.2011, on the basis of which first advertisement was issued were kept in abeyance vide resolution dated 24.3.2012 of the Board of Management. Though the amended rules were proposed, they have not been formally approved so far.

(32) The question is whether the selections pursuant to the second advertisement with the reduced minimum percentage can be considered to be valid in these circumstances?

(33) The first point that needs to be noted is that vide resolution of the Board of Management the earlier recruitment Rules were only kept in abeyance. The rules were neither repealed nor have they been

replaced by another set of rules. The amended rules were placed for approval before the Board of Management, which authorised the Chairman to take a decision. But no clear decision to approve the same was taken.

(34) The word 'abeyance' means 'Temporary inactivity; suspension' {Black's Law Dictionary (Ninth Edition)}. This means that by the decision to keep the earlier Rules in abeyance they have not been erased out of existence. They remain as part of the statute book, only their operation was to remain suspended and they were not to be enforced pending approval of new rules, which approval has not so far been accorded.

(35) A somewhat similar situation was considered by the Supreme Court in *K. Kuppasamy* versus *State of T.N. and others*¹ and it was held that merely because the Government had indicated its intention to amend the relevant rules it did not mean that the statutory rules stood obliterated. Till the rule is amended the existing rules will apply. The Court observed as under:

“3. The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and, therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. The relevant rules, it is admitted, were framed under the proviso to Article 309 of the Constitution. They are statutory rules. Statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies. Even today the amendment has not been effected. As and when it is effected ordinarily it would be prospective in nature unless expressly or by necessary implication found to be retrospective. The Tribunal was, therefore, wrong in ignoring the rule.”

(36) As the proposed rules were never approved, and the earlier rules were not repealed but only kept in abeyance, in our view, the Ld. Single Judge rightly basing his decision on the earlier rules, held the

¹ (1998) 8 SCC 469

appointment of the appellant to be against the qualifications prescribed in the rules as it existed at the time of his appointment and selection.

(37) The second advertisement could only sustain if the amendment proposed had been approved and the advertisement was in consonance therewith.

(38) It has been well said that like Nature, Law abhors a vacuum (*Rajasthan State Electricity Board versus Laxman Lal*², *Sundeep Kumar Bafna versus State of Maharashtra*³).

(39) The intention of the Board of Management in keeping the existing rules in abeyance (as distinct from repealing them right away) could not have been to create a void. In the interregnum, till the approval of the new rules, either because of the intent manifested in the resolution of the Board of Management, or of necessity or of law, if not of all of them, the earlier rules would have to be held to be applicable to prevent a vacuum,

(40) The position may have been different if there were no rules at all to begin with. In that event, the qualifications stipulated in the advertisement by the competent authority would govern the selection. But such is not the case here. Thus we find no merit in the argument of Mr. Puri that in the absence of the rules, the conditions in the advertisement would govern.

(41) The other argument of the Mr. Puri that the Ld. Single Judge did not specify which rules were applicable is, also not sustainable for the decision of the Ld. Single Judge is premised on the earlier rules being applicable.

(42) But we find merit in his argument regarding the direction to appoint respondent No.1 with effect from the date the appellant was appointed with all consequential benefits. During arguments the Ld. Counsel for the appellant has raised a serious issue as to whether the respondent No. 1 has the requisite experience as on the last date of submission of applications.

(43) As the question of experience of respondent No.1 was not an issue in the writ petition and has been raised only in arguments, (barring a passing reference in para 14 of the written statement of the respondent- institute) we do not propose to opine on this question

² 1991 Supp (2) SCC 531

³ (2014) 16 SCC 623

except only to reiterate the settled legal position that in the absence of any other date specified in the rules/advertisement the relevant date for reckoning experience would be the last date of receipt of applications.

(44) We feel that having found the appellant to be ineligible and his appointment having been set aside, the appropriate direction would have been to direct the respondent institute to consider the case of respondent No.1 (the writ petitioner) for appointment subject to his fulfilling the condition of experience and other formal verification.

(45) Thus, while affirming the decision of the Ld. Single Judge on the question of setting aside the selection of the appellant, we modify the direction therein to appoint respondent No.1 with effect from the date when the appellant was appointed with all consequential benefits.

(46) Instead, the respondent institute is directed to consider the case of respondent No.1 for appointment subject to his fulfilling the condition of experience and other formal verification. The said exercise be carried out within one month of the date of receipt of this order. If he fulfills the requisite condition, his appointment would be with effect from the date when the appellant was appointed. He would be entitled to all consequential benefits except arrears of pay and allowances.

(47) The appeals stand disposed of accordingly.

Tribhuvan Dahiya