2019 INSC 604

CORRECTED

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICITON

CIVIL APPEAL NOS. 5969-5970 OF 2009

Union of India & Ors. etc. etc. .. Appellants

Versus

S. Maadasamy and Anr. etc. etc. .. Respondents

J U D G M E N T

M. R. Shah, J.

1. As both these appeals arise out of the impugned common judgment and order passed by the High Court and are between the same parties, the same are being disposed of by this common judgment.

2. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 29.10.2007 passed by the

High Court of Madras in Writ Petition Nos. 44921 and 44922 of 2006, by which the High Court has dismissed the said writ petitions preferred by the appellants-Union of India and others and confirmed the judgment and order passed by the learned Central Administrative Tribunal dated 04.07.2006 in O.A. No. 218 of 2005 and O.A. No. 814 of 2005, the Union of India and others-original writ petitioners before the High Court have preferred the present appeals.

3. The facts leading to the present appeals in nutshell are as under:

That respondent no. 1 herein-original applicant initially joined the services in the Government of Puducherry as a Craft Instructor in the Labour Department on 03.11.1975 and was appointed as the Group Instructor on regular basis. That, thereafter he was promoted as Inspector of Factories on 27.09.1982 and as Principal, Group 'A' (Junior Scale) on regular basis w.e.f. 25.08.1989. That, thereafter on 26.07.2001, he was promoted as the Joint Chief Inspector of Factories (hereinafter referred to as the "JCIF") on regular basis. The promotion of respondent No. 1-original applicant was challenged by one Sri

P.S. Krishnamurthy, who was promoted as Principal, Group 'A' (Junior Scale) subsequent to the promotion of respondent No. 1-original applicant. On the representation made by the said Sri P.S. Krishnamurthy, the Government initiated steps to convene a review DPC, but the same was rejected by the UPSC. Thereafter, respondent no. 1-original applicant joined duty in the said post on 26.07.2001. The said promotion was challenged by Sri P.S. Krishnamurthy by way of O.A. No. 795 of 2001, but the same was dismissed by the Central Administrative Tribunal (for short 'Tribunal') on 29.07.2001. According to the appellants, the Government of Puducherry also sent a proposal to UPSC for amendment of the recruitment rules equating the post of Principal, ITI held by Sri P.S. Krishnamurthy with that of JCIF. It appears that pursuant to the draft recruitment rules equating the posts, respondent No. 1-original applicant was transferred from JCIF and posted as Principal, Group 'A' (Senior Scale) on 30.09.2003. It appears that, in the meantime, in the year 1998 the Government of Puducherry decided to create one post of Principal (Senior Scale) (Rs.3000-4500/- later revised to Rs.10,000-15200/-) in the Government ITI at Karaikal. According to the Department, the same was pursuant to the

order of the Tribunal, based on the number of students at ITI, Karaikal being more than 400. The same was done in anticipation of the approval of the Government of India, by keeping one post of Principal (Junior Scale) in abeyance. That the Government of India, by order dated 19.10.2000 sanctioned the proposal for creation of the post of Principal, Group 'A' (Senior Scale) subject to the condition that one post of Principal (Junior Scale) which was kept in abeyance, should be abolished. That, thereafter respondent No. 1 working as Principal (Junior Scale) in ITI, Puducherry was promoted to the post of JCIF vide order dated 26.07.2001. That, thereafter on 17.09.2001, pursuant to the approval received from the Government of India for the creation of one post of Principal (Senior Scale), one post of Principal (Junior Scale) was abolished. It appears that pursuant to the draft recruitment rules equating the posts of Principal, ITI and the JCIF, respondent No.1-original applicant was transferred from JCIF and posted as Principal, Group 'A' (Senior Scale) on 30.09.2003. That the said order was challenged by respondent No. 1 herein-original applicant before the learned Tribunal by way of O.A. No. 869 of 2003. That the said O.A. came to be allowed by the Tribunal vide its order dated 06.01.2004. The

writ petition challenging the judgment and order passed by the learned Tribunal came to be dismissed by the High Court on 16.02.2005. At this stage, it is required to be noted that while quashing and setting aside the order dated 30.09.2003 transferring respondent No. 1 from JCIF to Principal, Group 'A" (Senior Scale), the learned Tribunal held that reliance placed on draft recruitment rules to support the transfer, cannot be sustained, as the mere approval of the Lt. Governor is not enough and the consultation with and approval of the UPSC is required and thereafter, it has to be notified. The Tribunal also held the transfer as *mala fide* and passed with ulterior motive. The Tribunal also observed and held that after the rules are approved by UPSC and notified, the Government would be at liberty to make the transfer of the original applicant.

3.1 It appears that, thereafter the notification being G.O. No. 6 dated 08.03.2005 to amend the recruitment rules relating to the post of JCIF/Chief Principal, Group 'A' (Senior Scale) was published on 15.03.2005. Simultaneously, on the same date, respondent No. 1 herein-original applicant came to be transferred and posted as Principal, Group 'A' (Senior Scale) to the

Government ITI, Karaikal from the post of JCIF, Puducherry. The said order of transfer came to be challenged by respondent No. 1-original applicant before the learned Tribunal by way of O.A. No. 218 of 2005. That, by way of O.A. No. 814 of 2005, respondent No. 1-original applicant challenged the revised recruitment rules introduced by G.O. No. 6 dated 08.03.2005, equating the two posts, namely the post of JCIF and the post of Principal Group 'A" (Senior Scale) and also to set aside the said amended recruitment rules.

3.2 That the learned Tribunal quashed and set aside the order of transfer dated 15.03.2005 stating that the same was *mala fide* and passed with an ulterior motive. The learned Tribunal also allowed O.A. No. 814 of 2005 and held that the amended rules are arbitrary and violative of Articles 14 and 16 of the Constitution of India. According to the learned Tribunal, the purpose for bringing the amended rules was not germane, but was directed only to achieve a different purpose.

3.3 Feeling aggrieved and dissatisfied with the order passed by the learned Tribunal in O.A. No. 218 of 2005 quashing and setting aside the order of transfer dated 15.03.2005 and the

judgment and order passed in O.A. No. 814 of 2005 quashing and setting aside the amended recruitment rules equating the post of Principal Group 'A" (Senior Scale) with that of the post of JCIF, the appellants herein-Union of India and others preferred writ petitions before the High Court. That, by the impugned common judgment and order, the High Court has dismissed both the writ petitions and confirmed the judgment and order passed by the learned Tribunal quashing and setting aside the order of transfer dated 15.03.2005 and setting aside the amended rules equating the post of Principal Group 'A" (Senior Scale) with that of the post of JCIF. That, by the impugned judgment and order, the High Court has dismissed both the writ petitions. Hence, the present appeals challenging the impugned common judgment and order passed by the High Court in Writ Petition Nos. 44921 and 44922 of 2006 confirming the judgment and order passed by the learned Tribunal in O.A. No. 218 of 2015 and O.A. No. 814 of 2005 dated 04.07.2006.

3.4 Now, so far as the challenge to the impugned common judgment and order passed by the High Court dismissing the writ petition and confirming the judgment and order passed by the

learned Tribunal in O.A. No. 218 of 2005, by which the learned Tribunal set aside the order of transfer dated 15.03.2005 is concerned, it is the admitted position that in view of the subsequent development and respondent No. 1 herein-original applicant has retired on attaining the age of superannuation, as such, the challenge to the order passed by the High Court confirming the order passed by the learned Tribunal quashing and setting aside the order of transfer dated 15.03.2005 has become infructuous/academic. Even otherwise, there are concurrent findings given by both, the learned Tribunal as well as the High Court holding that the order of transfer was *mala fide* and with the oblique motive. Therefore, the appeal challenging the impugned judgment and order passed by the High Court dismissing the writ petition and confirming the judgment and order passed by the learned Tribunal in O.A. No. 218 of 2005 stands disposed of as infructuous/academic.

3.5 However, the question still remains how the period from the order of transfer dated 15.03.2005 till respondent No. 1-original applicant attained the age of superannuation is to be treated/considered. It appears that at the time when respondent

No. 1-original applicant attained the age of superannuation, he has been paid the retirement benefits and the pension/pensionary benefits vide order dated 18.08.2016 and the period from 15.03.2005 till he attained the age of superannuation is treated as *dies-non* and he has been paid the pension/pensionary benefits accordingly. Therefore, it will be open for respondent No. 1-original applicant to challenge the order dated 18.08.2016 treating the period between 15.03.2005 till he attained the age of superannuation as *dies-non*, before the appropriate Court/Forum and as and when such proceedings are initiated, the same may be considered in accordance with law and on its own merits.

4. In view of the above, now the challenge to the impugned judgment and order passed by the High Court confirming the order passed by the learned Tribunal in O.A. No. 814 of 2005 by which the amended recruitment rules vide notification - G.O. No. 6 dated 08.03.2005 equating the post of Principal, Grade 'A' (Senior Scale) with that of JCIF survives.

4.1 Shri A. Mariarputham, learned Senior Advocate has appeared on behalf of the appellants. Learned counsel appearing on behalf of the appellants has vehemently submitted that, as such, the challenge to the amended rules by respondent No. 1-original applicant before the learned Tribunal was limited to equating the two posts and not the entirety of the rules. It is further submitted by the learned counsel appearing on behalf of the appellants that, even otherwise, in the facts and circumstances of the case, both, the learned Tribunal as well as the High Court have committed grave error in quashing and setting aside the amended rules equating the post of Principal, Group 'A' (Senior Scale) with that of the post of JCIF. It is submitted that the educational and other qualifications prescribed for the two posts in question, namely JCIF and Principal, Grade 'A' (Senior Scale) are identical; that the feeder cadre/posts for both the posts are also identical and having common rules for the two posts. It is submitted that, therefore, in that view of the matter, the equations of two posts cannot be said to be bad-in-law. It is further submitted by the learned counsel appearing on behalf of the appellants that even in the lower cadres, the pattern of having the same rules for a group of

posts, where the feeder cadres are the same, was in existence. In support of his above submission, he has relied upon the 1982 Rules, governing the post of Inspector of Factories, Principal and Technical officers. It is submitted that a person posted as Inspector of Factories is transferable as Principal and vise-versa etc.

4.2 It is further submitted by the learned counsel appearing on behalf of the appellants that both, the learned Tribunal as well as the High Court have materially erred in quashing and setting aside the amended rules equating the aforesaid two posts, on the ground that the duties and responsibilities with respect to the two posts are not similar/identical. It is submitted that there is no requirement in law that all the posts clubbed together should be identical in respect of duties and responsibilities and functions. It is submitted that by the very nature of things, it will not be identical. It is submitted that what is to be seen is whether the person is capable/competent to discharge the functions of both the posts. It is submitted that having regard to the identical, educational and other qualifications prescribed and coming from the feeder cadres common to both, they are

competent to man both the posts and capable of discharging the functions of both the posts. It is submitted that, in the present case and in the case of respondent No. 1 himself, in fact, his initial appointed was as a craft instructor; later he became the Inspector of Factories and thereafter he got promoted as Principal (Junior Scale) and thereafter got promoted as JCIF.

4.3 It is further submitted by the learned senior counsel appearing on behalf of the appellants that, even otherwise, the principles laid down by this Court for an administrative determination as to whether two posts are equivalent in nature for different purposes such as absorption, counting the length of service for seniority, cannot be invoked to strike down a legislative exercise of rule making under the proviso to Article 309 of the Constitution of India which has been held to be statutory and legislative in character.

4.4 It is further submitted by the learned counsel appearing on behalf of the appellants that, therefore, on facts the decision of this Court in the case of ***Union of India v. P.K. Roy*** (1968) 2 SCR 186 as well as the decision in the case of ***Sub-Inspector***

Roop Lal v. Lt. Governor (2000) 1 SCC 644, relied upon by the High Court shall not be applicable to the facts of the case on hand, more particularly, when the amended rules equating the posts were statutory and legislative in character.

4.5 It is further submitted by the learned counsel appearing on behalf of the appellants that, even otherwise, on facts, both, the learned Tribunal and the High Court have committed a grave error in quashing and setting aside the amended rules equating the post of Principal, Grade 'A' (Senior Scale) with that of the post of JCIF, inasmuch as the amended rules were approved by the UPSC and the rules were amended in consultation with the UPSC and after elaborate discussions thereafter the UPSC gave its concurrence/approval and thereafter the rules were amended equating the two posts.

4.6 Relying upon the decision of this Court in the case of ***P.U. Joshi v. Accountant General, Ahmedabad*** (2003) 2 SCC 632, it is vehemently submitted by the learned counsel appearing on behalf of the appellants that, as such, it is ultimately for the Government to take an appropriate decision on equation of posts. It is submitted that questions relating to the constitution,

pattern, nomenclature of posts, cadres, categories and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State. It is submitted that, therefore, the learned Tribunal and the High Court have committed a grave error in interfering with such a policy decision/decision of the Government to equate two posts, which were after due deliberations and in consultation with the UPSC.

4.7 Making the above submissions, it is prayed to allow the present appeals and quash and set aside the impugned judgment and order passed by the High Court and the learned Tribunal insofar as quashing and setting aside the notification – G.O. No. 6 dated 18.03.2005 by which the post of Principal, Grade 'A' (Senior Scale) was equated with the post of JCIF.

5. Shri Pramod Swarup, learned Senior Advocate appearing on behalf of respondent No. 1 has supported the impugned judgment and order passed by the High Court. It is submitted that the impugned judgment and order passed by the High Court

upholding the judgment and order passed by the learned Tribunal quashing and setting aside the amended rules equating the post of Principal, Grade 'A' (Senior Scale) with that of the post of JCIF is absolutely just and proper and considering the decisions of this Court in ***P. K. Roy*** (supra) and ***Roop Lal*** (supra). It is submitted that as it was found that the nature of duties; responsibilities and powers exercised by holding the two posts are not similar and identical and, therefore, the High Court was justified in confirming the judgment and order passed by the learned Tribunal quashing and setting aside the amended rules. Therefore, it is prayed to dismiss the present appeals.

6. Heard learned counsel appearing on behalf of the respective parties at length.

6.1 As observed hereinabove, now in the present appeals, the challenge to the impugned judgment and order passed by the High Court dismissing the writ petition and confirming the judgment and order passed by the learned Tribunal in O.A. No. 814 of 2005 quashing and setting aside the amended rules equating the post of Principal, Grade 'A' (Senior Scale) with that of JCIF survives. Therefore, the only question which is now

required to be considered by this Court is whether, in the facts and circumstances of the case, the High Court is justified in dismissing the writ petition and confirming the order passed by the learned Tribunal quashing and setting aside the amended rules by notification – G.O. No. 6 of 2015 dated 08.03.2015 equating the post of Principal, Grade 'A' (Senior Scale) with that of the post of JCIF?

6.2 From the impugned judgment and order passed by the High Court, it appears that the High Court has dismissed the writ petition, confirming the judgment and order passed by the learned Tribunal quashing and setting aside the amended rules equating the post of Principal, Grade 'A' (Senior Scale) with the post of JCIF mainly on the ground that the nature of duties of both the posts, responsibilities and powers exercised by the officers holding the posts are not similar and/or identical. Considering the decisions of this Court in the case of ***P.K. Roy*** (supra) and ***Roop Lal*** (supra), the High Court has observed and held that the equation of posts has to be determined by taking into account the following factors:

(i) nature and duties of post;

(ii) responsibilities and powers exercised by officer holding a post; extent of territorial or other charge held or responsibilities discharged;

(iii) minimum qualifications, if any, prescribed for recruitment to the post; and

(iv) salary of the post.

6.3 Relying upon the aforesaid two decisions of this Court, the High Court has dismissed the writ petitions preferred by the appellants herein-Union of India and has confirmed the judgment and order passed by the learned Tribunal quashing and setting the amended rules vide notification – G.O. No. 6 of 2015 equating the post of Principal, Grade 'A' (Senior Scale) with that of the post of JCIF. However, neither the learned Tribunal nor the High Court has considered the relevant factors which were considered while amending the rules and equating the two posts. The High Court has also not considered the fact that the UPSC gave its concurrence to the amended rules and only thereafter the rules were amended and the posts were equated.

6.4 From the affidavit-in-reply filed on behalf of the UPSC before the learned Tribunal in O.A. No. 814 of 2005, it appears that the rules were amended after the concurrence of the UPSC and after the draft rules were approved by the UPSC. From the affidavit-

in-reply filed by the UPSC, it appears that the UPSC gave its concurrence after due deliberation with the Government from time to time. Relevant paragraphs of the affidavit-in-reply which are necessary for determination of the issue involved are as under:

> "5. That the proposal for framing of common Recruitment Rules for the post of Joint Chief Inspector of Factories and Principal, Group 'A' (Senior Scale) in the scale of pay of Rs. 10000-15200 under the Labour Department of the Government of Pondicherry in lieu of the existing Recruitment Rules for the post of Joint Chief Inspector of Factories, was received on 18th March 2003 (ANNEXURE R-I). The proposal was examined and the Government of Pondicherry was requested to certify whether the duties of both the posts (Joint Chief Inspector of Factories and Principal, Group 'A' (Senior Scale) match to merit framing of common Recruitment Rules and whether the persons holding the post of Principal will be able to discharge the duties of the post of Joint Chief Inspector of Factories effectively and vice versa. In this connection Commission's letter, dated 21.05.2003 (ANNEXURE R-II) may be referred to. It is most respectfully submitted that in response to Commission's letter referred to above, the Government of Pondicherry furnished clarifications vide their letter, dated 01.08.2003 (ANNEXURE R-III). Subsequently, the Government of Pondicherry was also requested to furnish the duties and responsibilities attached to the post of Joint Chief Inspector of Factories, vide Commission's letter, dated 23.10.2003 (ANNEXURE R-IV). The duties and responsibilities were furnished by the Government of Pondicherry vide their letter, dated 29.10.2003 (ANNEXURE R-IV-A). It was found that the duties of both the posts did not match. Accordingly, the

Government of Pondicherry was advised vide letter dated 27.11.2003 (ANNEXURE R-IV-B) to explore the possibility of filling the post by deputation. In reply, the Government of Pondicherry informed vide their letter, dated 09.02.2004 (ANNEXURE R-V) that the suggestion to explore the possibility of filling up the post of Joint Chief Inspector of Factories by deputation, will not help them in ensuring the safety and health of industrial workers.

6. It is most respectfully submitted that the Government of Pondicherry, in their letter, dated 09.02.2004 referred to above, insisted upon having common Recruitment Rules for the posts of Joint Chief Inspector of Factories and Principal, Group 'A' (Senior Scale), while expressing that their intention that these two posts are interchangeable, and both the incumbents holding feeder posts of Inspector of Factories and Principal, Group 'A' (Junior Scale) are capable of discharging their duties of the post of Joint Chief Inspector of Factories effectively. The Pondicherry Government also stated that feeder post for the promotional post of Principal (Junior Scale), Inspector of Factories and Inspector of Boilers are also interchangeable and that the Joint Chief Inspector of Factories and Principal, Group 'A' (Senior Scale) are the only higher posts available for the lower cadre as promotional avenues. Therefore, the post of Joint Chief Inspector of Factories cannot be set a part for deputationists, as suggested by UPSC.

7. It is also most respectfully submitted that the Government of Pondicherry, in their communication referred to above, clearly stated that the intention is for creating avenues of promotion to the cadre of Inspector of Factories and Principal, Group 'A' (Junior Scale), Technical Officer and Training Officer and the Government has also brought all these four posts under one umbrella. The Government of

Pondicherry had stated that since these four posts were brought under one umbrella, there will be no difficulty in operating a common Recruitment Rules for the posts of Joint Chief Inspector of Factories and Principal, Group 'A' (Senior Scale) by keeping these four posts as a feeder post. The Government of Pondicherry had also stated that having a common Recruitment Rules will facilitate not only the rotation of officers at frequent intervals for better administration, but also will create promotional avenues to the officers holding the feeder posts. The Government of Pondicherry further emphasised that such an action will also meet guidelines of the Chief Vigilance Commission of India, New Delhi. Subsequently, the case was also discussed by Joint Secretary (Labour) with the concerned officers of UPSC in the Commission on 24.05.2004 and the representative of the Pondicherry Government was requested to submit detailed comment with regard to the requirement of having a common Recruitment Rules again. The record of the discussion held on 24.05.2004 is annexed as (ANNEXURE R-VI). Having examined the proposal it was felt necessary to have a clear view, particularly the details to corroborate the assertion of the Pondicherry Government that there is stagnation in the feeder grade. As such, the Government of Pondicherry was requested to forward a statement indicating the name of the incumbents holding the posts of Inspector of Boilers, Inspector of Factories, Technical Officer and Training Officer and Principal, I.T.I. and also their date of regular appointments in the respective grade. Commission's letter, dated 19.11.2004 (ANNEXURE R-VII) may be referred to. Finally, having examined the entire proposal along with the details furnished by the Government of Pondicherry, the Recruitment Rules were concurred by the Commission upon insistence of the Government of Pondicherry to have the common Recruitment Rules in view of the following:

(i) That the feeder post of Principal (Junior Grade) and Inspector of Factories are also interchangeable.

(ii) That the feeder grade posts of Inspector of Boilers, Inspector of Factories, Principal, Group 'B', I.T.I., Technical Officer and Training Officer could be provided better promotional avenues as some of the incumbents holding these posts are stagnating in their respective grade.

(iii) That it is necessary to have a common Recruitment Rules, because the post of Joint Chief Inspector of Factories is a sensitive post and there is a need to rotate the officers at frequent intervals so as to meet the guidelines of the Central Vigilance Commission. The Government of Pondicherry had certified that there is no impediment to have a common Recruitment Rules for both the posts of Joint Chief Inspector of Factories and Principal, Group 'A' (Senior Scale)."

6.5 From the aforesaid, it appears that the UPSC gave its concurrence after having due deliberations and considering the relevant factors and only thereafter the rules came to be amended and the two posts in question came to be equated. In the case of ***P.U. Joshi*** (supra) in paragraph 10, this Court has observed and held as under:

> **"10.** We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their

creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

6.6 Thus, when a conscious decision was taken by the UPSC and the Government while amending rules and equating the two posts after considering the pros and cons of the matter and considering the relevant factors referred to and reproduced hereinabove, being a policy decision, the Tribunal was not justified in quashing and setting aside the statutory rules. Therefore, the High Court has committed a grave error in dismissing the writ petition and confirming the judgment and order passed by the learned Tribunal quashing and setting aside the amended rules by notification – G.O. No. 6 of 2015 equating the post of Principal, Grade 'A' (Senior Scale). Now, so far as the reliance placed upon the decisions of this Court in the cases of ***P.K. Roy*** (supra) and ***Roop Lal*** (supra) is concerned, on considering the decisions, we are of the opinion that, in the facts and circumstances of the case, those decisions shall not be applicable to the facts of the case on hand. The decision in the case of ***P.K. Roy*** (supra) related to administrative determination of equivalence between different posts in the context of State re-organization and absorption of individuals in equivalent posts. The decision in the case of ***Roop Lal*** (supra) related to absorption

of a Sub-Inspector belonging to BSF in the Delhi Police when he was serving on deputation, and period to be counted for seniority. Therefore, on facts, the said decision shall not be applicable to the facts of the case on hand.

Even otherwise, on considering the nature and duties of both the posts, namely JCIF and Principal, Grade 'A' (Senior Scale), we are of the opinion that the duties to be performed by JCIF and Principal, Grade 'A' (Senior Scale) can be said to be identical and/or similar in nature.

7 In view of the above and for the reasons stated above, we are unable to agree with the view taken by the High Court dismissing the writ petitions and confirming the judgment and order passed by the learned Tribunal quashing and setting aside the amended rules by notification – G.O. No. 6 of 2015 equating the post of Principal, Grade 'A' (Senior Scale) with the post of JCIF. The impugned judgment and order passed by the High Court as well as the judgment and order passed by the learned Tribunal deserve to be quashed and set aside.

7.1 In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court in Writ Petition No. 44922 of 2006 arising out of the judgment and order dated 04.07.2006 passed by the learned Tribunal in O.A. No. 814 of 2005 quashing and setting aside the recruitment rules issued vide notification – G.O. No. 6 of 2015 equating the post of Principal, Grade 'A' (Senior Scale) with that of JCIF, is hereby quashed and set aside. The appeal arising out of Writ Petition No. 44922 of 2006 is hereby allowed accordingly. No costs.

7.2 Now, so far as the impugned judgment and order passed by the High Court in Writ Petition No. 44921 of 2006 arising out of the judgment and order passed by the learned Tribunal dated 04.07.2006 in O.A. No. 218 of 2005 by which the Tribunal set aside the order of transfer is concerned, the same stands disposed of, as observed hereinabove. However, the liberty is reserved in favour of respondent No. 1–original applicant to challenge the order dated 18.08.2016 treating the period between 15.03.2005 till he attained the age of superannuation as *dies-non*, before an appropriate court/forum and as and when such

proceedings are initiated, the same may be considered in accordance with law and on merits.

.....J.
[L. NAGESWARA RAO]

.....J.
[M. R. SHAH]

New Delhi,
May 1, 2019.

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2006, by which the High Court has dismissed the said writ petitions preferred by the appellants-Union of India and others and confirmed the judgment and order passed by the learned Central Administrative Tribunal dated 04.07.2006 in O.A. No. 218 of 2005 and O.A. No. 814 of 2005, the Union of India and others-original writ petitioners before the High Court have preferred the present appeals.

3. The facts leading to the present appeals in nutshell are as under:

That respondent no. 1 herein-original applicant initially joined the services in the Government of Puducherry as a Craft Instructor in the Labour Department on 03.11.1975 and was appointed as the Group Instructor on regular basis. That, thereafter he was promoted as Inspector of Factories on 27.09.1982 and as Principal, Group 'A' (Junior Scale) on regular basis w.e.f. 25.08.1989. That, thereafter on 26.07.2001, he was promoted as the Joint Chief Inspector of Factories (hereinafter referred to as the "JCIF") on regular basis. The promotion of respondent No. 1-original applicant was challenged by one Sri P.S. Krishnamurthy, who was promoted as Principal, Group 'A'

(Junior Scale) subsequent to the promotion of respondent No. 1-original applicant. On the representation made by the said Sri P.S. Krishnamurthy, the Government initiated steps to convene a review DPC, but the same was rejected by the UPSC. Thereafter, respondent no. 1-original applicant joined duty in the said post on 26.07.2001. The said promotion was challenged by Sri P.S. Krishnamurthy by way of O.A. No. 795 of 2001, but the same was dismissed by the Central Administrative Tribunal (for short 'Tribunal') on 29.07.2001. According to the appellants, the Government of Puducherry also sent a proposal to UPSC for amendment of the recruitment rules equating the post of Principal, ITI held by Sri P.S. Krishnamurthy with that of JCIF. It appears that pursuant to the draft recruitment rules equating the posts, respondent No. 1-original applicant was transferred from JCIF and posted as Principal, Group 'A' (Senior Scale) on 30.09.2003. It appears that, in the meantime, in the year 1998 the Government of Puducherry decided to create one post of Principal (Senior Scale) (Rs.3000-4500/- later revised to Rs.10,000-15200/-) in the Government ITI at Karaikal. According to the Department, the same was pursuant to the order of the Tribunal, based on the number of students at ITI,

Karaikal being more than 400. The same was done in anticipation of the approval of the Government of India, by keeping one post of Principal (Junior Scale) in abeyance. That the Government of India, by order dated 19.10.2000 sanctioned the proposal for creation of the post of Principal, Group 'A' (Senior Scale) subject to the condition that one post of Principal (Junior Scale) which was kept in abeyance, should be abolished. That, thereafter respondent No. 1 working as Principal (Junior Scale) in ITI, Puducherry was promoted to the post of JCIF vide order dated 26.07.2001. That, thereafter on 17.09.2001, pursuant to the approval received from the Government of India for the creation of one post of Principal (Senior Scale), one post of Principal (Junior Scale) was abolished. It appears that pursuant to the draft recruitment rules equating the posts of Principal, ITI and the JCIF, respondent No.1-original applicant was transferred from JCIF and posted as Principal, Group 'A' (Senior Scale) on 30.09.2003. That the said order was challenged by respondent No. 1 herein-original applicant before the learned Tribunal by way of O.A. No. 869 of 2003. That the said O.A. came to be allowed by the Tribunal vide its order dated 06.01.2004. The writ petition challenging the judgment and order passed by the

learned Tribunal came to be dismissed by the High Court on 16.02.2005. At this stage, it is required to be noted that while quashing and setting aside the order dated 30.09.2003 transferring respondent No. 1 from JCIF to Principal, Group 'A" (Senior Scale), the learned Tribunal held that reliance placed on draft recruitment rules to support the transfer, cannot be sustained, as the mere approval of the Lt. Governor is not enough and the consultation with and approval of the UPSC is required and thereafter, it has to be notified. The Tribunal also held the transfer as *mala fide* and passed with ulterior motive. The Tribunal also observed and held that after the rules are approved by UPSC and notified, the Government would be at liberty to make the transfer of the original applicant.

3.1 It appears that, thereafter the notification being G.O. No. 6 dated 08.03.2005 to amend the recruitment rules relating to the post of JCIF/Chief Principal, Group 'A' (Senior Scale) was published on 15.03.2005. Simultaneously, on the same date, respondent No. 1 herein-original applicant came to be transferred and posted as Principal, Group 'A' (Senior Scale) to the Government ITI, Karaikal from the post of JCIF, Puducherry.

The said order of transfer came to be challenged by respondent No. 1-original applicant before the learned Tribunal by way of O.A. No. 218 of 2005. That, by way of O.A. No. 814 of 2005, respondent No. 1-original applicant challenged the revised recruitment rules introduced by G.O. No. 6 dated 08.03.2005, equating the two posts, namely the post of JCIF and the post of Principal Group 'A" (Senior Scale) and also to set aside the said amended recruitment rules.

3.2 That the learned Tribunal quashed and set aside the order of transfer dated 15.03.2005 stating that the same was *mala fide* and passed with an ulterior motive. The learned Tribunal also allowed O.A. No. 814 of 2005 and held that the amended rules are arbitrary and violative of Articles 14 and 16 of the Constitution of India. According to the learned Tribunal, the purpose for bringing the amended rules was not germane, but was directed only to achieve a different purpose.

3.3 Feeling aggrieved and dissatisfied with the order passed by the learned Tribunal in O.A. No. 218 of 2005 quashing and setting aside the order of transfer dated 15.03.2005 and the judgment and order passed in O.A. No. 814 of 2005 quashing

and setting aside the amended recruitment rules equating the post of Principal Group 'A" (Senior Scale) with that of the post of JCIF, the appellants herein-Union of India and others preferred writ petitions before the High Court. That, by the impugned common judgment and order, the High Court has dismissed both the writ petitions and confirmed the judgment and order passed by the learned Tribunal quashing and setting aside the order of transfer dated 15.03.2005 and setting aside the amended rules equating the post of Principal Group 'A" (Senior Scale) with that of the post of JCIF. That, by the impugned judgment and order, the High Court has dismissed both the writ petitions. Hence, the present appeals challenging the impugned common judgment and order passed by the High Court in Writ Petition Nos. 44921 and 44922 of 2006 confirming the judgment and order passed by the learned Tribunal in O.A. No. 218 of 2015 and O.A. No. 814 of 2005 dated 04.07.2006.

3.4 Now, so far as the challenge to the impugned common judgment and order passed by the High Court dismissing the writ petition and confirming the judgment and order passed by the learned Tribunal in O.A. No. 218 of 2005, by which the learned

Tribunal set aside the order of transfer dated 15.03.2005 is concerned, it is the admitted position that in view of the subsequent development and respondent No. 1 herein-original applicant has retired on attaining the age of superannuation, as such, the challenge to the order passed by the High Court confirming the order passed by the learned Tribunal quashing and setting aside the order of transfer dated 15.03.2005 has become infructuous/academic. Even otherwise, there are concurrent findings given by both, the learned Tribunal as well as the High Court holding that the order of transfer was *mala fide* and with the oblique motive. Therefore, the appeal challenging the impugned judgment and order passed by the High Court dismissing the writ petition and confirming the judgment and order passed by the learned Tribunal in O.A. No. 218 of 2005 stands disposed of as infructuous/academic.

3.5 However, the question still remains how the period from the order of transfer dated 15.03.2005 till respondent No. 1-original applicant attained the age of superannuation is to be treated/considered. It appears that at the time when respondent No. 1-original applicant attained the age of superannuation, he

has been paid the retirement benefits and the pension/pensionary benefits vide order dated 18.08.2016 and the period from 15.03.2005 till he attained the age of superannuation is treated as *dies-non* and he has been paid the pension/pensionary benefits accordingly. Therefore, it will be open for respondent No. 1-original applicant to challenge the order dated 18.08.2016 treating the period between 15.03.2005 till he attained the age of superannuation as *dies-non*, before the appropriate Court/Forum and as and when such proceedings are initiated, the same may be considered in accordance with law and on its own merits.

4. In view of the above, now the challenge to the impugned judgment and order passed by the High Court confirming the order passed by the learned Tribunal in O.A. No. 814 of 2005 by which the amended recruitment rules vide notification - G.O. No. 6 dated 08.03.2005 equating the post of Principal, Grade 'A' (Senior Scale) with that of JCIF survives.

4.1 Shri A. Mariarputham, learned Senior Advocate has appeared on behalf of the appellants. Learned counsel appearing

on behalf of the appellants has vehemently submitted that, as such, the challenge to the amended rules by respondent No. 1-original applicant before the learned Tribunal was limited to equating the two posts and not the entirety of the rules. It is further submitted by the learned counsel appearing on behalf of the appellants that, even otherwise, in the facts and circumstances of the case, both, the learned Tribunal as well as the High Court have committed grave error in quashing and setting aside the amended rules equating the post of Principal, Group 'A' (Senior Scale) with that of the post of JCIF. It is submitted that the educational and other qualifications prescribed for the two posts in question, namely JCIF and Principal, Grade 'A' (Senior Scale) are identical; that the feeder cadre/posts for both the posts are also identical and having common rules for the two posts. It is submitted that, therefore, in that view of the matter, the equations of two posts cannot be said to be bad-in-law. It is further submitted by the learned counsel appearing on behalf of the appellants that even in the lower cadres, the pattern of having the same rules for a group of posts, where the feeder cadres are the same, was in existence. In support of his above submission, he has relied upon the 1982

Rules, governing the post of Inspector of Factories, Principal and Technical officers. It is submitted that a person posted as Inspector of Factories is transferable as Principal and vise-versa etc.

4.2 It is further submitted by the learned counsel appearing on behalf of the appellants that both, the learned Tribunal as well as the High Court have materially erred in quashing and setting aside the amended rules equating the aforesaid two posts, on the ground that the duties and responsibilities with respect to the two posts are not similar/identical. It is submitted that there is no requirement in law that all the posts clubbed together should be identical in respect of duties and responsibilities and functions. It is submitted that by the very nature of things, it will not be identical. It is submitted that what is to be seen is whether the person is capable/competent to discharge the functions of both the posts. It is submitted that having regard to the identical, educational and other qualifications prescribed and coming from the feeder cadres common to both, they are competent to man both the posts and capable of discharging the functions of both the posts. It is submitted that, in the present

case and in the case of respondent No. 1 himself, in fact, his initial appointed was as a craft instructor; later he became the Inspector of Factories and thereafter he got promoted as Principal (Junior Scale) and thereafter got promoted as JCIF.

4.3 It is further submitted by the learned senior counsel appearing on behalf of the appellants that, even otherwise, the principles laid down by this Court for an administrative determination as to whether two posts are equivalent in nature for different purposes such as absorption, counting the length of service for seniority, cannot be invoked to strike down a legislative exercise of rule making under the proviso to Article 309 of the Constitution of India which has been held to be statutory and legislative in character.

4.4 It is further submitted by the learned counsel appearing on behalf of the appellants that, therefore, on facts the decision of this Court in the case of ***Union of India v. P.K. Roy*** (1968) 2 SCR 186 as well as the decision in the case of ***Sub-Inspector Roop Lal v. Lt. Governor*** (2000) 1 SCC 644, relied upon by the High Court shall not be applicable to the facts of the case on

hand, more particularly, when the amended rules equating the posts were statutory and legislative in character.

4.5 It is further submitted by the learned counsel appearing on behalf of the appellants that, even otherwise, on facts, both, the learned Tribunal and the High Court have committed a grave error in quashing and setting aside the amended rules equating the post of Principal, Grade 'A' (Senior Scale) with that of the post of JCIF, inasmuch as the amended rules were approved by the UPSC and the rules were amended in consultation with the UPSC and after elaborate discussions thereafter the UPSC gave its concurrence/approval and thereafter the rules were amended equating the two posts.

4.6 Relying upon the decision of this Court in the case of ***P.U. Joshi v. Accountant General, Ahmedabad*** (2003) 2 SCC 632, it is vehemently submitted by the learned counsel appearing on behalf of the appellants that, as such, it is ultimately for the Government to take an appropriate decision on equation of posts. It is submitted that questions relating to the constitution, pattern, nomenclature of posts, cadres, categories and other conditions of service including avenues of promotions and criteria

to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State. It is submitted that, therefore, the learned Tribunal and the High Court have committed a grave error in interfering with such a policy decision/decision of the Government to equate two posts, which were after due deliberations and in consultation with the UPSC.

4.7 Making the above submissions, it is prayed to allow the present appeals and quash and set aside the impugned judgment and order passed by the High Court and the learned Tribunal insofar as quashing and setting aside the notification – G.O. No. 6 dated 18.03.2005 by which the post of Principal, Grade 'A' (Senior Scale) was equated with the post of JCIF.

5. Shri Pramod Swarup, learned Senior Advocate appearing on behalf of respondent No. 1 has supported the impugned judgment and order passed by the High Court. It is submitted that the impugned judgment and order passed by the High Court upholding the judgment and order passed by the learned Tribunal quashing and setting aside the amended rules equating

the post of Principal, Grade 'A' (Senior Scale) with that of the post of JCIF is absolutely just and proper and considering the decisions of this Court in ***P. K. Roy*** (supra) and ***Roop Lal*** (supra). It is submitted that as it was found that the nature of duties; responsibilities and powers exercised by holding the two posts are not similar and identical and, therefore, the High Court was justified in confirming the judgment and order passed by the learned Tribunal quashing and setting aside the amended rules. Therefore, it is prayed to dismiss the present appeals.

6. Heard learned counsel appearing on behalf of the respective parties at length.

6.1 As observed hereinabove, now in the present appeals, the challenge to the impugned judgment and order passed by the High Court dismissing the writ petition and confirming the judgment and order passed by the learned Tribunal in O.A. No. 814 of 2005 quashing and setting aside the amended rules equating the post of Principal, Grade 'A' (Senior Scale) with that of JCIF survives. Therefore, the only question which is now required to be considered by this Court is whether, in the facts and circumstances of the case, the High Court is justified in

dismissing the writ petition and confirming the order passed by the learned Tribunal quashing and setting aside the amended rules by notification – G.O. No. 6 of 2015 dated 08.03.2015 equating the post of Principal, Grade 'A' (Senior Scale) with that of the post of JCIF?

6.2 From the impugned judgment and order passed by the High Court, it appears that the High Court has dismissed the writ petition, confirming the judgment and order passed by the learned Tribunal quashing and setting aside the amended rules equating the post of Principal, Grade 'A' (Senior Scale) with the post of JCIF mainly on the ground that the nature of duties of both the posts, responsibilities and powers exercised by the officers holding the posts are not similar and/or identical. Considering the decisions of this Court in the case of ***P.K. Roy*** (supra) and ***Roop Lal*** (supra), the High Court has observed and held that the equation of posts has to be determined by taking into account the following factors:

(i) nature and duties of post;

(ii) responsibilities and powers exercised by officer holding a post; extent of territorial or other charge held or responsibilities discharged;

(iii) minimum qualifications, if any, prescribed for recruitment to the post; and

(iv) salary of the post.

6.3 Relying upon the aforesaid two decisions of this Court, the High Court has dismissed the writ petitions preferred by the appellants herein-Union of India and has confirmed the judgment and order passed by the learned Tribunal quashing and setting the amended rules vide notification – G.O. No. 6 of 2015 equating the post of Principal, Grade 'A' (Senior Scale) with that of the post of JCIF. However, neither the learned Tribunal nor the High Court has considered the relevant factors which were considered while amending the rules and equating the two posts. The High Court has also not considered the fact that the UPSC gave its concurrence to the emended rules and only thereafter the rules were amended and the posts were equated.

6.4 From the affidavit-in-reply filed on behalf of the UPSC before the learned Tribunal in O.A. No. 814 of 2005, it appears that the rules were amended after the concurrence of the UPSC and after the draft rules were approved by the UPSC. From the affidavit-in-reply filed by the UPSC, it appears that the UPSC gave its concurrence after due deliberation with the Government from time to time. Relevant paragraphs of the affidavit-in-reply which

are necessary for determination of the issue involved are as under:

> "5. That the proposal for framing of common Recruitment Rules for the post of Joint Chief Inspector of Factories and Principal, Group 'A' (Senior Scale) in the scale of pay of Rs. 10000-15200 under the Labour Department of the Government of Pondicherry in lieu of the existing Recruitment Rules for the post of Joint Chief Inspector of Factories, was received on 18th March 2003 (ANNEXURE R-I). The proposal was examined and the Government of Pondicherry was requested to certify whether the duties of both the posts (Joint Chief Inspector of Factories and Principal, Group 'A' (Senior Scale) match to merit framing of common Recruitment Rules and whether the persons holding the post of Principal will be able to discharge the duties of the post of Joint Chief Inspector of Factories effectively and vice versa. In this connection Commission's letter, dated 21.05.2003 (ANNEXURE R-II) may be referred to. It is most respectfully submitted that in response to Commission's letter referred to above, the Government of Pondicherry furnished clarifications vide their letter, dated 01.08.2003 (ANNEXURE R-III). Subsequently, the Government of Pondicherry was also requested to furnish the duties and responsibilities attached to the post of Joint Chief Inspector of Factories, vide Commission's letter, dated 23.10.2003 (ANNEXURE R-IV). The duties and responsibilities were furnished by the Government of Pondicherry vide their letter, dated 29.10.2003 (ANNEXURE R-IV-A). It was found that the duties of both the posts did not match. Accordingly, the Government of Pondicherry was advised vide letter dated 27.11.2003 (ANNEXURE R-IV-B) to explore the possibility of filling the post by deputation. In reply, the Government of Pondicherry informed vide their letter, dated 09.02.2004 (ANNEXURE R-V) that the suggestion to explore the possibility of filling up the

post of Joint Chief Inspector of Factories by deputation, will not help them in ensuring the safety and health of industrial workers.

6. It is most respectfully submitted that the Government of Pondicherry, in their letter, dated 09.02.2004 referred to above, insisted upon having common Recruitment Rules for the posts of Joint Chief Inspector of Factories and Principal, Group 'A' (Senior Scale), while expressing that their intention that these two posts are interchangeable, and both the incumbents holding feeder posts of Inspector of Factories and Principal, Group 'A' (Junior Scale) are capable of discharging their duties of the post of Joint Chief Inspector of Factories effectively. The Pondicherry Government also stated that feeder post for the promotional post of Principal (Junior Scale), Inspector of Factories and Inspector of Boilers are also interchangeable and that the Joint Chief Inspector of Factories and Principal, Group 'A' (Senior Scale) are the only higher posts available for the lower cadre as promotional avenues. Therefore, the post of Joint Chief Inspector of Factories cannot be set a part for deputationists, as suggested by UPSC.

7. It is also most respectfully submitted that the Government of Pondicherry, in their communication referred to above, clearly stated that the intention is for creating avenues of promotion to the cadre of Inspector of Factories and Principal, Group 'A' (Junior Scale), Technical Officer and Training Officer and the Government has also brought all these four posts under one umbrella. The Government of Pondicherry had stated that since these four posts were brought under one umbrella, there will be no difficulty in operating a common Recruitment Rules for the posts of Joint Chief Inspector of Factories and Principal, Group 'A' (Senior Scale) by keeping these four posts as a feeder post. The Government of

Pondicherry had also stated that having a common Recruitment Rules will facilitate not only the rotation of officers at frequent intervals for better administration, but also will create promotional avenues to the officers holding the feeder posts. The Government of Pondicherry further emphasised that such an action will also meet guidelines of the Chief Vigilance Commission of India, New Delhi. Subsequently, the case was also discussed by Joint Secretary (Labour) with the concerned officers of UPSC in the Commission on 24.05.2004 and the representative of the Pondicherry Government was requested to submit detailed comment with regard to the requirement of having a common Recruitment Rules again. The record of the discussion held on 24.05.2004 is annexed as (ANNEXURE R-VI). Having examined the proposal it was felt necessary to have a clear view, particularly the details to corroborate the assertion of the Pondicherry Government that there is stagnation in the feeder grade. As such, the Government of Pondicherry was requested to forward a statement indicating the name of the incumbents holding the posts of Inspector of Boilers, Inspector of Factories, Technical Officer and Training Officer and Principal, I.T.I. and also their date of regular appointments in the respective grade. Commission's letter, dated 19.11.2004 (ANNEXURE R-VII) may be referred to. Finally, having examined the entire proposal along with the details furnished by the Government of Pondicherry, the Recruitment Rules were concurred by the Commission upon insistence of the Government of Pondicherry to have the common Recruitment Rules in view of the following:

(iv) That the feeder post of Principal (Junior Grade) and Inspector of Factories are also interchangeable.

(v) That the feeder grade posts of Inspector of Boilers, Inspector of Factories, Principal, Group 'B', I.T.I., Technical Officer and Training Officer could be provided better

promotional avenues as some of the incumbents holding these posts are stagnating in their respective grade.

(vi) That it is necessary to have a common Recruitment Rules, because the post of Joint Chief Inspector of Factories is a sensitive post and there is a need to rotate the officers at frequent intervals so as to meet the guidelines of the Central Vigilance Commission. The Government of Pondicherry had certified that there is no impediment to have a common Recruitment Rules for both the posts of Joint Chief Inspector of Factories and Principal, Group 'A' (Senior Scale)."

6.5 From the aforesaid, it appears that the UPSC gave its concurrence after having due deliberations and considering the relevant factors and only thereafter the rules came to be amended and the two posts in question came to be equated. In the case of ***P.U. Joshi*** (supra) in paragraph 10, this Court has observed and held as under:

> **"10.** We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for

> the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

6.6 Thus, when a conscious decision was taken by the UPSC and the Government while amending rules and equating the two posts after considering the pros and cons of the matter and considering the relevant factors referred to and reproduced hereinabove, being a policy decision, the Tribunal was not

justified in quashing and setting aside the statutory rules. Therefore, the High Court has committed a grave error in dismissing the writ petition and confirming the judgment and order passed by the learned Tribunal quashing and setting aside the amended rules by notification – G.O. No. 6 of 2015 equating the post of Principal, Grade 'A' (Senior Scale). Now, so far as the reliance placed upon the decisions of this Court in the cases of ***P.K. Roy*** (supra) and ***Roop Lal*** (supra) is concerned, on considering the decisions, we are of the opinion that, in the facts and circumstances of the case, those decisions shall not be applicable to the facts of the case on hand. The decision in the case of ***P.K. Roy*** (supra) related to administrative determination of equivalence between different posts in the context of State re-organization and absorption of individuals in equivalent posts. The decision in the case of ***Roop Lal*** (supra) related to absorption of a Sub-Inspector belonging to BSF in the Delhi Police when he was serving on deputation, and period to be counted for seniority. Therefore, on facts, the said decision shall not be applicable to the facts of the case on hand.

Even otherwise, on considering the nature and duties of both the

decisions, namely JCIF and Principal, Grade 'A' (Senior Scale), we are of the opinion that the duties to be performed by JCIF and Principal, Grade 'A' (Senior Scale) can be said to be identical and/or similar in nature.

7 In view of the above and for the reasons stated above, we are unable to agree with the view taken by the High Court dismissing the writ petitions and confirming the judgment and order passed by the learned Tribunal quashing and setting aside the amended rules by notification – G.O. No. 6 of 2015 equating the post of Principal, Grade 'A' (Senior Scale) with the post of JCIF. The impugned judgment and order passed by the High Court as well as the judgment and order passed by the learned Tribunal deserve to be quashed and set aside.

7.1 In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court in Writ Petition No. 44922 of 2006 arising out of the judgment and order dated 04.07.2006 passed by the learned Tribunal in O.A. No. 814 of 2005 quashing and setting aside the recruitment rules issued vide notification – G.O. No. 6 of 2015 equating the post of

Principal, Grade 'A' (Senior Scale) with that of JCIF, is hereby quashed and set aside. The appeal arising out of Writ Petition No. 44922 of 2006 is hereby allowed accordingly. No costs.

7.2 Now, so far as the impugned judgment and order passed by the High Court in Writ Petition No. 44921 of 2006 arising out of the judgment and order passed by the learned Tribunal dated 04.07.2006 in O.A. No. 218 of 2005 by which the Tribunal set aside the order of transfer is concerned, the same stands disposed of, as observed hereinabove. However, the liberty is reserved in favour of respondent No. 1–original applicant to challenge the order dated 18.08.2016 treating the period between 15.03.2005 till he attained the age of superannuation as *dies-non*, before an appropriate court/forum and as and when such proceedings are initiated, the same may be considered in accordance with law and on merits.

.....J.
[L. NAGESWARA RAO]

.....J.
[M. R. SHAH]

New Delhi,
May 1, 2019.