

[2014] 12 S.C.R. 87

RAJENDRA KUMAR AGRAWAL

v.

STATE OF U.P. & ORS.

(Civil Appeal Nos. 9091-9092 of 2014)

SEPTEMBER 23, 2014

[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
SHIVA KIRTI SINGH, JJ.]

Service Law:

U.P. Avas Evam Vikas Parishad (Appointment and Conditions of Service of Chief Engineer) Regulations, 1990 – Selection – Vacant post of Chief Engineer – Selection process for regular promotion from the post of Superintendent Engineer – Power to relax the qualification as to minimum length of service under Reg. 20 – Permissibility of – Held: On facts, the power of relaxation under the Regulations was always available and has been exercised in a manner which does not call for any interference – Order of High Court that it amounts to retrospective amendment of rules of eligibility after the selection process has begun and that it was for dubious reasons only to accommodate the appellant cannot be accepted – Direction to the Parishad and the State Government to expedite the process of selection – U.P. Eligibility List Rules 1986 – r. 4.

Disposing of the appeals, the Court

HELD: 1.1. After the judgment of this Court dated 27.4.12 in the case of U.P. Power Corporation Ltd. v. Rajesh Kumar & Ors. there was no impediment in the way of the Parishad in proceeding with regular selection for filling up the vacant post of Chief Engineer in a regular manner. This Court had directed for making officiating arrangement by selecting a suitable Superintending

A Engineer to hold additional charge of the post of Chief
 Engineer only on account of order of *status quo qua* the
 process of regular promotion in pending civil appeals.
 The Parishad committed an act of impropriety in not
 bringing the subsequent vacation of *status quo* order on
 B account of disposal of pending civil appeals on 27.4.2012
 and in not seeking formal permission of this Court to fill
 up the post of Chief Engineer on regular basis. However,
 now it would not be proper to direct the Parishad to fill
 up the vacancy only on officiating basis. [Para 8] [96-D-
 C H; 97-A]

1.2. Rule 4 of the U.P. Eligibility List Rules 1986
 shows that the power of relaxation available to the
 concerned authority under different service rules for
 filling a post by promotion has been sought to be
 D regulated with a condition that prescribed minimum
 length of service may be suitably relaxed up to the
 prescribed extent if the required number of eligible
 persons are not available in the field of eligibility. The
 Parishad acted as per letter of the State Government and
 E granted relaxation to the extent permissible although this
 exercise could result in enlarging the zone of
 consideration only to six candidates.[Para 19] [104-D-E;
 105-B-C]

F 1.3. The process for selection of suitable candidate
 for regular promotion to the post of Chief Engineer could
 not be initiated due to pendency of civil appeals in which
 order of *status quo* was operating *qua* regular promotion.
 For that very reason even by order dated 27.3.2012 this
 G Court directed to undertake elaborate process of
 selection but only for making officiating arrangement by
 conferring additional charge for the post in question on
 the selected candidate. It was only after said impediment
 got removed on account of judgment in the pending civil
 H appeals on 27.4.2012 that the concerned authorities got
 liberty to initiate the selection process for regular

promotion. Thus, the High Court erred in holding that the selection process for regular promotion to the post of Chief Engineer had already commenced. The Government was yet to constitute a proper Committee and the list of eligible candidates was also not finalized till the issue of relaxation was taken up as per directions of the State Government. The High Court mistook the process for making officiating arrangement as the process for selection for filling up the post on regular basis. [Para 20] [105-F-H; 106-A, E-G]

1.4. The pleadings in the writ petition show that no factual malafide was alleged against any person in authority nor such authority was impleaded by name. In absence of impleadment of any member of the parishad or any of the officers of the State Government by name and merely on vague or bald assertions no case of malafide could be made out so as to invalidate the decisions taken by the parishad for exercise of power of relaxation. [Para 21] [107-A-C]

1.5. The exercise of power of relaxation appears to be in the interest of Parishad because the post of Chief Engineer, is a single post of considerable importance. The enlargement of zone of consideration with addition of relatively senior persons would only benefit the public cause by enabling selection of most meritorious person from a larger group of eligible persons. Hence, the High Court erred in inferring that the relaxation was for some dubious reasons or to benefit the appellant. The judgment and order of the High Court are set aside by holding that the power of relaxation under the Regulations was always available and has been exercised in a manner which does not call for any interference. The Parishad and the State Government is directed to expedite the process of selection of the most suitable candidate out of the eligible

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A candidates and fill up the vacant post of Chief Engineer in the Parishad. [Para 23, 25] [108-C-E, G-H; 109-A]

- B** *M. Nagaraj v. Union of India* 2006 (7) Suppl. SCR 336 : (2006) 8 SCC 212; *J.C. Yadav & Ors. v. State of Haryana & Ors.* 1990 (2) SCR 470 : (1990) 2 SCC 189; *Sandeep Kumar Sharma v. State of Punjab & Ors.* 1997 (2) SCR 405 = (1997) 10 SCC 298; *Ashok Kumar Uppal & Ors. v. State of J&K & Ors.* 1998 (1) SCR 164: (1998) 4 SCC 179; *State of Gujarat & Ors. v. Arvindkumar T. Tiwari & Anr.* 2012 (7) SCR 1072 : (2012) 9 SCC 545; *Y.V. Rangaiah & Ors. etc. v. J. Sreenivasa Rao & Ors. etc.* (1983) 3 SCC 284; *B.L. Gupta & Anr. v. M.C.D.* (1998) 9 SCC 223; *Mohd. Raisul Islam & Ors. v. Gokul Mohan Hazarika & Ors.* 2010 (7) SCR 732 : (2010) 7 SCC 560; *State of Orissa & Anr. v. Mamata Mohanty* 2011 (2) SCR 704 : (2011) 3 SCC 436;
- D** *State of Bihar & Anr. v. P.P. Sharma, IAS & Anr.* 1991 (2) SCR 1: 1992 Suppl.(1) SCC 222; *M.V. Thimmaiah & Ors. v. U.P. Public Service Commission & Ors.* 2007 (13) SCR 624 : (2008) 2 SCC 119; *Jasbir Singh Chhabra & Ors. v. State of Punjab & Ors.* (2010) 4 SCC 192; *R.S. Garg v. State of U.P. & Ors.* 2006 (4) Suppl. SCR 120 : (2006) 6 SCC 430 – referred to.

Case Law Reference:

	2006 (7) Suppl. SCR 336	Referred to	Para 5
F	1990 (2) SCR 470	Referred to	Para 11
	1997 (2) SCR 405	Referred to	Para 11
	1998 (1) SCR 164	Referred to	Para 11
G	2012 (7) SCR 1072	Referred to	Para 11
	(1983) 3 SCC 284	Referred to	Para 14
	(1998) 9 SCC 223	Referred to	Para 14
H	2010 (7) SCR 732	Referred to	Para 14

2011 (2) SCR 704	Referred to	Para 14	A
1991 (2) SCR 1	Referred to	Para 21	
2007 (13) SCR 624	Referred to	Para 21	
(2010) 4 SCC 192	Referred to	Para 21	B
2006 (4) Suppl. SCR 120	Referred to	Para 22	

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 9091-9092 of 2014.

From the Judgment & Order dated 08.10.2012 of the High Court of Judicature at Allahabad, Lucknow Bench in Writ Petition No. 1183 (S/B) and 1264 (S/B) of 2012. C

WITH

C.A. No. 9093 of 2014 D

S.B. Upadhyay, Kailash Vasdev, Irshad Ahmad, AAG, Nikhil Majithia, Subhasish Bhowmick, Rameshwar Prasad Goyal, Praveen Chauhan, Yash Prakash, Gaurav Agarwal, Kaustav Pathak, Abhith Kumar, Dinesh Kumar Garg, Dhananjay Garg, Vishwajit Singh, Abhindra Maheshwari, Umrao Singh Rawat for the appearing parties. E

The Judgment of the Court was delivered by

SHIVA KIRTI SINGH, J. 1. Leave granted. F

2. These appeals arise out of a common judgment of Division Bench of High Court, Allahabad, Lucknow Bench dated 08.10.2012, hence they have been heard together and will be governed by this common judgment. G

3. The appellants as well as the private respondents are Superintending Engineers in the service of U.P. Avas Evam Vikas Parishad (for brevity, 'the Parishad'). The appellants are arrayed amongst respondents in the appeal filed by the others H

A whereas one Anil Kumar Jain, another Superintending Engineer whose Writ Petition bearing No.1276(SB) of 2012 was also allowed by the common judgment under appeal has also been arrayed as a respondent on account of his application for impleadment being allowed by this Court.

B 4. The appellants as well as the private contesting
respondents are aspirants for the single post of Chief Engineer
in the Parishad which fell vacant in January 2011. Thereafter,
although Narsingh Prasad was junior to many others, he was
handed over officiating charge of the post of Chief Engineer
C on 30.9.2011. Anil Kumar Jain moved the High Court and a
Division Bench quashed the order dated 30.9.2011 and
directed for regular promotion. Narsingh Prasad preferred Civil
Appeal No.3153 of 2012 which was allowed to a limited extent
D on March 27, 2012. This Court in paragraph 8 of the order
noticed that certain appeals were pending in which order of
status quo relating to promotional posts had been passed. On
that account, this Court found that no regular promotion could
take place and hence the order of the High Court was
untenable. This Court in such circumstances directed that the
E Selection Committee be constituted by the Board within four
weeks which shall consider the suitability of all the eligible
candidates for holding the additional charge of the post of the
Chief Engineer. The Parishad was allowed by this Court to
choose someone to hold the officiating charge *qua* the post of
F Chief Engineer but it was made clear that such decision in
favour of any candidate would not enure to his benefit at the
time of consideration for regular appointment.

G 5. For some reasons no selection could be made within
the time granted by this Court for making the officiating
arrangement but in the meanwhile Civil Appeal bearing
No.2608 of 2011 (U.P. Power Corporation Ltd. v. Rajesh
Kumar & Ors.) with other connected appeals, came to be finally
decided by judgment dated April 27, 2012 reported in (2012)
H 7 SCC 1. By that judgment, this Court declared the relevant

provisions in the Act and the Rules providing for reservation in matters of promotion to be *ultra vires* being in teeth of the dictum in the case of **M. Nagaraj v. Union of India** (2006) 8 SCC 212. In paragraph 87 of the judgment it was clarified that promotions that had been already given without the aid or assistance of the relevant provision in the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and the U.P. Government Servants Seniority Rules, 1991 which had been declared *ultra vires* shall remain undisturbed. Thus, within one month of the order of this Court dated March 27, 2012, the only impediment in filling up the post of Chief Engineer by regular promotion became non-existent and, therefore, the Parishad on 14.6.2012 issued a letter to the State Government urging for suitable steps for regular appointment to the vacant post of Chief Engineer. Before receipt of reply from the State Government, the Parishad's application for extension of four weeks' time fixed by order dated 27.3.2012 came up for orders of this Court which extended the time period on 20.7.2012 by one month. The State Government vide letter dated 27.7.2012 noticed the eligibility list of officers submitted by the Parishad and after noticing that only two officers of civil cadre and one officer of electrical/mechanical cadre fulfilled the prescribed eligibility of five years' experience on the post of Superintending Engineer, accepted the advice by the Public Sector Department for grant of relaxation in the qualifying experience of five years under the provisions of Regulation 20 of the U.P. Avas Evam Vikas Parishad (Appointment and Conditions of Service of Chief Engineer) Regulations, 1990 [for short, 'the Regulations'].

6. On 04.8.2012, the Parishad constituted a Selection Committee for selecting the most eligible candidate to hold the additional charge of Chief Engineer. The Selection Committee in its meeting held on 06.8.2012 came to the opinion that since there was no longer any legal impediment in proceeding with regular selection for regular promotion to the post of Chief Engineer, the Parishad should take a decision in that regard

A and State Government be moved to constitute a Selection
Committee for that purpose which is required to be headed by
the Chief Secretary of the State. Appellant Rajendra Kumar
Agrawal approached the High Court by way of writ petition
bearing W.P.(S/B)No.1183/2012 claiming the officiating charge
B of Chief Engineer as the senior most eligible person and a
direction against continuation of Housing Commissioner on the
said post in officiating capacity. On 23.8.2012 the Parishad
considered the recommendations of the Selection Committee
and decided to relax the eligibility criteria of five years'
C experience to 3½ years including the probation period of two
years in the light of U.P. Government Servants Relaxation in
Qualifying Service for Promotion Rules, 2006 (for brevity, 'Rules
of 2006'). The decision of the Board granting relaxation of 1½
D years under the provisions of Rule 20 of the Regulations was
taken after considering details of nine Superintending
Engineers in which Anil Kumar Jain of Electrical/Mechanical
cadre occupied seniority position no.1 followed by Rajendra
Kumar Agrawal at serial no.14 with experience of 4 years 3
E months; Mathura Prasad Vaish at no.15 with experience of 3
years 7 months; and Umesh Mittal at serial no.16 with
experience of 3 years 7 months. Three other Superintending
Engineers Gyanendra Singh, Jai Kant and Santram at seniority
nos.21, 22 and 83 respectively had zero or very little length of
F experience whereas Narsingh Prasad, seniority position no.84
and Pravender Kumar, seniority position no.88 had experience
of 7 years or more. The experience of the concerned
Superintending Engineers was calculated as on 01.1.2012 in
the light of Regulation 5 which requires length of service to be
reckoned as on January 1st of the year in which the selection
is made. On account of relaxation in the required experience
G of five years by 1½ years, three senior Superintending
Engineers, Rajendra Kumar Agrawal, Mathura Prasad Vaish
and Umesh Mittal came in the eligibility zone which earlier
included only three others who were at seniority position no.1
belonging to Electrical/Mechanical cadre and seniority position
H nos.84 and 88 belonging to Civil cadre. The aforesaid decision

of relaxation was communicated to the State Government by letter dated 24.8.2012 for taking immediate action for selection to the post of Chief Engineer in accordance with the rules. A

7. The letter dated 24.8.2012 as well as decision of the Parishad dated 23.8.2012 were challenged by Narsingh Prasad through Writ Petition (S/B)No.1264 of 2012. He contended that the decision to make regular promotion was in violation of the orders of this Court particularly order dated 27.3.2012, it also amounted to retrospective amendment of eligibility criteria when the selection process was already under way and that such decisions were only with a view to benefit Rajendra Kumar Agrawal for political reasons. Another writ petition filed by Anil Kumar Jain bearing W.P. No.1276 (S/B) of 2012 was also directed against the same very decisions as challenged by Narsingh Prasad. The 4th writ petition decided by the common order was W.P.No.1207 (S/B) of 2012 filed by one Gyanendra Singh who had not been promoted then as a Superintending Engineer but wanted his experience as an officiating Superintending Engineer to be counted for promotion. That was negated by the High Court and he has not chosen to appeal against rejection of his claim. By the common impugned order, the High Court dismissed the writ petition of Rajendra Kumar Agrawal and allowed those filed by Narsingh Prasad and Anil Kumar Jain. Since Anil Kumar Jain had not impleaded Rajendra Kumar Agrawal in his writ petition, therefore, the latter preferred only two Special Leave Petitions – one against dismissal of his writ petition and the other against relief granted to Narsingh Prasad. However, subsequently Anil Kr. Jain has been impleaded in these appeals on his own request and hence the entire common judgment is under question in presence of all the parties and this Court is now called upon to examine the following two main questions: B
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- (1) Whether the Parishad should be allowed, as pleaded by it, to proceed with making regular promotion to the vacant post of Chief Engineer in H

A the light of subsequent judgment of this Court dated
27.4.2012 in the case of U.P. Power Corporation
v. Rajesh Kumar & Ors. (supra) or as held by the
High Court it be directed to fill up that vacancy only
on officiating basis in purported compliance of
B order of this Court dated March 27, 2012?

(2) Whether the decision of the Parishad in compliance
with request of the State Government, to relax the
minimum qualifying experience of five years in
exercise of power under Regulation 20 is bad in
C law for the reasons assigned by the High Court that
it amounts to retrospective amendment of rules of
eligibility after the selection process has begun and
that it is for dubious reasons only to accommodate
Rajendra Kumar Agrawal?

D 8. With regard to the first question, we have no hesitation
in holding that after the judgment of this Court dated April 27,
2012 in the case of U.P. Power Corporation Ltd. v. Rajesh
Kumar & Ors. (supra) there was no impediment in the way of
E the Parishad in proceeding with regular selection for filling up
the vacant post of Chief Engineer in a regular manner. This
Court had directed for making officiating arrangement by
selecting a suitable Superintending Engineer to hold additional
charge of the post of Chief Engineer only on account of order
F of *status quo qua* the process of regular promotion in pending
civil appeals that were finally disposed of on April 27, 2012.
Thereafter, the Parishad would have only wasted time and
resources in making officiating arrangement after going through
elaborate procedure of selection. There can be no doubt that
G the Parishad committed an act of impropriety in not bringing
the subsequent vacation of *status quo* order on account of
disposal of pending civil appeals on 27.4.2012 and in not
seeking formal permission of this Court to fill up the post of
Chief Engineer on regular basis. However, now when the full
H facts are before this Court, it would not be proper to direct the

Parishad to fill up the vacancy only on officiating basis. Question no.1 is answered accordingly. A

9. So far as Question no.2 is concerned, in the light of answer to Question no.1, only two grounds which weighed with the High Court require our attention. The High Court accepted the contentions advanced on behalf of Narsingh Prasad that the impugned actions of the Parishad amounted to retrospective amendment of eligibility criteria after the selection process had commenced and that such decisions were taken only to benefit Rajendra Kumar Agrawal for political or dubious reasons. B
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10. Before advertng to the rival submissions, it will be useful to extract relevant Regulations 5 and 20 of the Regulations which are as follows :

"5. Source of appointment – Appointment to the post of Chief Engineer and other equivalent posts as may be specified in the cadre of the Service shall be made by promotion in the manner laid down in these Regulations from amongst the Superintending Engineers who have completed not less than five years of service as Superintending Engineer as on January 1st of the year in which the selection is made; D
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20. Relaxation – (1) If the Board is satisfied that the operation of any regulation regarding the conditions of service of persons appointed to the service causes undue hardship in any particular case, they may, notwithstanding anything contained in the regulations, applicable to his case, by order, dispense with or relax the requirement of that regulation to such extent and subject to such conditions as they may consider necessary for dealing with the case in a just and equitable manner. G
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A (2) When, in the opinion of the Board, or under the general
or specific orders of the State Government it appears
necessary to do so, the Board may make any appointment
or appointments to the service otherwise than in
accordance with these regulations, or in partial relaxation
B of any or some of the regulations and in case of any
appointment which is not in strict accord with these
regulations, the Board shall be deemed to have made the
appointment(s) in relaxation of these regulations.”

C 11. Learned counsel for the appellant – Rajendra Kumar
Agrawal – Mr. Nikhil Majithia has relied upon large number of
judgments of this Court in support of his contention that neither
of the grounds have any merit. According to him, the power to
relax the eligibility criteria was already available under
Regulation 20 of the Regulations and, therefore, it was a
D mistake on the part of the High Court in relying upon various
judgments which lay down a principle that retrospective
amendment of the rules relating to selection is impermissible
once the selection process has been initiated. In other words,
the submission is that in the present case it is a misconception
E that there has been any amendment much less a retrospective
amendment of the policy decision or the rules governing the
selection process. According to him, the power of relaxation
as available in Regulation 20 is to be found in many other rules
governing different services. With a view to mitigate undue
F hardship or to meet a particular situation, it may be validly
exercised in a situation where requisite qualified persons may
not be available for selection and appointment. In such
situations, the Government, in exercise of its powers to relax
requirement of rules, may issue an order relaxing any particular
G rule or rules with a view to avail the services of requisite officers.
In support of these submissions reliance has been placed upon
judgments of this Court in the case of (1) *J.C. Yadav & Ors.*
v. State of Haryana & Ors. (1990) 2 SCC 189; (2) *Sandeep*
Kumar Sharma v. State of Punjab & Ors. (1997) 10 SCC
H 298; (3) *Ashok Kumar Uppal & Ors. v. State of J&K & Ors.*

(1998) 4 SCC 179; and (4) **State of Gujarat & Ors. v. Arvindkumar T. Tiwari & Anr.** (2012) 9 SCC 545. A

12. For the purpose at hand, it is useful to refer to paragraph 6 of the judgment in the case of **J.C. Yadav** (supra). It runs as follows : B

“6. The rule confers power on the government to dispense with or to relax the requirement of any of the rules to the extent and with such conditions as it may consider necessary for dealing with the case in a just and equitable manner. The object and purpose of conferring this power on the government is to mitigate undue hardship in any particular case, and to deal with a case in a just and equitable manner. If the rules cause undue hardship or rules operate in an inequitable manner in that event the State Government has power to dispense with or to relax the requirement of rules. The rule does not restrict the exercise of power to individual cases. The government may in certain circumstances relax the requirement of rules to meet a particular situation. The expression ‘in any particular case’ does not mean that the relaxation should be confined only to an individual case. One of the meanings of the expression ‘particular’ means ‘peculiar or pertaining to a specified person – thing – time or place – not common or general’. The meaning of the word particular in relation to law means separate or special, limited or specific. The word ‘case’ in ordinary usage means ‘event’, ‘happening’, ‘situation’, ‘circumstances’. The expression ‘case’ in legal sense means ‘a case’, ‘suit’ or ‘proceeding in court or Tribunal’. Having regard to these meanings the expression ‘in any particular case’ would mean: in a particular or pertaining to an event. situation or circumstances. Rule 22 postulates relaxation of rules to meet a particular event or situation, if the operation of the rules causes hardship. The relaxation of the rules may be to the extent the State Government may consider C
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A necessary for dealing with a particular situation in a just and equitable manner. The scope of rule is wide enough to confer power on the State Government to relax the requirement of rules in respect of an individual or class of individuals to the extent it may consider necessary for

B dealing with the case in a just and equitable manner. The power of relaxation is generally contained in the Rules with a view to mitigate undue hardship or to meet a particular situation. Many a time strict application of service rules create a situation where a particular individual or a set of

C individuals may suffer undue hardship and further there may be a situation where requisite qualified persons may not be available for appointment to the service. In such a situation the government has power to relax requirement of rules. The State Government may in exercise of its

D powers issue a general order relaxing any particular rule with a view to avail the services of requisite officers. The relaxation even if granted in a general manner would ensure to the benefit of individual officers.”

E 13. In a more recent case of **Arvindkumar T. Tiwari** (supra) this Court considered several judgments on the issue including that in the case of **J.C. Yadav** (supra) and **Ashok Kumar Uppal** (supra) and in paragraph 10 of the judgment held as follows :

F “10. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent

G that the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an

H individual case or class of cases of undue hardship.

However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/ authority is conferred upon the Government/authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible. (Vide *State of Haryana v. Subash Chander Marwaha* (1974) 3 SCC 220, J.C. *Yadav & Ors. v. State of Haryana & Ors.* (1990) 2 SCC 189 and *Ashok Kumar Uppal & Ors. v. State of J&K & Ors.* (1998) 4 SCC 179.”

14. In reply, learned senior advocate Mr. S.B. Upadhyay appearing for Narsingh Prasad supported the view taken by the High Court and submitted that the decision to relax the eligibility criteria under Regulation 20 has to be viewed as changing the rules of selection after the process had started and, therefore, it has rightly been disapproved by the High Court. He placed reliance upon following judgments of this Court :

- (1) *Y.V. Rangaiah & Ors. etc. v. J. Sreenivasa Rao & Ors. etc.* (1983) 3 SCC 284;
- (2) *B.L. Gupta & Anr. v. M.C.D.* (1998) 9 SCC 223;
- (3) *Mohd. Raisul Islam & Ors. v. Gokul Mohan Hazarika & Ors.* (2010) 7 SCC 560; and
- (4) *State of Orissa & Anr. v. Mamata Mohanty* (2011) 3 SCC 436.

15. In the case of *Y.V. Rangaiah* (supra) as well as in the case of *B.L. Gupta* (supra), the question of granting relaxation under the existing rules did not fall for consideration of this Court. The only issue was whether the subsequent amendment in the service rules which were held to be prospective could

A be applied to the selection process in respect of vacancies
 which had arisen prior to amendment of the rules. In that
 situation, following several earlier judgments, it was held that
 the vacancies which had occurred prior to the amendment of
 the rules would be governed by the old rules and not by the
 B amended rules. After holding so in paragraph 9 in the case of
B.L. Gupta (supra), the Court explained the position further in
 paragraph 10 in following terms :

C “10.If no statutory rules had existed, it may have
 been possible, though we express no opinion on it, that
 the existing incumbents may have been regularised.
 Where, however, statutory rules exist, the appointments
 and promotions have to be made in accordance with the
 statutory rules specially where it has not been shown to us
 that the Rules gave the power to the appointing authority
 D of relaxing the said Rules. In the absence of any such
 power of relaxation, the appointment as Assistant
 Accountant could only be made by requiring the
 candidates to take the examination which was the method
 which was prescribed by the 1978 Rules.”

E 16. In paragraph 39 of the judgment in the case of **Mohd.**
Raisul Islam (supra) it was reiterated that “once a process of
 selection is started on the basis of the existing Rules of
 recruitment, the said Rules will continue to govern the selection
 F process, notwithstanding any amendment which may have been
 effected to the said Rules in the meantime.” In the case of
Mamata Mohanty (supra) the facts were quite different.
 Although learned senior counsel placed reliance upon only a
 particular sub-para, i.e., sub-para no.(viii) of para 68, in support
 G of contention that granting relaxation “at this stage” amounts to
 change of criteria after issuance of advertisement, which is
 impermissible in law, a reading of the entire paragraph 68 and
 other paragraphs clearly shows that the fact situation in that
 case was entirely different. Initially appointments had been
 H made under the 1974 Rules under which there was no power

to grant relaxation in eligibility in any authority, either the University or the State. Hence, it was held in sub-para (xi) of para 68 that in absence of such power the same could not have been exercised. The facts further show that contrary to the rules and the advertisement persons having less than the prescribed minimum marks had been appointed and such appointments had been approved after long time, in some cases, after 10 to 12 years. One university issued a routine order applicable to a large number of colleges after a lapse of about a decade for granting relaxation in the academic qualification. This Court disapproved the so-called relaxation by the university in the facts and circumstances indicated above.

17. The judgments relied upon by Mr. Upadhyay, learned senior advocate, in our considered view, are inapplicable to the facts of the present case especially in view of the provisions in Regulation 20 which has always existed in the Regulations. On the other hand, the submissions advanced by Mr. Majithia, learned counsel for Rajendra Kumar Agrawal deserve to be accepted particularly in view of the judgments relied upon by him. The Parishad had the necessary power to relax the eligibility criteria. In fact under Regulation 20(2) the power is available even with the State Government to issue general or specific orders enabling the Board to make any appointment or appointments to the service otherwise than in accordance with the Regulations or in partial relaxation of any or some of the regulations. This Regulation goes on to provide further that "in case of any appointment which is not in strict accord with these Regulations, the Board shall be deemed to have made the appointment(s) in relaxation of these Regulations."

18. In the appeal filed by Narsingh Prasad, a challenge has been made to the finding given by the High Court to the effect that the authorities have power to relax the rules. Thereafter, the High Court further held that such relaxation cannot be retrospective. The former observation has been challenged by Narsingh Prasad on the ground that power to relax the rules of

A eligibility can be exercised within the parameters of Rule 4 of the 2006 Rules which provides as follows :

B **Rule 4. Relaxation in qualifying service** – In case a post is filled by promotion and for such promotion a certain minimum length of service is prescribed on the lower post or posts, as the case may be, and the required number of eligible persons are not available in the field of eligibility, such prescribed minimum length of service may be suitably relaxed upto fifty percent by the Government in the
 C Administrative Department in consultation with the Personnel Department of the Government, excluding the period of probation as laid down for the said lower post or posts, as the case may be.”

(emphasis supplied)

D 19. A perusal of Rule 4 shows that the power of relaxation available to the concerned authority under different service rules for filling a post by promotion has been sought to be regulated with a condition that prescribed minimum length of
 E service may be suitably relaxed up to the prescribed extent if the required number of eligible persons are not available in the field of eligibility. The contention appears to be that although the power to relax is available, the Parishad erred in exercising such power because already there were three eligible persons
 F available in the field of eligibility. However, it has nowhere been pleaded nor it was argued as to what shall be the required number of eligible persons for exercise of such power. In this regard, the Regulations also do not throw any light. On this aspect, a perusal of letter dated 23.11.2010 sent by the
 G Parishad to the Principal Secretary, U.P. Administration, Housing & Planning Section-II, discloses that as per Rule 4 of the U.P. Eligibility List Rules 1986 (Promotion on the post of Outer Region of Public Service Commission) where sufficient persons are eligible for promotion, one list of the senior most candidates will be prepared by appointing authority, in which

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names as possible thrice multiple of number of vacancies but at least eight will be kept. Thereafter, the letter refers to Rule 4 of the Rules of 2006 governing relaxation which limits the extent to which relaxation can be granted. Seen in the background of aforesaid facts, the contention advanced in the appeal of Narsingh Prasad, as noted above, is found to be without any basis. The Parishad acted as per letter of the State Government and granted relaxation to the extent permissible although this exercise could also result in enlarging the zone of consideration only to six candidates. In paragraph 10 of the judgment in the case of Arvindkumar T. Tiwari (supra) extracted earlier, this Court has held that if the rules empower, such relaxation is permissible but has cautioned that such power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual.

20. Since the case at hand is not where the rules have been amended after the commencement of selection process but only of exercise of power to relax the qualification as to minimum length of service, it may not be necessary to go into questions of fact as to when the selection process was initiated, i.e., whether after or before the relaxation in qualification or whether the selection process had at all commenced or not. However, since the rival parties have addressed us on this issue, it will be useful to notice that in this case, the process for selection of suitable candidate for regular promotion to the post of Chief Engineer could not be initiated due to pendency of some civil appeals in which order of *status quo* was operating *qua* regular promotion in various services on account of challenge to the provisions for reservation in the matter of promotion. For that very reason even by order dated March 27, 2012 this Court directed to undertake elaborate process of selection but only for making officiating arrangement by conferring additional charge for the post in question on the selected candidate. It was only after aforementioned impediment got removed on account of judgment in the pending civil appeals

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A on 27th April 2012 that the concerned authorities got liberty to initiate the selection process for regular promotion. The selection process initiated earlier, as noted was only for making officiating arrangement. In the order dated March 27, 2012 this Court had made it clear that selection for holding additional
B charge would not confer any benefit upon the selected incumbent in the matter of regular promotion. Seen in the background of such facts, we find merit in the submission advanced on behalf of the Parishad that the selection process could have commenced only after April 27, 2012. Mr. Kailash
C Vasdev, senior advocate appearing for the Parishad usefully pointed out in this regard to the explanatory note for the Board meeting for 23rd August 2012. In paragraph 5 of that note it is mentioned that the matter of regular promotion to the post of Chief Engineer is pending consideration before the Government which had suggested for relaxing the eligibility
D condition of five years and at the end of that paragraph it was suggested that after getting the proposal for relaxation passed from the Board, approval of the Administration Department may be obtained and then a proposal for making necessary promotion may be put up. Anticipating acceptance of such
E proposal, the details of nine Superintending Engineers with their experience as on 1.1.2012 was also given in that explanatory note. In such facts and circumstances it is apparent that the High Court erred in holding that the selection process for regular promotion to the post of Chief Engineer had already
F commenced. The Government was yet to constitute a proper Committee for this purpose and the list of eligible candidates had also not been finalized till the issue of relaxation was taken up as per directions of the State Government. The High Court mistook the process for making officiating arrangement as the
G process for selection for filling up the post on regular basis.

21. The only remaining ground which weighed with the High Court relates to the issue of malafide or improper exercise of power of relaxation allegedly only to benefit appellant –

Rajendra Kumar Agrawal. On this issue, Mr. Majithia has taken us through the pleadings in the writ petition to show that no factual malafide was alleged against any person in authority nor such authority was impleaded by name to answer even vague suggestions of malafide. In fact by relying upon judgments in the case of **State of Bihar & Anr. v. P.P. Sharma, IAS & Anr.** 1992 Supp.(1) SCC 222; **M.V. Thimmaiah & Ors. v. U.P. Public Service Commission & Ors.** (2008) 2 SCC 119; and **Jasbir Singh Chhabra & Ors. v. State of Punjab & Ors.** (2010) 4 SCC 192, it was rightly submitted that in absence of impleadment of any member of the Parishad or any of the officers of the State Government by name and merely on vague or bald assertions no case of malafide could be made out so as to invalidate the decisions taken by the Parishad for exercise of power of relaxation under Regulation 20.

22. In reply learned senior advocate Mr. Upadhyay submitted that before the High Court the contentions were only to show malice in law by alleging and showing that power of relaxation had been exercised to achieve an impermissible and improper objective of conferring eligibility upon Rajendra Kumar Agrawal on account of his influence. He placed reliance upon paragraphs 11 and 25 of judgment of this Court in the case of **R.S. Garg v. State of U.P. & Ors.** (2006) 6 SCC 430. In paragraph 11 of that judgment, the Court noticed the relevant rule for relaxation of other conditions of service. That rule permitted relaxation of such conditions of service which caused undue hardship in any particular case, for dealing with the case in a just and equitable manner. Thereafter the Court, on facts, found that the eligibility criteria had been relaxed to accommodate one person who was not facing any hardship much less undue hardship. The Court found that in fact the relaxation would have caused undue hardship to the persons senior to the beneficiary. In paragraph 25 the Court explained the difference in the concept of 'malice in law' and 'malice in fact'. It was reiterated that any action resorted to for an unauthorized purpose would construe malice in law.

A 23. So far as the present case is concerned we do not find
any material to show that the State Government or the Parishad
resorted to exercise of power under Regulation 20 for some
unauthorized or oblique purpose. The allegation that it was only
to benefit Rajendra Kumar Agrawal is *ex facie* incorrect
B because relaxation was beneficial for three officers who all
were senior to Narsingh Prasad. There is no material to support
the allegation that Rajendra Kumar Agrawal was responsible
for the decision by the State Government or the Parishad on
account of any political or other influence over any person. To
C us, the exercise of power of relaxation appears to be in the
interest of Parishad because the post of Chief Engineer, as
held by this Court in earlier proceeding, is a single post of
considerable importance. The enlargement of zone of
consideration with addition of relatively senior persons would
D only benefit the public cause by enabling selection of most
meritorious person from a larger group of eligible persons.
Hence in the facts of the case, we are of the considered view
that the High Court erred in inferring that the relaxation was for
some dubious reasons or to benefit Rajendra Kumar Agrawal.

E 24. Mr. D.K. Garg, learned counsel for the impleaded
respondent – Anil Kumar Jain – advanced a submission that
there is no specific challenge to the impugned judgment
whereby writ petition of Anil Kumar Jain was also allowed. This
submission needs to be noticed only to be rejected. The entire
F common judgment is under challenge before us and since the
said applicant is already impleaded, there is no legal obstacle
in entertaining such a challenge.

G 25. In the light of our discussions and findings, we are left
with no option but to set aside the judgment and order of the
High Court under appeal by holding that the power of relaxation
under the Regulations was always available and has been
exercised in a manner which does not call for any interference.
We direct the Parishad and the State Government to expedite
the process of selection of the most suitable candidate out of
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RAJENDRA KUMAR AGRAWAL v. STATE OF U.P. 109
[SHIVA KIRTI SINGH, J.]

the eligible candidates and fill up the vacant post of Chief Engineer in the Parishad as per law without any delay within eight weeks. The appeals preferred by Rajendra Kumar Agrawal stand allowed and the appeal preferred by Narsingh Prasad is dismissed. There shall be no order as to costs. A

Nidhi Jain

Appeals disposed of. B