



2025:DHC:854-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 17326/2024 & CM APPL. 73773/2024

UNION PUBLIC SERVICE COMMISSION .....Petitioner

Through: Mr. R.V. Sinha, Adv.

versus

BHARAT LAL MEENA & ORS. ....Respondents

Through: Mr. Ranjit Sharma, Adv.

Mr. Gaurav Dhingra and Mr. Shashank  
Singh, Advs. for R-2 and 3.

**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT (ORAL)**

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**06.02.2025**

**C.HARI SHANKAR, J.**

1. The respondent was appointed as Trained Graduate Teacher with the Directorate of Education, Government of National Capital Territory of Delhi, in 1993. He was promoted as Vice Principal on 28 December 2012.

2. The respondent was considered for promotion, by a Departmental Promotion Committee<sup>1</sup> constituted by the Union Public Service Commission<sup>2</sup> on 31 May 2023 for promotion to the post of Principal. The DPC found the respondent unfit.

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<sup>1</sup> "DPC" hereinafter

<sup>2</sup> "UPSC" hereinafter



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3. Aggrieved thereby, the respondent moved the Central Administrative Tribunal<sup>3</sup> by way of OA 52/2024. By the impugned judgement dated 11 September 2024, the Tribunal has allowed the OA.

4. Aggrieved thereby, the UPSC has approached this Court by means of the present writ petition. We have heard Mr R.V. Sinha for the UPSC.

5. Having done so, we find the impugned judgement of the Tribunal to be unexceptionable.

6. Prior to the meeting of the DPC, consequent to disciplinary proceedings, the respondent had been imposed a minor penalty, on 30 September 2020, of reduction to a lower scale in the time scale of pay by one stage for a period of one year without cumulative effect and without any adverse effect on pension. Inasmuch as the penalty was for one year without cumulative effect, it is clear that the currency of the penalty came to an end on or around 30 September 2021.

7. As such, nearly over 2 ½ years elapsed since then, by the time the respondent was considered by the DPC constituted by the UPSC for promotion as Principal on 31 May 2023. The instructions issued by the Department of Personnel and Training<sup>4</sup> in its Office Memorandum dated 28 April 2014, governing the approach to be adopted by DPC while considering candidates for promotion, deals

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<sup>3</sup> “the Tribunal” hereinafter

<sup>4</sup> “DOPT” hereinafter



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with the issue of whether the DPC could take into consideration a penalty which have been imposed on the officer after the currency of the penalty is over, and ordains in this regard thus:

“(i) While there is no illegality in denying promotion during the currency of the penalty, denying promotion in such cases after the period of penalty is over would be in violation of the provisions of Article 20 of the Constitution.”

8. Clearly, therefore, the penalty imposed on the respondent on 30 September 2020 could not have been taken into account by the UPSC while assessing the respondent’s fitness for promotion as Principal.

9. The minutes of the UPSC, which considered the case of the respondent as well as several other candidates, are on record. In the case of candidates who have been considered unfit owing to penalties which had earlier been imposed on them, it is so specifically mentioned under the column “Assessment”. We may, in this context, reproduce S. Nos 30, 171 and 245 of the table to the constituting Annexure 1 to the minutes of the DPC, thus:

“S. No.	Name (S/Shri)	Assessment
30.	GHURAN JHA	Unfit due to Penalty imposed vide order dated 07.09.2021.
171.	BHARAT LAL MEENA (ST) [D.O.B. 06.09.1966]	Unfit due to penalty imposed vide Order No. 5/13/2015/DOV/7848 dated 30.09.2020.
245.	BHARAT LAL MEENA (ST)	Unfit due to penalty imposed vide Order No. F5/24/2016/DOV/7845 dated 30.09.2020.

10. Thus, it is clear that the *only ground* on which the respondent was found unfit for promotion was the penalty imposed on him by order 30 September 2020. This is apparent from the words “due to”.



11. Mr. Sinha, learned counsel for the petitioner, valiantly sought to convince us that the Court should not interfere as the DPC had taken into account the overall record of the respondent and that, in this context, the pristine legal position is that Court should refrain from interfering in the matter.

12. In the facts of this case, we are unable to accept this contention. The DPC minutes clearly state that the respondent was considered unfit for promotion “*due to* penalty imposed *vide* order No. F.5/13/2015/DOV/7848 dated 30 September 2020”. The words “*due to*” are telling. They indicate that the *only* reason for the respondent having been found unfit for promotion was the penalty imposed on him by order dated 30 September 2020.

13. From the time of the judgment of Vivian Bose J in *Commissioner of Police, Bombay v Gorhandas Bhanji*<sup>5</sup>, which was followed by the Supreme Court in *Mohinder Singh Gill v Chief Election Commissioner*<sup>6</sup>, the law is that an executive order has to stand or fall on the grounds contained therein. It is not open to anyone to modify or improve the order in pleadings made in Court.

14. Inasmuch as the UPSC has, in its DPC, found the respondent unfit for promotion “*due to*” the order dated 30 September 2020 whereby he was awarded a punishment of withholding from reduction to a lower scale in the time scale of pay by one stage for one year

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<sup>5</sup> AIR 1952 SC 16

<sup>6</sup> (1978) 1 SCC 405



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without cumulative effect, and the period of one year was over more than 2 ½ years prior to the constitution of the DPC by the UPSC, the consideration which weighed with the UPSC to find the respondent unfit was clearly in the teeth of clause (i) of the DOPT OM dated 24 April 2014 *supra*.

**15.** In that view of the matter, we are in agreement with the decision of the Tribunal that the decision of the UPSC, in the DPC which met on 31 May 2023, that the respondent was unfit for promotion, could not sustain, as it was predicated solely on the punishment awarded to him, the currency of which had expired more than 2 ½ years before the DPC was constituted.

**16.** Enforceability of DOPT OM dated 24 April 2014

**16.1** Mr. Sinha placed reliance on the judgment of the Supreme Court in *Collector of Thanjavur District v S. Rajagopalan*<sup>7</sup> to contend that the finding of double jeopardy returned by the Tribunal was not in accordance with law. We do not deem it necessary to enter into that arena as we are not proceeding on the principle of double jeopardy.

**16.2** Mr. Sinha also relied on the judgment of the Supreme Court in *J. R. Raghupathy v. State of AP*<sup>8</sup>, to contend that the departmental executive instructions are merely guidelines and there can be no mandamus to enforce such instructions.

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<sup>7</sup> (2000) 9 SCC 145

<sup>8</sup> (1988) 4 SCC 364



**16.3** The context in which *J.R. Raghupathy* was rendered is as similar to the context of the facts before us as chalk and cheese. The Supreme Court held, in that case, that no writ petition could lie for a mandamus to the Government to locate the Mandal headquarters at a particular location merely because in a GOM dated 25 July 1985, broad guidelines regarding locations of Mandal headquarters were to be found. In this regard, the Supreme Court held thus, as pointed out by Mr Sinha:

“18. Broadly speaking, the contention on behalf of the State Government is that relief under Article 226 of the Constitution is not available to enforce administrative rules, regulations or instructions *which have no statutory force*, in the absence of exceptional circumstances. It is well settled that mandamus does not lie to enforce departmental manuals or instructions not having any statutory force, which do not give rise to any legal right in favour of the petitioner. The law on the subject is succinctly stated in Durga Das Basu's Administrative Law, 2nd Edn., at p. 144:

*“Administrative instructions, rules or manuals which have no statutory force, are not enforceable in a court of law. Though for breach of such instructions, the public servant may be held liable by the State and disciplinary action may be taken against him, a member of the public who is aggrieved by the breach of such instructions cannot seek any remedy in the courts. The reason is, that not having the force of law, they cannot confer any legal right upon anybody, and cannot, therefore, be enforced even by writs under Article 226.”*

The learned author however rightly points out at p. 145:

*“Even though a non-statutory rule, bye-law or instruction may be changed by the authority who made it, without any formality and it cannot ordinarily be enforced through a court of law, the party aggrieved by its non-enforcement may, nevertheless, get relief under Article 226 of the Constitution where the non-observance of the non-statutory rule or practice would result in arbitrariness or absence of fair play or discrimination, — particularly where the*



authority making such non-statutory rule or the like comes within the definition of 'state' under Article 12.”

17. In *G.J. Fernandez*<sup>9</sup> the petitioner submitting the lowest tender assailed the action of the Chief Engineer in addressing a communication to all the tenderers stating that even the lowest tender was unduly high and enquired whether they were prepared to reduce their tenders. One of them having reduced the amount of his tender lower than the lowest, the Chief Engineer made a report to the Technical Sub-Committee which made its recommendations to the Major Irrigation Projects Control Board, the final authority, which accepted the tender so offered. The High Court dismissed the writ petition holding that there was no breach of the conditions of tender contained in the Public Works Department Code and further that there was no discrimination which attracted the application of Article 14. The question that fell for consideration before this Court was whether the Code consisted of statutory rules or not. The so-called Rules contained in the Code were not framed under any statutory enactment or the Constitution. Wanchoo, C.J. speaking for the court held that under Article 162 *the executive power of the State enables the government to issue administrative instructions to its servants how to act in certain circumstances, but that would not make such instructions statutory rules the breach of which is justiciable. It was further held that non-observance of such administrative instructions did not give any right to a person like the appellant to come to court for any relief on the alleged breach of the instructions. That precisely is the position here. The guidelines are merely in the nature of instructions issued by the State Government to the Collectors regulating the manner in which they should formulate their proposals for formation of a Revenue Mandal or for location of its headquarters keeping in view the broad guidelines laid down in Appendix I to the White Paper. It must be stated that the guidelines had no statutory force and they had also not been published in the official gazette. The guidelines were mere departmental instructions meant for the Collectors.* The ultimate decision as to formation of a Revenue Mandal or location of its headquarters was with the Government. It was for that reason that the Government issued the preliminary notification under subsection (5) of Section 3 of the Act inviting objections and suggestions. The objections and suggestions were duly processed in the Secretariat and submitted to the Cabinet Sub-Committee along with its comments. The note of the Collector appended to the proposal gave reasons for deviating from the guidelines in some of the aspects. Such deviation was usually for reasons of administrative convenience keeping in view the purpose and object of the Act i.e. to bring the administration nearer to the people. The

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<sup>9</sup> *G.J. Fernandez v. State of Mysore*, AIR 1967 SC 1753



Cabinet Sub-Committee after consideration of the objections and suggestions received from the Gram Panchayats and members of the public and other organisations as well as the comments of the Secretariat and the note of the Collector came to a decision applying the standards of reasonableness, relevance and purpose while keeping in view the object and purpose of the legislation, published a final notification under sub-section (5) of Section 3 of the Act. There is nothing on record to show that the decision of the State Government in any of these cases was arbitrary or capricious or was one not reached in good faith or actuated with improper considerations or influenced by extraneous considerations. In a matter like this, conferment of discretion upon the Government in the matter of formation of a Revenue Mandal or location of its headquarters in the nature of things necessarily leaves the Government with a choice in the use of the discretion conferred upon it.”

(Emphasis supplied)

**16.4** The Supreme Court was, in *Raghupathy*, concerned, therefore, with *instructions issued by the Government to Collectors, for their consumption*. There can be no manner of doubt that such instructions cannot clothe citizens with enforceable rights, so as to justify a prayer for a mandamus compelling their enforcement.

**16.5** These can hardly be compared with Office Memoranda issued by the DOPT, which is under the Ministry of Personnel, Public Grievances and Pensions, and is the nodal agency for issuing instructions involving service matters relating to Government servants, as per the Government of India (Transaction of Business) Rules, 1961<sup>10</sup> under Article 77(3)<sup>11</sup> of the Constitution of India. Rule

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<sup>10</sup> “the TBR” hereinafter

<sup>11</sup> **77. Conduct of business of the Government of India. –**

- (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.
- (2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules<sup>78</sup> to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.
- (3) The President shall make rules for the more convenient transaction of the business of the



4(3) of the TBR requires as under:

“4. **Inter-Departmental Consultations.** –

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(4) Unless the case is fully covered by a decision or advice previously given by the Department of Personnel and Training that Department shall be consulted on all matters involving –

(a) the determination of the methods of recruitment and conditions of service of general application to Government servants in civil employment; and

(b) the interpretation of the existing orders of general application relating to such recruitment or conditions of service.”

Parallely, the Government of India (Allocation of Business) Rules, 1961, also issued under Article 77(3) of the Constitution of India includes, in the business allocated to the DOPT, the following:

“I. **Recruitment, Promotion and Morale of Services**

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2. General questions relating to recruitment, promotion and seniority pertaining to Central Services except Railways Services and services under the control of the Department of Atomic Energy, the erstwhile Department of Electronics, the Department of Space and the Scientific and Technical Services under the Department of Defence Research and Development.

IV. **Service Conditions**

21. General questions (other than those which have a financial bearing including Conduct Rules relating to All India and Union Public Services except in regard to services under the control of the Department of Railways, the Department of Atomic Energy, the erstwhile Department of Electronics and the Department of Space).

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Government of India, and for the allocation among Ministers of the said business.



22. Conditions of service of Central Government employees (excluding those under the control of the Department of Railways, the Department of Atomic Energy, the erstwhile Department of Electronics, the Department of Space and the Scientific and Technical personnel under the Department of Defence Research and Development, other than those having a financial bearing and in so far as they raise points of general service interests).

## VII. Union Public Service Commission

40. Union Public Service Commission.”

The UPSC is bound, therefore, by the instructions issued by the DOPT in respect of service issues concerning Government servants which, indisputably, would include Office Memoranda regarding the manner in which DPCs are to convene and function. Such OMs cannot be compared with internal instructions issued by the Government to Collectors, for their consumption.

**16.6** Besides, administrative instructions, it is well settled, are binding on the Governmental authorities, as held in *Sai Bhaskar Iron Ltd v. A.P. Electricity Regularity Commission*<sup>12</sup>, *Dr Amarjit Singh Ahluwalia v. State of Punjab*<sup>13</sup> and *B.S. Minhas v. Indian Statistical Institute*<sup>14</sup>.

**16.7** As a parting note, it may be noted that, even in *Raghupathy*, the Supreme Court, while holding that an executive instruction, of the kind with which the Supreme Court was concerned in that case, could not be enforced by a writ of mandamus, nonetheless held that “the

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<sup>12</sup> (2016) 9 SCC 134

<sup>13</sup> (1975) 3 SCC 503

<sup>14</sup> (1983) 4 SCC 582



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party aggrieved by its non-enforcement may, nevertheless, get relief under Article 226 of the Constitution where the non-observance of the non-statutory rule or practice would result in arbitrariness or absence of fair play or discrimination”.

**16.8** We cannot, therefore, accept Mr. Sinha’s contentions that the DOPT OM dated 24 April 2014 was a mere executive instruction and that no mandamus could issue to enforce it.

**17.** Besides, we may note, that it was the petitioner itself, as the respondent before the Tribunal, which placed reliance on the said OM. The petitioner cannot now seek to wish away its effect.

**18.** For all the aforesaid reasons, the judgment of the Tribunal does not call for interference. The writ petition is accordingly dismissed with no orders as to costs.

**C.HARI SHANKAR, J.**

**AJAY DIGPAUL, J.**

**FEBRUARY 6, 2025**

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*Click here to check corrigendum, if any*