

CASE NO.:
Appeal (civil) 2527 of 2007

PETITIONER:
S.B. Bhattacharjee

RESPONDENT:
S.D. Majumdar & Ors.

DATE OF JUDGMENT: 15/05/2007

BENCH:
S.B. Sinha & C.K. Thakker

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2527 OF 2007
[Arising out of S.L.P. (Civil) No. 3413 of 2006]
WITH
CIVIL APPEAL NO. 2528-2529 OF 2007
[Arising out of S.L.P. (Civil) No. 12650-12651 of 2006]

S.B. SINHA, J :

1. Leave granted.

2. Interpretation of an Office Memorandum dated 10.10.2002 providing for the mode and manner for considering the suitability of candidates for promotion from one post to the other, falls for consideration in these appeals which arise out of a common judgment and order dated 27.01.2006 passed by a Division Bench of the Gauhati High Court in Writ Appeal No. 5 of 2004 whereby and whereunder the appeal preferred by Respondent No.1 from a judgment and order 29.11.2004 passed by a learned Single Judge of the said High Court in Writ Petition (Civil) No. 44 of 2004, was allowed.

3. A post of Executive Engineer was created on 01.02.2004. For the purpose of filling up the said post, the Departmental Promotion Committee (for short, 'the DPC') held a meeting on 16.03.2004. The DPC indisputably was, inter alia, to consider the Annual Confidential Reports (for short, 'ACRs') of the candidates concerned. Both the appellant and the first respondent along with two others were eligible therefor. Promotion to the said post is governed by the Mizoram Engineering Service Rules, 2001 (for short, 'the Rules'). Rule 20 of the said Rules, inter alia, provides for general procedure for promotion, relevant clauses whereof are as under :

"20. (1) Whether any vacancy or vacancies arise(s) to be filled up by promotion, the Controlling Authority shall furnish to the Commission, the following documents and information :

(d) Annual Confidential Reports of eligible candidates of preceding years as may be required, length of service, duly reviewed and accepted by the authorities concerned.

(e) Details about reservation for member of the service in respect of graduate in Engineering and holders of under graduate diploma in Engineering as provided under sub-rules (3) and (4) of Rule 19.

(f) Clearance from Vigilance Department separately in respect of each, and

(g) Any other documents and information as may be

considered necessary by the Commission."

4. State of Mizoram, however, issued an Office Memorandum dated 10.10.2002 laying down the procedures to be observed by the DPC, relevant clauses whereof are as under :

"3.2 While merit has to be recognised and rewarded, advancement in the officer's career should not be regarded as a matter of course but should be earned by dint of hard work, good conduct and result oriented performance as reflected in the annual confidential reports and based on strict and rigorous selection process.

3.4 Confidential Rolls are the basic inputs on the basis of which assessment is to be made by each DPC. The evaluation of CRs should be fair, just and non-discriminatory. Hence,

(a) The DPC should consider CRs for equal number of years in respect of all Officers considered for promotion subject to (c) below.

(b) The DPC should assess the suitability of the candidates for promotion on the basis of their service records and with particular reference to the CR for five preceding years, irrespective of the qualifying service prescribed in the Service Rules/Recruitment Rules. (If more than one CR has been written in a particular year all the CRs for the relevant years shall be considered together as the CR for one year).

(c) When ACR has not been written by the reporting Officer despite submission of the self-appraisal to the Reporting Officer by the Officers reported upon during the relevant period, the DPC should consider the CR of one preceding year beyond the relevant period.

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(e) The DPC should not be guided merely by the overall grading, if any, that may be recorded in the CRs, but should make its own assessment on the basis of the entries in the CRs, because it has been noticed that, some time, the overall grading in a CR may be inconsistent with the grading under various parameters or attributes.

(f) If the Reviewing Authority or the Accepting Authority, as the case may be, has overruled the Reporting Officer, or the Reviewing Authority, as the case may be, the remarks of the latter authority should be taken as the final remarks for the purpose of assessment, provided it is apparent from the relevant entries that the higher authority has come to a different assessment consciously after due application of mind. If the assessment of the Reporting Officer, Reviewing Authority and Accepting Authority are complimentary to each other and one does not have the effect of overruling the other, then the remarks should be read together and the final assessment made by the DPC.

(g) ACRs of Officers which became available during

the year immediately preceding the vacancy/panel year should be considered by the DPCs even if DPCs are held later than the year of vacancy. In other words, for the vacancy/panel year, 2001-2002, ACRs upto the year ending 31st March, 2000 are required to be considered irrespective of the date of convening of DPC. However,, ACRs upto the year ending 31st March, 2001 will be considered by the DPC if it sits after September of that year even if the vacancy falls within 2001-2002.

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3.5(ii) In respect of all posts which are in the scale of pay of Rs.12000-16500/- and above, the bench-mark shall be "VERY GOOD" and for all the posts which are in the scale of pay of Rs.8000-13500/- and above but less than Rs.12000-16500/- the bench-mark shall be 'GOOD'.

Further, overall grading of officers shall be made in the following manner :

Outstanding An Officer, who gets at least 3 (three) outstanding reports out of 5 (five), provided that the remaining 2(two) reports should not be less than 'Very Good', will be categorised as 'Outstanding'.

Very Good An Officer, who gets at least 3 (three) 'Very Good' reports out of 5 (five), provided that the remaining 2 (two) reports should not be less than 'Good' will be categorised as 'Very Good'.

Good An Officer, who gets at least 3 (three) 'Good' reports out of 5 (five), will be categorised as 'Average'.

Average An Officer, who gets at least 3 (three) 'Good' reports out of 5 (five), will be categorised as 'Average'.

An Officer who gets an overall grading of Outstanding will en bloc supersede Officer who gets an overall grading of 'Very Good' regardless of seniority. An Officer who gets an overall grading of 'Very Good' will en bloc supersede Officer who gets an overall grading of 'Good' regardless of seniority.

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3.8 For the purpose of evaluating the merit of the Officers while preparing year-wise panels, scrutiny of the record of service of the Officers should be limited to the records that would have been available had the DPC met at the appropriate time. For instance, for preparing a panel relating to the vacancies of 2001-2002 the latest available records of service of the Officers up-to the period ending March, 2000 as the case may be should be taken into account and not the subsequent one. However, if on the date of the meeting of the DPC, Departmental Proceedings are in progress and under the existing instructions sealed cover procedure is to be followed, such procedure should be observed even if Departmental Proceeding were not in existence in the year to which the vacancy related. The Officer's name should be kept in

the sealed cover till the proceedings are finalized."

5. Before we embark upon the rival contentions of the parties, we may notice the assessment of ACRs of the appellant and respondent no.1 respectively from 1997-98, which is as under :

"

Sl.

No.

Name of

Officer

1997-98

98-99

99-00

00-01

01-02

02-03

Overall

1.

S.D. Majumdar

VG

VG

VG

VG

VG

VG

Very Good

2.

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3.

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4.

S.B.Bhattacharjee

VG

Os

VG

VG

Os

Os

Outstanding

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6. Indisputably, if the ACR for the year 1997-98 is taken into consideration for the purpose of judging the suitability of the appellant and respondent no. 1 and that of the year 2002-03 is excluded, Respondent No. 1 being senior, would be promoted to the post of Executive Engineer; whereas in the event the ACR for the period 1997-98 is excluded and that of the year 2002-03 is taken into consideration, as the appellant herein would be given overall grading 'outstanding', the case of Respondent No.1 would not be considered at all.

7. The fact that respondent no. 1 is senior to the appellant is not in dispute. As the DPC recommended the candidature of the appellant alone in terms of the extant rules, Respondent No. 1 herein filed a writ petition before the Gauhati High Court on 04.06.2004. During the pendency of the said Writ Petition, the Government of Mizoram itself issued a clarification on or about 13.09.2004, which reads as under :

"In inviting a reference to this Department 's O.M. No. A.32012/1/81-APT./Loose dated 10.10.2002 on the above subject, this is to clarify para 3.4 (g) of the said O.M. that if the DPC sits after September of the year 2002, ACRs upto the year ending 31.3.2001 would be taken into consideration by the DPC while consideration the vacancies that arose for the vacancy year 2001-2002."

8. By a judgment and order dated 29.11.2004, a learned Single Judge of the Gauhati High Court dismissed the said writ petition of Respondent No. 1, inter alia, opining that clause (g) of Paragraph 3.4 of the said Office Memorandum must not only be applied having regard to the other provisions thereof, but also the latest ACR i.e. the ACR for the year ending 31.03.2003 should not be excluded from consideration. The clarificatory Office Memorandum dated 10.10.2002, the learned Single Judge opined, should receive such interpretation at the hands of the court which would advance the cause of public service. It was observed :

"6. Before parting with the record, this court must deal with the reliance placed on behalf of the petitioner on an office Memorandum dated 13.9.2004 which office Memorandum has been placed before the court at the hearing. The clarification issued in the office Memorandum dated 30.9.2004 can only be logically and reasonably understood if the year 2002 as recorded therein is understood as the year 2001. In any case as this court has already interpreted and laid down the true meaning of clause (g) of paragraph 3.4 of the office Memorandum dated 10.10.2002, the clarification contained in the office Memorandum dated 13.9.2004 would have little sequence in altering the conclusion already reached."

9. An intra-court appeal having been preferred thereagainst, a Division Bench of the said High Court reversed the said finding of the learned Single Judge, holding that the ACR for the year ending 31.03.2003 could not have been taken into consideration on a plain reading of Clause (g) of paragraph 3.4. Sustenance to the said finding was sought to be obtained from the Office Memorandum dated 16.06.2000 issued by the Government of India, the relevant portion whereof reads as under :

"G.I. Dept. of Per. & Trg. O.M. No. 22011/9/98-Estt. (D) dated the 16th June, 2000

Relevant year upto which ACRs are to be considered.

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2. In regard to operation of the Model Calendar for DPCs, a doubt has been raised by certain quarters as the question of the relevant year upto which ACRs are required to be considered by the DPCs. In this connection, it is once again clarified that only such ACRs should be considered which became available during the year immediately preceding the vacancy/panel years even if DPC are

held later than the Schedule prescribed in the Model Calendar. In other words, for the vacancy/panel year 2000-2001, ACRs upto the year 1998-99 are required to be considered irrespective of the date of convening DPC."

10. Although the clarificatory Office Memorandum has been issued by the State of Mizoram itself, apart from the candidate concerned, viz. Shri S.B. Bhattacharjee, the State of Mizoram as also the Mizoram Public Service Commission are before us.

11. Mr. Sunil Gupta, learned Senior Counsel appearing on behalf of the State of Mizoram, Mr. Ranjit Kumar, learned Senior Counsel appearing on behalf of the Mizoram Public Service Commission and Mr. Manoj Goel, learned counsel appearing on behalf of the private appellants in support of the appeals, inter alia, submitted :

(i) The Division Bench of the High Court committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration the fact that the Office Memorandum dated 10.10.2002, if read in its entirety, would lead to only one conclusion that the merit and merit alone should be taken into consideration for promotion to the post of Executive Engineer.

(ii) The words 'preceding five years' in clause (b) of paragraph 3.4 of the office memorandum dated 10.10.2002 would mean preceding five years before the meeting takes place.

(iii) Illustration appended to clause (g) of paragraph 3.4 would clearly suggest that in the event the meeting of the DPC is held after September, it is incumbent upon it to take into consideration the ACRs upto 31.03.2003.

(iv) The expression 'immediately preceding' occurring in Clause (g) of paragraph 3.4 must be given its due meaning, which would bring within its purview the ACRs upto 31.03.2003.

(v) The clarificatory Office Memorandum having been issued while the writ petition was pending, the same being not available to the Public Service Commission, it could not have been taken the same into consideration and in that view of the matter, it cannot be given a retrospective effect and retroactive operation.

(vi) As the clarification lacks precision in regard to the interpretation of the term 'immediately preceding', the same cannot be held to have overridden the first part of clause (g) of paragraph 3.4.

(vii) Illustration, it is trite, shall not give way to the main provision itself.

(viii) Whereas the learned Single Judge has considered the purport of entire rule, the Division Bench failed to do so and, thus, its judgment cannot be sustained.

(ix) The Office Memorandum issued by the Central Government was not relevant. Suitability of a candidate being the sole criteria, it was incumbent upon the DPC to consider the latest ACR so as to arrive at its own satisfaction and particularly when the chance of there being a negative report and/or down gradation of the officer concerned cannot be ruled out.

12. Mr. Shuvodeep Roy, learned Counsel appearing on behalf of Respondent, on the other hand, urged :

(i) The term 'immediately preceding' must be read with the words accompanying the same, namely, 'became available during the preceding the vacancy/panel year'.

(ii) An ACR becomes available for consideration not only when it is written but also when a representation is made in that behalf and reviewed by the Reviewing Authority.

(iii) As the clarificatory office memorandum dated 13.09.2004 is binding on the State, the same would be retrospective in nature.

(iv) Illustration being in nature of the proviso, the effect thereof cannot be

ignored.

(v) The learned Single Judge committed a manifest error in substituting one year for consideration of another year and, thus, the judgment of the Division Bench of the High Court cannot be faulted with.

(vi) The Rule itself takes care of a contingency if any departmental proceeding or any criminal proceeding is initiated against the recommendee, in which event, the State would not be powerless to pass appropriate orders, as would appear from Rule 17 of the Rules.

13. Although a person has no fundamental right of promotion in terms of Article 16 of the Constitution of India, he has a fundamental right to be considered therefor. An effective and meaningful consideration is postulated thereby. The terms and conditions of service of an employee including his right to be considered for promotion indisputably are governed by the rules framed under the proviso appended to Article 309 of the Constitution of India.

14. Rule 20, as noticed hereinbefore, provides that if any vacancy or vacancies arise(s) to be filled up by promotion, the Controlling Authority would furnish to the Commission the documents enumerated therein including ACRs of eligible candidates of preceding years, as may be required, length of service, duly reviewed and accepted by the authorities concerned.

15. It has not been denied or disputed before us that in a given case ACRs of an eligible candidate may not be written and, thus, may not be available. If the same is available, a notice in that behalf must be given, in the event, any exigency arises therefor to the affected officer and only upon consideration of the representation made by him, if any, the decision taken in that behalf by the Reviewing Authority shall be final. The ACR by immediate superior, thus, is not final or determinative, as the same would be subject to the decision of the Reviewing Authority.

16. The validity or otherwise of the said Office Memorandum dated 10.10.2002 is not in question. With a view to give effect to the statutory rules governing the field, the State of Mizoram has issued the said Office Memorandum directing that the procedure laid down therein shall be observed by the DPC. Indisputably, merit and suitability of the candidates concerned are the primary consideration for promotion to a selection post, wherefor the necessary ingredients as envisaged in clause 3.4 of the said Office Memorandum would fall for consideration of the DPC, but it must be borne in mind that clause 3.4 provides for the mode and manner in which the DPC shall consider the same.

17. DPC is required to consider the service records, with particular reference to the ACRs for five preceding years. The ACRs for 'five preceding years' must, therefore, be held to mean 'five preceding years' of ACRs which have attained finality. It, however, does not define how the said 'five preceding years' is to be calculated. Calculation and/or reckoning of 'five preceding years' is provided for in clause (g) of paragraph 3.4.

18. Before, however, we embark upon the construction of clause (g) of paragraph 3.4 of the said Office Memorandum, we may notice that in terms of clause (e) thereof, a minute grading of the ACRs and not overall grading alone would be subject-matter of consideration of the DPC; as it has been stated therein, 'it had been noticed that some time the overall grading in ACR may be inconsistent with the grading under various parameters or attributes'. Each of the parameters or attributes on the basis whereof the ACRs are written and gradation is given would, thus, have to be considered.

19. The Rules indisputably envisage that a person having an overall grading of 'outstanding' shall alone be considered vis-à-vis who do not come within the purview of the gradation of outstanding despite the fact that their service career they might have received overall grading of 'Very Good'.

20. We at this stage may also notice paragraph 3.8 of the said Office Memorandum, which proceeds on the basis that for the purpose of evaluating the merit of the officers, scrutiny of the records of the officers should be limited to the records that would have been available, had the DPC met at the appropriate time. Even in relation thereto, an illustration had been given stating that if a vacancy arises in 2001-02, only the latest records of service of the Officers upto the period ending March 2000, namely, 1999-2000 shall be taken into consideration.

It categorically uses both positive language as also a negative language stating that what would be taken into consideration is only the records ending upto March 2000 and not the subsequent ones.

21. In the aforementioned backdrop of events, interpretation of clause (g) of paragraph 3.4 should be resorted to. The words 'immediately preceding', as noticed hereinbefore, are preceded by the words 'ACRs of the officers which became available during the year'. This constitutes the first part. The words 'vacancy/panel year' following the words 'the year immediately preceding' must also be duly taken into consideration.

A DPC may be held during the year in which the vacancy arises or later than the year of the vacancy. The Rules intentionally provided for one year gap.

It is only in a case where a controversy may arise in regard to the number of ACRs which would be available, the illustration and/or proviso has been appended to clause 3.4.

22. The Office Memorandum, if read in the context of the rules, takes into consideration the necessity of considering the case of the eligible candidates during the year where vacancy arose. The DPC is expected to meet each year. Only when it is not possible to hold a meeting of the DPC within that year, the illustration would be applicable.

A vacancy must arise in a particular year. If it arose as in the present case in 2003-04 following the illustration contained in clause (g) of paragraph 3.4, ACRs upto the year 31.03.2002 i.e. vacancy year/panel year 2001-02 are required to be taken into consideration irrespective of the date of convening of the DPC. Only when ACRs upto 31.03.2003 were required to be taken into consideration if it sits after September of that year even if the vacancy arose within the year 2001-02.

23. If the opinion of the learned Single Judge is given effect to, then 31.03.2003 becomes 31.03.2004. Indisputably, necessity was felt for a further clarification. It was in the aforementioned premise that a further clarification was issued by the State so as to direct that if the DPC sits after September of the year concerned (in this case 2004), the ACRs upto the year ending 31.03.2003 could be taken into consideration while considering the vacancies which arose in 2003-04. The Division Bench of the High Court, in our opinion, cannot, thus, be held to have committed any error in this behalf.

24. It may be that in a given case, the court can with a view to give effect to the intention of the legislature, may read the statute in a manner compatible therewith, and which would not be reduced to a nullity by the draftsman's unskilfulness or ignorance of law. But, however, it is also necessary for us to bear in mind the illustration given by the executive while construing an executive direction and office memorandum by way of executive construction cannot be lost sight of. It is in that sense the doctrine of cotemporanea expositio may have to be taken recourse to in appropriate cases, although the same may not be relevant for construction of a model statute passed by a legislature.

319, it is stated :

"But a uniform and consistent departmental practice arising out of construction placed upon an ambiguous statute by the highest executive officers at or near the time of its enactment and continuing for a long period of time is an admissible aid to the proper construction of the statute by the Court and would not be disregarded except for cogent reasons. The controlling effect of this aid which is known as 'executive construction' would depend upon various factors such as the length of time for which it is followed, the nature of rights and property affected by it, the injustice result from its departure and the approval that it has received in judicial decisions or in legislation.

Relying upon this principle, the Supreme Court in *Ajay Gandhi v. B. Singh* having regard to the fact that the President of the Income Tax Appellate Tribunal had been from its inception in 1941 exercising the power of transfer of the members of the Tribunal to the places where Benches of the Tribunal were functioning, held construing sections 251(1) and 255(5) of the Income Tax Act that the President under these provisions has the requisite power of transfer and posting of its members. The court observed : "For construction of a statute, it is trite, the actual practice may be taken into consideration."

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as contemporanea expositio to interpret not only ancient but even recent statute both in England and India."

25. Clarification was issued by the State of Mizoram not only in the light of the express provisions contained in paragraph 3.8 of the Office Memorandum but also in the light of a similar clarification issued by the Central Government. The Division Bench of the High Court has noticed that the clarificatory memorandum was issued considering the Central Government clarificatory Office Memorandum as a model.

Reliance placed by Mr. Ranjit Kumar, learned Senior Counsel appearing on behalf of the appellant on a decision of this Court in *Shambhu Nath Mehra v. The State of Ajmer* [AIR 1956 SC 404], in our opinion, is not apposite. This Court therein was considering interpretation of the word 'especially' contained in Section 106 of the Indian Evidence Act, 1872, which was an exception to Section 101 thereof, vis-à-vis Sections 112 and 113 of the Railways Act. It is in that context this Court observed :

"13. We recognise that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit; and if knowledge of certain facts is as much available to the prosecution, should it choose to exercise due diligence, as to the accused, the facts cannot be said to be "especially" within the knowledge of the accused. "

If the first part of the statement of law in *Shambhu Nath*. (supra), in our opinion, is applicable, the illustration in question does not curtail nor extend the ambit. It merely clarifies what otherwise might have been obvious. It introduces the rule by abundant caution although it might not have been necessary keeping in view the purport and object which Rule 20 and paragraph 3.8 seeks to achieve.

26. The clarification issued by the State is not in the teeth of the illustration given in clause (g) of paragraph 3.4 of the Office Memorandum. The clarification having been issued, the same should be taken into

consideration by this Court irrespective of the fact as to whether it was available to the Public Service Commission on 16.03.2004 when the DPC held its meeting which, in our opinion, was not of much significance.

The clarification being explanatory and/or clarificatory, in our opinion, will have a retrospective effect.

27. In *S.S. Grewal v. State of Punjab and Others* [(1993) Supp. (3) SCC 234], this Court stated the law thus :

"\005In this context it may be stated that according to the principles of statutory construction a statute which is explanatory or clarificatory of the earlier enactment is usually held to be retrospective. (See: *Craies on Statute Law*, 7th Edn., p. 58) It must, therefore, be held that all appointments against vacancies reserved for Scheduled Castes made after May 5, 1975 (after May 14, 1977 insofar as the Service is concerned), have to be made in accordance with the instructions as contained in the letter dated May 5, 1975 as clarified by letter dated April 8, 1980\005"

28.. Yet again in *Commissioner of Income-Tax, Bombay and Others v. Podar Cement Pvt. Ltd. and Others* [(1997) 5 SCC 482], this Court referring to a large number of authorities including that of G.P. Singh's *Principles of Statutory Interpretation*, observed :

"\005An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law."

29. This Court in *Allied Motors (P) Ltd. v. Commissioner of Income Tax, Delhi* [(1997) 3 SCC 472], observed :

"13. Therefore, in the well-known words of Judge Learned Hand, one cannot make a fortress out of the dictionary; and should remember that statutes have some purpose and object to accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning. In the case of *R.B. Jodha Mal Kuthiala v. CIT*, this Court said that one should apply the rule of reasonable interpretation. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole."

[See also *Zile Singh v. State of Haryana and Others* [(2004) 8 SCC 1]

30. We should not, however, fail to notice that in *S. Sundaram Pillai and Others etc. v. V.R. Pattabiraman and Others etc.* [(1985) 1 SCC 591], this Court held :

"53 . Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is\027

"(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and (e) it cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

[See also S.P.S. Balasubramanyam v. Suruttayan alias Andali Padayachi and Others (1992) Supp. (2) SCC 304 and Hardev Motor Transport v. State of M.P. and Others (2006) 8 SCC 613]

In a given case, and in absence of rule, the court might have been justified to hold that the DPC must take into consideration the merit and merit only. However, in a case of this nature, where the State lays down the procedures as to how and in what manner the merit and suitability is to be judged, it was obligatory on the part of the commission to follow the same in its letter and spirit. The case at hands shows that it can in a situation of this nature prove to be disastrous to an employee, if any other construction is given.

31. Respondent No. 1 is senior to the appellant by 16 years. A post was created. It for one reason or the other was sought to be filled up immediately. If the interpretation as accepted by the learned Single Judge is to be given effect to, the case of Respondent No.1 was not to be considered at all by the DPC. The Division Bench of the High Court, therefore, in our opinion, cannot be said to have committed any error warranting interference by this Court. The appeals are, therefore, dismissed. Counsel's fee is quantified at Rs.10,000/-.