

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 23<sup>rd</sup> DAY OF MARCH, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE D K SINGH**

**AND**

**THE HON'BLE MR. JUSTICE S RACHAIAH**

**WRIT APPEAL NO. 814 OF 2025 (S-RES)**



**BETWEEN:**

1. SRI HARISH KUMAR H P  
S/O PUTTEGOWDA,  
AGED ABOUT 40 YEARS,  
R/AT HIRINDYAPPANAHALLI,  
KODIHALLI HOBLI,  
KANAKAPURA TALUK,  
RAMANAGARA DISTRICT-562119
2. SRI VISHWANATH  
S/O VRUSHABENDRAYYA SASIMATH,  
AGED ABOUT 37 YEARS,  
R/AT GUDDNEPPANAMATH POST,  
KUKANOOR YELABURGA TALUK,  
KOPPALA DISTRICT-583232
3. SRI HAMPANNA KOLAKAR  
S/O SIDDAPPA,  
AGED ABOUT 37 YEARS,  
R/AT YARANALA POST,  
BASAVANA BAGEWADI TALUK,  
VIJAYAPURA DISTRICT-586122

...APPELLANTS

(BY SRI. LAKSHMI NARAYANA, SENIOR ADVOCATE FOR  
SMT. SHILPA RANI., ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
DEPARTMENT OF URBAN DEVELOPMENT,  
REP BY ITS CHIEF SECRETARY,



VIKASA SOUDHA,  
BENGALURU-560001

2. THE DIRECTOR  
DEPARTMENT OF MUNICIPAL ADMINISTRATION,  
9TH FLOOR,  
VISHVESHWARAIHA TOWER,  
DR AMBEDKAR ROAD,  
BENGALURU-560001
3. KARNATAKA PUBLIC SERVICE COMMISSION  
REP BY ITS SECRETARY,  
UDYOGA SOUDHA,  
BENGALURU-560001

...RESPONDENTS

(BY SRI. RUEBEN JACOB, AAG ALONG WITH  
SRI. MOHAMMAD JAFFAR SHAH, AGA FOR R1 & R2;  
SMT. M.R.SINCHANA, ADVOCATE FOR R3)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO CALL FOR  
RECORDS IN WP No-7190/2022 (S-RES) SET ASIDE THE  
ORDER DATED 24.02.2025 THEREIN PASSED BY THE LEARNED  
SINGLE JUDGE AND ALLOW THE WP AS PRAYED FOR TO MEET  
THE ENDS OF JUSTICE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR  
JUDGMENT ON 30.01.2026, COMING ON FOR  
PRONOUNCEMENT THIS DAY, **HON'BLE MR. JUSTICE  
D K SINGH.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE D K SINGH  
and  
HON'BLE MR. JUSTICE S RACHAIAH

**CAV JUDGMENT**

(PER: HON'BLE MR. JUSTICE D K SINGH)

The present intra Court Appeal has been filed impugning the judgment and order dated 24.02.2025 passed by the writ Court in W.P.No.7190/2022.

2. The parties are referred to as per their ranking before the writ Court, for the sake of convenience.

3. The petitioners have filed the writ petition seeking a writ of certiorari to quash the endorsement dated 04.11.2021 issued by the Director, Department of Municipal Administration, Government of Karnataka, whereby the petitioners request to issue appointment order against the post of Work Inspector in pursuance to the selection held by the Karnataka Public Service Commission (hereinafter referred to as 'the KPSC') has been rejected and further prayer for writ of mandamus commanding the respondents to issue letter of appointment to the petitioners who have secured more than 25% marks and are fully eligible for appointment in terms of the final selection list dated 16.09.2017.

4. The learned Single Judge however has taken the view that as the State Government had taken a decision vide

Government order dated 05.01.2021 to abolish the cadre of Work Inspector, the petitioners would not be entitled for appointment even if they have secured more than 25% marks in the examination. Mere selection and names in the select list would not entitle them to seek appointment when the Government has taken a decision to abolish the post against which they got selected.

5. On requisition having been sent by the Director, Department of Municipal Administration, the respondent No.2 for making selection against 211 posts of the Work Inspector in the Department of Urban Development to be merged with local bodies, the KPSC, the respondent No.3, issued a notification dated 06.04.2016 and called for applications from the eligible candidates to fill up 211 posts of the Work Inspector. The KPSC conducted the competitive examination on 13.11.2016 and directed the candidates to appear for verification of their testimonials on 21.06.2017. After verification of the testimonials of the candidates, the KPSC notified provisional select list and issued final select list on 16.09.2017. The petitioners' names were found in the final select list at Sl.Nos.4, 6 and 2 respectively.

6. After publication of the select list, the appointment orders were not issued to the petitioners. It appears that the Secretary, Urban Development Department on 04.10.2017 communicated that the Public Works Department had abolished the cadre of Work Inspector in 2011 and the same had been removed from the Cadre and Recruitment rules of the Public Works Department. The draft Karnataka Municipal Corporation (Common Recruitment of Officers and Employees) (Amendment) Rules, 2018, proposed for 10 corporations were pending for finalisation and consequently, cancellation of selection for the post of Work Inspector in question was sought for.

7. On this communication issued by the Secretary of Urban Development Department seeking cancellation of the selection for the 211 posts of the Work Inspector, the Government stated that as the KPSC had already published the final select list therefore, only those candidates who had secured 25% marks and above in the selection process would be considered for appointment, and in case of abolition of the cadre of Work Inspector, the eligible candidates appointed would be merged into an equivalent cadre.

8. In compliance of the aforesaid directions of the State Government, the Director issued an instruction letter to the appellants on 15.02.2019 for verification of original documents. The petitioners submitted all their original records pertaining to their educational qualifications before respondent No.2 and all these original educational mark sheets and certificates have since been in the custody of respondent No.2 i.e., the Director, Departmental Municipal Corporation.

9. The candidates who had secured less than 25% in the selection process approached this Court in W.P.No.3077/2019 and other connected writ petitions seeking the quashing of the selection process and other such reliefs. However, the said writ petitions were dismissed by the learned Single Judge vide judgment and order dated 19.08.2021.

10. In the said W.P.No.3077/2019, the Director, Department of Municipal Administration, respondent No. 2 had filed an affidavit *inter alia* stating that since the KPSC had already published the final select list, the candidates who had secured more than 25% and above marks in the selection process would be considered for appointment, and it was further stated that in the event of abolition of cadre of Work

Inspector, the eligible candidates appointed could be merged into an equivalent cadre. This was also brought to the notice of the Government. Paragraphs 6 and 9 of the affidavit are extracted hereunder:

*"6. Further, to this in the letter dated 05.12.2017 addressed to the Secretary, Urban Development Department, it has been submitted that, since Karnataka Public Service Commission had already published final selection list, only those candidates who have secure 25% and above may be considered for appointment and in case of abolition of cadre of Work Inspector, the eligible candidates appointed may be merged into equivalent cadre."*

*9. I further submit that in accordance with the opinion obtained, Government vide letter dated 06.02.2019 has informed Director of Municipal Admission to consider those candidates in the selection list who have secured above 25% for appointment as Work Inspectors. "*

11. The Government had thereafter took a decision vide Government Order dated 05.01.2021 with the concurrence of the Finance Department, to abolish various posts in the Department of Municipal Administration, including the post of Work Inspector except Bruhath Bengaluru Mahanagara

Palike(BBMP). The cadre of Work Inspector consists of 380 posts, which the Government decided to abolish, in all 1,694 various posts were decided to be abolished by the said Government Order dated 05.01.2021.

12. After the W.P.No.3077/2019 was disposed of vide judgment and order dated 19.08.2021, the petitioners submitted a representation to the Director of Municipal Administration to issue appointment orders, as per their own affidavit filed in the W.P.No.3077/2019, stating that the petitioners had secured more than 25% marks in the selection process. However, the State Government, vide impugned endorsement dated 04.11.2011 denied to issue the appointment orders on the ground that since the post of Work Inspector stood abolished by the Government, Vide Government order dated 05.01.2021, the petitioners were not entitled to appointment against the post of Work Inspector in pursuance of the selection made by the Public Service Commission.

13. The learned Senior Counsel for the appellants would submit that the post of Work Inspector and various other posts were created under the Karnataka Municipal Corporation

(Common Recruitment of Officers and Employees) Rules, 2011 (hereinafter referred to as 'the 2011 Rules') and these rules have been framed in exercise of powers conferred by Section 421 of the Karnataka Municipal Corporation Act, 1976 (hereinafter referred to as, 'the KMC Act') by the State Government. It is further submitted that the cadre of Work Inspector consists of 380 posts and without an amendment to the statutory rules, the cadre of Work Inspector cannot be abolished by merely executive instructions, i.e., the order dated 05.01.2021. It is further submitted that the Government order dated 05.01.2021 itself contained a direction to amend the Rules of 2011, however, till date, the Rules have not amended.

14. Rule 5 of the 2011 Rules provides for method of recruitment and minimum qualification for the post of Work Inspector, which read as under:

**"5. Method of recruitment and minimum qualification:-** *In respect of posts specified in column(2) of Schedule-III, the pay scale, method of recruitment and minimum qualifications shall be as mentioned in the corresponding entries in columns(3), (4) and (5) thereof. Details of deputational posts shall be as specified in Schedule IIIA."*

| <b>Sl. No.</b> | <b>Category of posts</b> | <b>Pay Scale</b> | <b>Method of Recruitment</b> | <b>Maximum Qualification</b>                                               |
|----------------|--------------------------|------------------|------------------------------|----------------------------------------------------------------------------|
| 28.            | Work Inspector           | 7215-13350       | By direct recruitment        | For direct recruitment (1) must have passed SSLC or equivalent examination |

15. The recruitment process was completed much prior to the Government Order dated 05.01.2021. The Government had itself taken a conscious decision to appoint candidates from the select list who had secured more than 25% marks in the selection process. It is, therefore, submitted that the Government cannot now resile from its own stand taken in the affidavit filed in the W.P.No.3077/2019. The petitioners have secured more than 25% marks and their documents were verified and the originals are retained with the Director of Municipal Administration. Consequently, the petitioners have become overaged. There is a legitimate expectation of petitioners being appointed in pursuance to the selection held in which they were successful. It is further submitted that there are only 4 candidates who have secured more than 25% marks in the selection process and in view of the Government's own undertaking on an affidavit before the Writ Court in

W.P.No.3077/2019, the petitioners are entitled to be appointed to the post of Work Inspector.

16. It is further submitted that though mere inclusion in the select list does not confer an indefeasible right to appointment, but a selection process can only be cancelled for valid, reasonable and justifiable reasons. The selection process once held cannot be cancelled arbitrarily at the whims of the Government. The selected candidates have a legitimate expectation of appointment and only in the event of the selection process having been found to be not fair or its integrity was doubted, then the selection process would be cancelled. Here, the Government consciously decided to appoint the candidates who had secured more than 25% marks in the selection process and whose names were in the select list. Despite this decision and undertaking, the Government has now changed its stand claiming that since the Government has abolished the cadre vide Government order dated 05.01.2021, the petitioners are not entitled to appointment in pursuance to the selection held for the post of Work Inspector.

17. The abolition of a cadre can only be effected by amending the relevant service rules. The cadre of Work

Inspector was created under the 2011 Rules. Till date, there has been no amendment to the aforesaid 2011 Rules to abolish the cadre. A policy decision can only take effect once the associated rules have been amended. If the associated rules have not been amended, the policy decision cannot be given effect to. The only ground taken by the State Government for not appointing the petitioners is that the Government decided to abolish the cadre of Work Inspector. Therefore, though the petitioners were selected and they had secured more than 25% marks, they have not been entitled to appointment. This stand of the State Government is wholly arbitrary, illegal and in violation of Articles 14 and 16 of the Constitution of India.

18. It is further submitted that the learned Single Judge has missed the point that unless the policy decision was implemented, the statutory amendment in the rules could not have been given effect to. The learned single judge has merely focused on the point that the mere selection of the petitioners, even if they had score more than 25% marks would not confer a right to appointment.

19. On the other hand, Mr. Rueben Jacob, learned Additional Advocate General assisted by Mr. Mohammad Jaffar

Shah, learned Additional Government Advocate has supported the judgment and has submitted that it is well settled that mere inclusion of names in a select list does not confer an indefeasible right in favour of the selected candidates to be appointed. Even after selection, it is the discretion of the Executive/Competent Authority to offer appointment. If the Government had decided to abolish the post of Work Inspector, even if the amendment has not been given effect to in the statutory rules of 2011, the petitioners would not have the right to seek a writ of mandamus from this Court for appointment against the post of Work Inspector. He, therefore, submits that the writ appeal does not have any merit and the learned Single Judge has rightly held that the petitioners would not have a fundamental or legal right to seek a writ of mandamus from this Court for issuing them appointment orders against the post of Work Inspector when such post has been abolished, even though a statutory amendment has not been brought in. It is further submitted that under Article 162 of the Constitution of India, the Government has the executive power to take a policy decision on all the matters where it has the power to legislate.

20. The following questions arise for consideration:

i. Whether a cadre created under the statutory rules can be abolished by an executive order?

ii. Whether a candidate duly selected for a post would have the legitimate expectation of appointment on the said post, unless there are valid and justifiable reasons for not effecting the appointment?

iii. Whether the Government is empowered to withhold the appointment of a duly selected candidate, when there are no allegations in respect of the selection process or the eligibility of the candidate?

21. In ***Sant Ram Sharma Vs. State Of Rajasthan And Others (1967 AIR SC 1910)***, it has been held that a cadre created under statutory service rules cannot be abolished by an executive order without amending the statutory service rules or enacting a new law. The administrative orders cannot amend or supersede the statutory rules. Abolition of a cadre that is created by the statutory rules would amount to altering the rules unless the rules themselves are amended or a statute

is enacted to authorise the change. The relevant paragraph is extracted hereunder:

*"7. We proceed to consider the next contention of Mr N.C Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed."*

22. The Madras High Court in the case of **ARASU RUBBER CORPORATION LTD. Vs. S.SUNDAR (WA.1124/2021)** held that it is well settled that the executive

directions can supplement but not override the statutory rules framed under Article 309 of the Constitution of India. The relevant paragraph is extracted hereunder:

*"14. It is also to be noted that any relaxation of the qualification in exercise of the powers under Article 162 of the Constitution of India contrary to the regulation framed under Article 309 of the Constitution of India, is clearly bad. Article 162 cannot be understood to give the executive power to override statutory rules framed under Article 309 of the Constitution. In this regard, it may be relevant to refer to the following judgments:*

*(i) Sk. Nausad Rahaman v. Union of India, [(2022) 12 SCC 1], wherein, it was held by the Hon'ble Supreme Court as follows:*

*"29. Fifth, where there is a conflict between executive instructions and Rules framed under Article 309, the rules must prevail. In the event of a conflict between the Rules framed under Article 309 and a law made by the appropriate legislature, the law prevails. Where the rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rules. [Union of India v. Somasundaram Viswanath, (1989) 1 SCC 175, para 6 : 1989 SCC (L&S) 150]*

*.....*

*33. There is a fundamental fallacy in the submission which has been urged on behalf of the appellants. Administrative instructions, it is well-settled, can supplement Rules which are framed under the proviso to Article 309 of the Constitution in a manner which does not lead to any inconsistencies. Executive instructions may fill up the gaps in the rules. But supplementing the exercise of the rule-making power with the aid of administrative or executive instructions is distinct from taking the aid of administrative instructions contrary to the express provision or the necessary intendment of the Rules which have been framed under Article 309. The 2016*

*RR have been framed under the proviso to Article 309. Rule 5 of the 2016 RR contains a specific prescription that each CCA shall have its own separate cadre. The absence of a provision for filling up a post in the Commissionerate by absorption of persons belonging to the cadre of another Commissionerate clearly indicates that the cadre is treated as a posting unit and there is no occasion to absorb a person from outside the cadre who holds a similar or comparable post.*

*35. Rule 5 of the 2016 RR postulates that each CCA has a separate cadre and does not contain a provision for bringing in, by way of absorption, persons from outside the cadre. Inducting persons from outside the cadre by absorption requires a specific provision in the subordinate legislation for the simple reason that the concept of a cadre would otherwise militate against bringing in those outside 22/31 23 the cadre. That is the reason why Rule 4(ii) of the erstwhile 2002 RR contained a specific provision to this effect. That provision has however not been included when the 2016 RR were framed. If the authority entrusted with the power of framing Rules under Article 309 of the Constitution did so on the ground that the provision was subject to misuse and was contrary to the interests of the administration, no employee can assert a vested right to claim an ICT." (emphasis supplied)*

*(ii) K. Kuppusamy v. State of T.N., [(1998) 8 SCC 469], in which, it was observed by the Hon'ble Supreme Court as under :*

*"3. The short point on which these appeals must succeed is that the Tribunal fell into an error in taking the view that since the Government had indicated its intention to amend the relevant rules, its action in proceeding on the assumption of such amendment could not be said to be irrational or arbitrary and, therefore, the consequential orders passed have to be upheld. We are afraid this line of approach cannot be countenanced. The relevant rules, it is admitted, were framed under the proviso to Article 309 of the Constitution. They are statutory rules. Statutory rules cannot be overridden by*

*executive orders or executive practice." (emphasis supplied)*

*(iii) In Union of India v. Ashok Kumar Aggarwal, [(2013) 16 SCC 147 ], it was observed by the Hon'ble Supreme Court as follows:*

*"59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide Union of India v. Majji Jangamayya [(1977) 1 SCC 606 : 1977 23/31 24 SCC (L&S) 191] , P.D. Aggarwal v. State of U.P. [(1987) 3 SCC 622 : 1987 SCC (L&S) 310 : (1987) 4 ATC 272] , Paluru Ramkrishnaiah v. Union of India [(1989) 2 SCC 541 : 1989 SCC (L&S) 375 : (1989) 10 ATC 378 : AIR 1990 SC 166] , C. Rangaswamaiah v. Karnataka Lokayukta [(1998) 6 SCC 66 : 1998 SCC (L&S) 1448] and Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation [(2011) 5 SCC 435 : AIR 2011 SC 2220] .)*

*60. Similarly, a Constitution Bench of this Court, in Naga People's Movement of Human Rights v. Union of India [(1998) 2 SCC 109 : 1998 SCC (Cri) 514 : AIR 1998 SC 431] , held that the executive instructions have binding force provided the same have been issued to fill up the gap between the statutory provisions and are not inconsistent with the said provisions.*

*61. In Nagaraj Shivarao Karjagi v. Syndicate Bank [(1991) 3 SCC 219 : 1991 SCC (L&S) 965 : (1992) 19 ATC 639 : AIR 1991 SC 1507] this Court has explained the scope of circulars issued by the Ministry observing that it is binding on the officers of the department, particularly the recommendations made by CVC." (emphasis supplied)*

*(iv) In a recent decision in ESI Corpn. v. Union of India, [(2022) 11 SCC 392], in which, it was held by the Hon'ble Supreme Court as follows :*

*"17. In P.D. Aggarwal v. State of U.P. [P.D. Aggarwal v. State of U.P., (1987) 3 SCC 622 : 1987 SCC (L&S)*

*310] a two-Judge Bench of this Court declined to grant primacy to an office memorandum issued by the Government of Uttar Pradesh which purportedly amended the method of recruitment of Assistant Civil Engineers in the U.P. Public Service Commission without amending the relevant regulations. The Court held : (SCC p. 640, para 20)*

*"20. The office memorandum dated 7-12-1961 which purports to amend the United Provinces Service of Engineers (Buildings and Roads Branch) Class II Rules, 1936 in our opinion cannot override, amend or supersede 24/31 25 statutory rules. This memorandum is nothing but an administrative order or instruction and as such it cannot amend or supersede the statutory rules by adding something therein as has been observed by this Court in Sant Ram Sharma v. State of Rajasthan [Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910 : (1968) 1 SCR 111] . Moreover the benefits that have been conferred on the temporary Assistant Engineers who have become members of the service after being selected by the Public Service Commission in accordance with the service rules are entitled to have their seniority reckoned in accordance with the provisions of Rule 23 as it was then, from the date of their becoming member of the service, and this cannot be taken away by giving retrospective effect to the Rules of 1969 and 1971 as it is arbitrary, irrational and not reasonable."*

23. The High Court of Himachal Pradesh, in the case of

**Priyanka Gautam & Others Vs. State Of Himachal Pradesh & Others(2014 LABIC 3374)**, has held that where a cadre is created by statutory rules, some abolition or major restructuring effects a change to those rules. Such change requires amendment to the rules under Article 309 or a legislative enactment. This view has been consistently

supported that the cadre creation/abolition is a matter governed by the statutory rules and the executive action cannot unilaterally alter those rules. Paragraph 13 of the said judgment is extracted hereunder:

*"13. It is settled proposition of law that executive instructions cannot overrule or override the statutory Rules. Therefore, in case there is a conflict between the executive instructions and the rules made under Article 309, the rules made under Article 309 will prevail and in case there is conflict between the rules framed under Article 309 and the law made by the legislature will prevail. It is further trite that administrative instructions or orders can only be issued in matters of which the Rules made under Article 309 are silent, therefore, administrative instructions can only supplant the Rules but cannot supplement the same. Even a policy decision taken by the Government cannot have the force of rule made under Article 309 of the Constitution of India. Needless to state that Article 162 whereby the Government is competent to issue administrative instructions/orders and Article 309 operate in different area. In exercising the powers under Article 162, the Government cannot ignore the Rules framed under Article 309. Thus, any appointment or regularisation of an appointment made in contravention of the rules made under Article 309 shall be void. It is equally settled law that the rules framed under Article 309 cannot be amended or modified by an administrative order or instruction even by way of adding to the provisions of the statutory rule, unless there is a gap in the rule which required to be fill up. Therefore, what essentially follows is that the Government cannot amend or supersede the statutory Rules by administrative instructions and it is only when the Rules are silent on any particular point can the Government fill up the gaps and supplant the Rules or the law by issuing instructions that too not inconsistent with the Rules. Thus, an administrative instruction cannot*

*abridge or run counter to statutory provision or Rule."*

24. The Bombay High Court, in the case of **Ganpat R. Palni Vs. State of Goa, 2009 SC OnLine 1949**, has held that the creation and abolition of post is the Government's prerogative when the same is done in good faith. However, the policy decision to abolish the posts which have been created under the statutory rules can be done only by amending or altering the statutory rules and not otherwise. The creation or abolition of the posts though is an executive prerogative, but must align with the statutory framework. The relevant paragraph is extracted hereunder:

*"10. It is well settled that creation or abolition of posts or for that matter surrender of posts is entirely a discretion of the Government as long as it is done in good faith and the Courts cannot interfere with the same. In State of Haryana v. Shri Des Raj Sangar ((1976) 2 SCC 844) the Apex Court held that whether the post should be retained or abolished is essentially a matter for the Government to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the Court. It is not open to the Court to go behind the wisdom of the decision and substitute its own opinion for that of the*

*Government on the point as to whether a post should or should not be abolished. The decision to abolish the post should, however, be taken in good faith and be not used as a cloak or pretence to terminate the services of a person holding that post. In case it is found on consideration of the facts of a case that the abolition of the post was only a device to terminate the services of an employee, the abolition of the post would suffer from a serious infirmity and would be liable to be set aside. The termination of a post in good faith and the consequent termination of the services of the incumbent of that post would not attract Article 311. In that case the post was abolished as an economy measure to meet financial stringency for administrative reasons and the Apex Court held that the Court cannot review such reasons and the fact that the post to be abolished was held by a person who is confirmed in that post and the post which was not abolished was held by a person who was not permanent would not affect the legality of the decision to abolish the former post as long as the decision to abolish the post is taken in good faith. In Divisional Manager, Aravali Golf Club v. Chander Hass ((2008) 1 SCC 683) the Apex Court has held that the creation and sanction of posts is the prerogative of the executive and legislative authorities and not of the Courts. Likewise, in State of Haryana v. Navneet Verma ((2008) 2 SCC 65),*

*the Apex Court has reiterated that the power to create or abolish a post rests with the Government; whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity; creation, continuance and abolition of posts are all decided by the Government in the interest of administration and general public; the Court is least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fides, legal or factual; as long as the decision to abolish the post is taken in good faith in the absence of any material, interference by the Court is not warranted."*

25. The High Court of Orissa, in the case of ***Nilamani Das v. State of Orissa (1982 SCC OnLine Ori 130)***, has held that in absence of cadre or rules allowing executive regulations would not empower the executive to abolish a cadre/post created under the statutory rules. The relevant paragraph is extracted hereunder:

**8.** *For forming a cadre, notification forming the said cadre is to be published in the gazette. Cadres are also formed by rules under Article 309 of the Constitution of India or by express order by declaring such cadre exercising powers under Article 162 of the Constitution. There has been no declaration, no publication, no rules and no*

*provision for recruitment or transfer or seniority in the gradation list. Interpretation of rules does not depend on conduct of parties and it cannot be spelt out from other documents available. The sanctity is attributed to cadres because it creates vested rights. It is contended by the State Government that even assuming that there was a cadre prior to the Orissa Ministerial Service Rules, the same has disappeared after the Orissa Ministerial Service Rules came into force. Annexures-1 to 30 do not indicate any cadre at all. When there is no statute or rule holding the field, Government can by executive order regulate the services of the employees. In Sant Ram Sharma v. State of Rajasthan [A.I.R. 1967 S.C. 1910.] , it has been held in para-7 that it does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned. It is true that Government cannot amend or supersede the statutory rules by administrative instructions, but if the rules are silent on any particular point, Government can fill up the gap and supplement the rules and issue instructions not inconsistent with the rules already framed. In para-8 it has been held that the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws. Reference in this connection*

*has been made to the case of B.N. Nagarajan v. State of Mysore [A.I.R. 1966 S.C. 1942.] .*

26. The High Court of Andhra Pradesh in the case of **T.A. Waheed Saheb vs. The State of Andhra Pradesh and Ors. (W.P.No.42518/2022)** has held that once the field is occupied by the statutory law or rules, the cadre creation or abolition must be effected through statutory amendments rather than executive orders. The relevant paragraph is extracted hereunder:

*"10. Further, a useful reference could be made to the Division Bench ruling of the Karnataka High Court rendered in the case of M.V. Dixit and Ors. Vs. State of Karnataka and Ors., wherein it has been pleased to hold in Paras 22, 23, 24 and 25 as under:-*

*22. After the coming into force of the Civil Services Act, creation and abolition of posts (i.e. specifying different categories of posts in different branches of Public Service, specifying the total number of posts and nature of posts in each category and the scales of pay admissible to each category) can only be by way of Rules made in the manner prescribed in Section 3(2) of the said Act and not by any executive order issued under Article 162 of the Constitution. The field of Regulation of creation and abolition of posts, method of recruitment and conditions of*

*service is now occupied by an enactment of State Legislature. Therefore, exercise of the power in regard to regulation of the matters falling in the occupied field can only be in accordance with the said Act and not otherwise by an executive order.*

23. ....XXXXX.....

24. ....XXXXX.....

25. ....XXXXX....."

27. Thus, we are of the opinion that vide Government order dated 05.01.2021, the cadre of Work Inspector under the 2011 Rules cannot be abolished unless there is necessary amendment to that effect in the statutory rules. The Government Order dated 05.01.2021 is a mere policy decision that must be given effect by amending the rules. Unless the rules are amended, the cadre of Work Inspector continues to exist. Therefore, we reject the contention of the learned Additional Advocate General that the Government is empowered to abolish the post/cadre by taking executive decision and there is no requirement or necessity of amending the statutory rules to that effect.

28. So far as question Nos.ii and iii are concerned, they can be taken together as both of them are interlinked. It is well

settled that Government is not compelled to appoint a duly selected candidate inasmuch as mere selection or inclusion in merit list or final list does not create a vested or indefeasible right to appointment. The Government or the Authority may withhold the appointment for valid reasons including policy considerations, changes in eligibility or a conscious decision not to fill all vacancies. Therefore, a candidate cannot seek a writ of mandamus to compel appointment solely based on selection and the Government has the power to refuse or withhold the appointment provided there exist valid reasons.

29. The Supreme Court, in the case of ***Shankarsan Dash v. Union of India, (1991) 3 SCC 47*** has held that though the Government has power and discretion not to offer appointment to a duly selected candidate, but the State's prerogative not to fill the advertised vacancies should be *bona fide* and non-arbitrary. Paragraph 7 of the said judgment is extracted under:

*"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant*

*recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] , Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] , or Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899] . "*

30. The Supreme Court, in the case of **Jitendra Kumar v. State of Haryana, (2008) 2 SCC 161** has held as follows:

*42. The legal principle obtaining herein is not in dispute that the selectees do not have any legal right of appointment subject, inter alia, to bona fide action on the part of the State. We may notice some of the precedents operating in the field.*

*43. In Shankarsan Dash v. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95] this Court held: (SCC pp. 50-51, para 7)*

*"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no*

*legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] , Neelima Shangla v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or Jatinder Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174] .”*

*(emphasis supplied)*

44. Yet again in *R.S. Mittal v. Union of India* [1995 Supp (2) SCC 230 : 1995 SCC (L&S) 787 : (1995) 30 ATC 53] this Court held: (SCC p. 234, para 10)

*“10. ... It is no doubt correct that a person on the select panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment. But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel. In the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly unjustified.”*

*(emphasis supplied)*

45. In *Asha Kaul v. State of J&K* [(1993) 2 SCC 573 : 1993 SCC (L&S) 637 : (1993) 24 ATC 576] this Court held: (SCC pp. 580-81, para 8)

"8. It is true that mere inclusion in the select list does not confer upon the candidates included therein an indefeasible right to appointment (*State of Haryana v. Subash Chander Marwaha* [(1974) 3 SCC 220 : 1973 SCC (L&S) 488] ; *Mani Subrat Jain v. State of Haryana* [(1977) 1 SCC 486 : 1977 SCC (L&S) 166] ; *State of Kerala v. A. Lakshmikutty* [(1986) 4 SCC 632 : (1986) 1 ATC 735] ) but that is only one aspect of the matter. The other aspect is the obligation of the Government to act fairly. The whole exercise cannot be reduced to a farce. Having sent a requisition/request to the Commission to select a particular number of candidates for a particular category,—in pursuance of which the Commission issues a notification, holds a written test, conducts interviews, prepares a select list and then communicates to the Government—the Government cannot quietly and without good and valid reasons nullify the whole exercise and tell the candidates when they complain that they have no legal right to appointment. We do not think that any Government can adopt such a stand with any justification today."

(See also *A.P. Aggarwal v. Govt. of NCT of Delhi* [(2000) 1 SCC 600 : 2000 SCC (L&S) 206] .)

46. In *Food Corpn. of India v. Bhanu Lodh* [(2005) 3 SCC 618 : 2005 SCC (L&S) 433] this Court held: (SCC p. 629, para 14)

"14. Merely because vacancies are notified, the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies, has to be taken bona fide and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filled, then the State is obliged to fill them in

*accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review."*

31. In the case of ***Nilamani Das v. State of Orissa***,  
**1982 SCC OnLine Ori 130** it has been held as follows:

*"8. For forming a cadre, notification forming the said cadre is to be published in the gazette. Cadres are also formed by rules under Article 309 of the Constitution of India or by express order by declaring such cadre exercising powers under Article 162 of the Constitution. There has been no declaration, no publication, no rules and no provision for recruitment or transfer or seniority in the gradation list. Interpretation of rules does not depend on conduct of parties and it cannot be spelt out from other documents available. The sanctity is attributed to cadres because it creates vested rights. It is contended by the State Government that even assuming that there was a cadre prior to the Orissa Ministerial Service Rules, the same has disappeared after the Orissa Ministerial Service Rules came into force. Annexures-1 to 30 do not indicate any cadre at all. When there is no statute or rule holding the field, Government can by executive order regulate the services of the employees. In Sant Ram Sharma v. State of Rajasthan [A.I.R. 1967 S.C. 1910.] , it has been held in para-7 that it does not mean that*

*till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned. It is true that Government cannot amend or supersede the statutory rules by administrative instructions, but if the rules are silent on any particular point, Government can fill up the gap and supplement the rules and issue instructions not inconsistent with the rules already framed. In para-8 it has been held that the State Government has executive power, in relation to all matters with respect to which the Legislature of the State has power, to make laws."*

32. It is also well settled that the Government's discretion not to offer the appointment to a selected candidate is circumscribed by constitutional principles and statutory constraints. A candidate who is selected has a legitimate expectation of appointment.

33. In the case of ***Union of India v. Uzair Imran, (2024) 20 SCC 345*** it has been held as follows:

**23.** *Notwithstanding this settled legal position, the stage when ineligibility is cited for not offering employment also assumes importance. It is indeed indisputable that none has any legal right to claim public employment. In terms of Article 16 of the*

*Constitution, a candidate has only a right to be considered therefore. Once a candidate is declared ineligible to participate in the selection process at the threshold and if he still wishes to participate in the process perceiving that his candidature has been arbitrarily rejected, it is for him to work out his remedy in accordance with law. However, if the candidature is not rejected at the threshold and the candidate is allowed to participate in the selection process and ultimately his name figures in the merit list — though such candidate has no indefeasible right to claim appointment — he does have a limited right of being accorded fair and non-discriminatory treatment.*

**24.** *Given the stages of the process that the candidate has successfully crossed, he may not have a vested right of appointment but a reasonable expectation of being appointed having regard to his position in the merit list could arise. The employer, if it is a State within the meaning of Article 12 of the Constitution, would have no authority to act in an arbitrary manner and throw the candidate out from the range of appointment, as distinguished from the zone of consideration, without rhyme or reason. The employer State being bound by Article 14 of the Constitution, the law places an obligation, nay duty, on such an employer to provide some justification by way of reason. If plausible justification is provided, the courts would be loath to question the justification*

*but the justification must be such that it is rational and justifiable, and not whimsical or capricious, warranting non-interference.*

34. From the aforesaid authorities it can be inferred that not offering appointment to a duly selected candidates should be for justified and valid reasons and not for arbitrary, illegal or *mala fide* reasons.

35. In the case of ***Shubham Patel Vs. State of Madhya Pradesh (MANU/MP/3059/2023)*** it has been held as follows:

**5.** *The Supreme Court in the case of Union Territory of Chandigarh Vs. Dilbagh Singh and Others reported in (1993) 1 SCC 154 has held as under:*

*"12. If we have regard to the above enunciation that a candidate who finds a place in the select list as a candidate selected for appointment to a civil post, does not acquire an indefeasible right to be appointed in such post in the absence of any specific rule entitling him for such appointment and he could be aggrieved by his non-appointment only when the Administration does so either arbitrarily or for no bona fide reasons, it follows as a necessary concomitant that such candidate even if has a legitimate expectation of being appointed in such posts due to his name finding a place in the select*

*list of candidates, cannot claim to have a right to be heard before such select list is cancelled for bona fide and valid reasons and not arbitrarily. In the instant case, when the Chandigarh Administration which received the complaints about the unfair and injudicious manner in which select list of candidates for appointment as conductors in CTU was prepared by the Selection Board constituted for the purpose, found those complaints to be well founded on an enquiry got made in that regard, we are unable to find that the Chandigarh Administration had acted either arbitrarily or without bona fide and valid reasons in cancelling such dubious select list. Hence, the contentions of the learned counsel for the respondents as to the sustainability of the judgment of CAT under appeal on the ground of non-affording of an opportunity of hearing to the respondents (candidates in the select list) is a misconceived one and is consequently rejected."*

36. Thus, a duly selected candidate may not have a legal right to appointment and the Government may withhold from appointing a selected candidate, provided the decision not to give appointment is neither *mala fide*, nor arbitrary and grounded in statutory rules or a policy decision. Where there exist statutory rules or where a candidate has a legitimate expectation grounded in prior conduct or explicit assurance, the

Court may interfere and compel the Government to offer the appointment.

37. In the present case, the select list was published on 16.09.2017 after due selection in pursuance to the notification published on 06.04.2016. The provisional select list was published and thereafter the final select list came to be published on 16.09.2017 as mentioned above, the petitioners were placed at Sl.Nos.4, 6 and 2 respectively in the select list. The Government took a conscious decision to give appointment to those candidates who had secured more than 25% marks in the selection result. The petitioners' original documents were taken for verification on 15.02.2019. The Director-respondent No.2 in his affidavit filed in W.P.No.3077/2019 reiterated the Government's decision to give appointments to the persons who had secured more than 25% marks in the selection process and therefore, we are of the view that the petitioners should have the legitimate expectation grounded in the prior conduct and explicit assurance of the Government inasmuch as they had secured more than 25% marks in the selection process.

38. Against the 211 posts advertised, petitioners are only 4 in number and even if the Government has taken the decision to abolish 380 posts in the cadre of Work Inspector, as per the Government's assurance in the letter of the Secretary, Urban Development Department dated 05.12.2017, the petitioners should be considered for appointment and in the case of abolition of the cadre by amending the rules, the petitioners should be merged into an equivalent cadre.

39. We, therefore, set aside the impugned judgment and order passed by the learned Single Judge and consequently the endorsement dated 25.09.2017 and allow this writ appeal. The Government is directed to give appointment to the petitioners to the post of Work Inspector within two months from today. In the event of an amendment to the 2011 Rules abolishing the cadre of Work Inspector, the Government may merge the petitioners' posts to an equivalent cadre.

**Sd/-  
(D K SINGH)  
JUDGE**

**Sd/-  
(S RACHAIAH)  
JUDGE**

RKA