



**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL No..... OF 2026  
(SLP (C) No.28644 of 2019)**

**RAJESH SHARMA**

**...APPELLANT(S)**

**VERSUS**

**NORTH DELHI MUNICIPAL CORPORATION AND  
ANR.**

**...RESPONDENT(S)**

**J U D G M E N T**

**MANOJ MISRA, J.**

1. Leave granted.
2. This appeal impugns the judgment and order of the High Court<sup>1</sup> dated 28.08.2019 in Writ Petition (C) No.3451/2015, whereby the writ petition of the respondents against the order of Central Administrative Tribunal, Principal Bench at New Delhi<sup>2</sup> dated

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<sup>1</sup> High Court of Delhi at New Delhi

<sup>2</sup> CAT

07.08.2014 in Original Application (for short, O.A.) No.4466/2011 was allowed.

### **FACTS**

**3.** The appellant served as an Executive Engineer (Civil) with the North Delhi Municipal Corporation (for short, the Corporation). While in service he was convicted and sentenced under Section 13 (1) (d) of the Prevention of Corruption Act, 1988<sup>3</sup> and Sections 420, 120 (B) of the Indian Penal Code, 1860<sup>4</sup> *vide* order dated 15.07.2011. Pursuant to his conviction, the Commissioner dismissed him from service *vide* order dated 15.11.2011. Impugning the order of dismissal, the appellant filed O.A. No.4466/2011 before CAT, *inter alia*, on the ground that on the date the order of dismissal was passed he was a Group A officer and, therefore, the authority competent to take disciplinary action against him was the 'Corporation' and not the Commissioner. CAT accepted the aforesaid plea and set aside the dismissal *vide* order dated 07.08.2014 by leaving it open for the competent

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<sup>3</sup> P.C. Act

<sup>4</sup> IPC

disciplinary authority to pass a fresh penalty order. Aggrieved therewith, the respondents preferred writ petition before the High Court which came to be allowed by the impugned order. The High Court held that Commissioner being the Disciplinary Authority was empowered to dismiss the respondent i.e., the appellant herein.

**4.** The short question that arises for our consideration is whether the Commissioner was competent to inflict the punishment of dismissal from service upon the appellant.

**5.** To have a clear understanding of the context in which the issue arises for our consideration, it is necessary to have a look at the relevant statutory provisions as well as the regulations prevailing on the date of the order of dismissal.

#### **RELEVANT STATUTORY PROVISIONS**

**6.** The Delhi Municipal Corporation Act, 1957<sup>5</sup> (Act No.66 of 1957) was an Act to consolidate and amend the laws relating to the Municipal Government of Delhi.

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<sup>5</sup> The 1957, Act

Section 2 (7) of the 1957 Act defines “Corporation” as follows:

“Corporation” means the Municipal Corporation of Delhi established under this Act.

**7.** Section 3 of the 1957 Act provided for establishment of a Municipal Corporation of Delhi charged with the Municipal Government of Delhi. According to Section 3, as it stood then, *‘with effect from such date as the Central Government may, by notification in the official gazette, appoint, there shall be a Corporation charged with the Municipal Government of Delhi, to be known as the Municipal Corporation of Delhi’*. It further provided that “Corporation” shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of the Act, to acquire, hold or dispose of property and may by the said name sue and be sued. Sub-section (3) of Section 3 provided that the Corporation shall be composed of the councilors and alderman. Sub-section (4) of Section 3 provided that ‘councilors’ shall be chosen by direct election on the basis of adult suffrage from various wards into which Delhi

shall be divided in accordance with the Act; and alderman shall be chosen by the councilors from among persons who are qualified to be councilors but are not councilors themselves. Sub-section (5) provided that the total number of councilors shall at the establishment of the Corporation be 80, provided that 12 out of 80 seats of councilors shall be reserved for the members of the scheduled castes.

**8.** Chapter III of the 1957 Act delineates functions of the Corporation. Sub-section (1) of Section 41 provided that “*subject to the provisions of this Act and the rules, regulations and bye laws made thereunder the Municipal Government of Delhi shall vest in the Corporation.*”

**9.** Section 42 of the 1957 Act spells out obligatory functions of the Corporation, *inter alia*, including the fulfilment of any other obligation imposed by or under the Act or any other law for the time being in force.

**10.** Section 44 of the 1957 Act enumerates the municipal authorities under the Corporation which, *inter alia*, includes the Commissioner.

**11.** Section 54 of the 1957 Act, *inter alia*, provides for appointment of the Commissioner. Sub-section (1) of Section 54 provides that the Central Government shall, by notification in the official gazette, appoint a suitable person as the Commissioner of the Corporation.

**12.** Section 59 of the 1957 Act specifies the functions of the Commissioner. It reads as under:

**Section 59. Functions of the Commissioner. --**

Save as otherwise provided in this Act, the entire executive power for the purpose of carrying out the provisions of this Act and of any other Act for the time being in force which confers any power or imposes any duty on the Corporation, shall vest in the Commissioner who shall also –

- (a) exercise all the powers and perform all the duties specifically conferred or imposed upon him by this Act or by any other law for the time being in force;
- (b) prescribe the duties of, and exercise supervision and control over the acts and proceedings of, all municipal officers and other municipal employees other than the Municipal Secretary and the Municipal Chief Auditor and the municipal officers and other municipal employees immediately subordinate to them and subject to any regulation that may be made in this behalf, dispose of all questions relating to the service of the said officers and other employees and their pay, privileges, allowances and other conditions of service;

(c) on the occurrence or threatened occurrence of any sudden accident or any unforeseen event or natural calamity involving or likely to involve extensive damage to any property of the Corporation, or danger to human life, take such immediate action as he considers necessary and make a report forthwith to the Standing Committee and the Corporation of the action he has taken and the reasons for the same as also of the amount of cost, if any, incurred or likely to be incurred in consequence of such action, which is not covered by a budget-grant;

(d) **\*Subject to any regulation that may be made in this behalf, be the disciplinary authority in relation to all municipal officers and other municipal employees.**

\*Substituted by Act 67 of 1993, w.e.f. 1.10.1993 for clause (d).

Original clause (d) reads as under:

“(d) exercise the powers and perform the duties conferred or imposed by or under this Act upon the General Manager (Electricity) or the General Manager (Transport) in his absence or on failure by him to exercise or perform the same.”

**13.** Chapter VI of the 1957 Act provides for Municipal Officers and other Municipal Employees of the Corporation. According to Section 89, *“the Corporation shall appoint suitable persons to be respectively the Chief*

*Engineer (Water Supply)<sup>6</sup>, the Municipal Engineer, the Municipal Health Officer, the Education Officer, the Municipal Chief Accountant, the Municipal Secretary and the Municipal Chief Auditor and may appoint one or more Deputy Commissioners and such other officer or officers of a status equivalent to or higher than the status of any of the officers specified earlier in this sub-section as the Corporation may deem fit on such monthly salaries and such allowances, if any, as may be fixed by the Corporation.”*

**14.** Section 92 of the 1957 Act provides that “*subject to the provisions of Section 89, the power of appointing municipal officers and other municipal employees, whether temporary or permanent shall vest in the Commissioner: Provided that the power of appointing officers and other employees immediately subordinate to the Municipal Secretary or the Municipal Chief Auditor to category B posts or category C posts shall vest in the Standing Committee: Provided further that the Standing Committee may delegate to the Municipal Secretary or the*

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<sup>6</sup> Chief Engineer (Water Supply) omitted by Act 67 of 1993, w.e.f. 1.10.1993

*Municipal Chief Auditor the power of appointing officers and other employees immediately subordinate to the said Secretary or Auditor, to category C posts.”*

**15.** Sub-section (1) of Section 95 provides that “*every municipal officer or other municipal employee shall be liable to have his increments or promotion withheld or to be censured, reduced in rank, compulsorily retired, removed or dismissed for any breach of any departmental regulations or of discipline or for carelessness, unfitness, neglect of duty or other misconduct by such authority as may be prescribed by regulations: Provided that no such officer or other employee as aforesaid shall be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed: Provided further that the Corporation may by regulations provide that municipal employees belonging to such classes or categories as may be specified in the regulations shall be liable also to be fined by such authority as may be specified therein.*”

**16.** Section 98 of the 1957 Act confers power on the Corporation to make regulations, *inter alia*, to provide for:

(a) the procedure to be followed in imposing any penalty under sub-section (1) of Section 95, suspension pending departmental inquiries before the imposition of such penalty and the authority by whom such suspension may be ordered; the officer or authority to whom an appeal shall lie under sub-section (4) of that section; and (b) any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of persons appointed to services and posts under the Corporation and any other matter for which in the opinion of the Corporation provisions should be made by regulations.

**17.** Sub-section (1) of Section 480 of the 1957 Act provides that “*any regulation which may be made by the Corporation under this Act, may be made by the Central Government within one year of the establishment of the Corporation; and any regulation so made may be altered or rescinded by the Corporation in the exercise of its powers under this Act.*” Sub-section (2) of Section 480 provides that “*no regulation made by the Corporation under this Act shall have effect until it has been approved*

*by the Central Government and published in the official gazette.”*

## **RELEVANT REGULATIONS**

**18.** In exercise of the powers conferred by Section 480 of the 1957 Act, the Central Government notified Delhi Municipal Corporation Service (Control and Appeal) Regulations, 1959<sup>7</sup> *vide* notification dated 04.04.1959.

**19.** Regulation 6 of the 1959 Regulations specifies the penalties which may be imposed for good and sufficient reasons on a municipal officer or other employee. These are:

### **Minor Penalties**

- (i) Censure;
- (ii) Withholding of increments or promotion; and
- (iii) Recovery of the whole or part of any pecuniary loss caused to the Corporation by negligence or misconduct.

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<sup>7</sup> 1959 Regulations

## Major penalties

- (iv) Reduction in rank including reduction to a lower post or to a lower time scale or to a lower stage in a time scale;
- (v) Compulsory retirement; and
- (vi) Dismissal from service which shall be a disqualification for future employment.

**20.** Regulation 7 of the 1959 Regulations provides:

“7. The authority specified in column 1 of the Schedule may impose on any of the municipal officers or other municipal employees specified there against in column 2 thereof any of the penalties specified there against in column 3 thereof. Any such officer or employee may appeal against the order imposing upon him any of those penalties to the authority specified in column 4 of the said Schedule.”

**21.** Relevant part of the Schedule as referred to in Regulation 7 is extracted below:

SCHEDULE (See Regulation 7)			
Description of posts	Authority competent to impose penalties	Penalties	Appellate Authority
1	2	3	4
<b>PART 'A'</b>			
In case where appointments are made under Section 509			
All Municipal Officer and other employees.	Corporation	(i) (ii) & (iii)	Central Government
All Municipal Officer and other employees	Central Government	All	President of India

<b>PART 'B'</b>			
Posts under the Corporation (Other than those under the Municipal Chief Auditor or the Municipal Secretary).			
1. Category 'A' posts	Corporation	All	Central Government
-do-	Deputy Commissioner,	(i) (ii) & (iii)	Commissioner
2. Category 'B' & 'C' posts	Commissioner	All	Standing Committee
(i) Where appointment of the Officer or employee was made by the erstwhile local bodies or authorities specified in the Second Schedule of the Act.	Deputy Commissioner	(i) (ii) & (iii)	Commissioner
	Any Municipal Officer or employee to whom powers to impose penalty is delegated under Section 491 of the Act.	(i) (ii) & (iii)	Deputy Commissioner
(ii) Where the appointment was made by the Commissioner	Commissioner	All	Standing Committee
	Deputy Commissioner  Any Municipal Officer or employee to whom powers to impose penalty is delegated under Section 491 of the Act.	(i) (ii) & (iii)  (i) (ii) & (iii)	Commissioner  Deputy Commissioner

## **CONUNDRUM BEFORE THE HIGH COURT**

**22.** Before the High Court, submission on behalf of the appellant was that under Regulation 7 read with the Schedule of the 1959 Regulations, the authority competent to impose major penalty upon an officer belonging to category A post is the Corporation, and therefore, the order of dismissal passed by the

Commissioner is void. *Per contra*, the argument on behalf of respondents was that under the amended Section 59 (d) of the 1957 Act, which was inserted with effect from 01.10.1993 by Act 67 of 1993, the Commissioner is the disciplinary authority in relation to all municipal officers and other municipal employees albeit subject to any regulation that may be made in this behalf. As the 1959 Regulations were made before the substitution of clause (d), to the extent they were contrary to the amended provisions of the 1957 Act would cease to operate. Therefore, the order of dismissal passed by the Commissioner was well within his jurisdiction and cannot be termed void.

### **HIGH COURT'S VIEW**

**23.** The High Court took the view that since Section 59 (d), as substituted by Act 67 of 1993 with effect from 01.10.1993, uses the phrase "*subject to any regulation that may be made in this behalf*", the power of the disciplinary authority conferred on the Commissioner by clause (d) of Section 59 would be subject to regulations that may be made in future and not the existing ones.

## **SUBMISSIONS ON BEHALF OF THE APPELLANT**

**24.** The learned counsel for the appellant has questioned the impugned order, *inter alia*, on the following grounds:

- (i) The High Court did not follow its own decision rendered by a coordinate bench in ***MCD Thru Commissioner vs. Ved Prakash Kanoji***<sup>8</sup> which affirmed decision rendered by a Single Judge of the High Court in ***G.S. Matharao vs. CBI***<sup>9</sup>. Judicial propriety demands that if a bench of co-equal strength disagrees with the earlier view, it must refer the matter to a larger bench. Failure to do so, renders the decision vulnerable. Therefore, the impugned order should be set aside, and the matter be remitted back to the High Court for a fresh decision.
- (ii) Section 59 (d) and Section 95 of the 1957 Act must be harmoniously construed. Moreover,

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<sup>8</sup> 2013 SCC OnLine Del 791: (2014) 209 DLT 657

<sup>9</sup> 2012 SCC OnLine Del 480

Section 59 opens with the phrase “*save as otherwise provided in this Act*” which signifies that the executive power of the Commissioner is subject to other provisions of the Act. Further, clause (d) of Section 59 itself makes the disciplinary power subject to the regulations, therefore, when clause (d) of Section 59 is read conjointly with sub-section (1) of Section 95, which provides that “*punishment may be imposed by such authority as may be prescribed by the regulations*”, it is clear that where the regulations specify the authority competent to impose the punishment, it can be imposed by that authority and no other, not even the Commissioner.

- (iii) As Clause (d) of Section 59 was brought by substitution, it would be deemed to be incorporated by pen and ink in the original statute and since it opens with the words ‘*subject to any regulation made in this behalf,*

the disciplinary power envisaged thereunder would be subject to the existing Regulations. More so, when there is nothing in the amended provision to indicate that it overrides the existing regulations.

- (iv) If the interpretation accorded by the High Court is accepted, there would be an unresolved conflict between Section 59(d) and 95(1) of the 1957 Act. Such an interpretation must therefore be eschewed.
- (v) The existing Regulations are saved by Section 24 of The General Clauses Act, 1897 notwithstanding the amendments brought by Act 67 of 1993. This is so, because for Section 24 to apply there is no distinction between repeal and amendment.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

**25.** On behalf of the respondents, it was submitted:

- (i) The object of the 1993 amendment was to streamline the municipal administration in the light of observations made in S.

Balakrishnan Committee's Report. A statutory provision brought in by amendment would have to be construed in a manner that it seeks to achieve the object for which it is brought in the statute book. The legislative intent is clear in making Commissioner the disciplinary authority in relation to all municipal officers and employees. Therefore, use of the words "*subject to any regulation that may be made in this behalf,*" would mean subject to regulations that are made after the amendment. Otherwise, the legislature might have used words "*subject to any regulations framed under the Act*" or could have dropped the phrase '*that may be made in this behalf*'. The use of the phrase "*that may be made in this behalf*" signifies that clause (d) is subject to those regulations that are made after the amendment.

- (ii) There is no conflict between Sections 59 (d) and 95 in as much as Section 95 does not

specify any disciplinary authority. It is a general provision enabling Regulations to specify the disciplinary authority circumscribed to the limit set out in the proviso i.e., the disciplinary authority should not be subordinate to the appointing authority; whereas Section 59(d) is specific in declaring the Commissioner as disciplinary authority of all officers and employees.

- (iii) Once a statutory provision specifically declares a particular authority as the disciplinary authority even if such declaration is contrary to the existing regulations, it would prevail in as much as in the event of a conflict between a statutory provision and a regulation, the statutory provision must prevail.
- (iv) Clause 59 (d) was substituted with effect from 1.10.1993, therefore the argument that 59 (d) would be deemed to be there since inception is not sustainable. In consequence, it would

be subject to only those regulations that are made thereafter.

(v) The earlier decisions of the High Court did not take into consideration the object with which clause (d) was substituted in the 1957 Act, and therefore, the earlier view is not a binding precedent. Besides, if the construction accorded to clause (d) by the High Court is correct, this Court should not interfere merely because the High Court could have, or ought to have, referred the matter to a larger bench.

(vi) By Act 67 of 1993, Section 92, which deals with power to appoint, was amended. As per which, subject to the provisions of Section 89, the power to appoint municipal officers and other municipal employees, whether temporary or permanent, vested in the Commissioner. This takes care of the first proviso to sub-section (1) of Section 95 which mandates that no municipal officer or other

municipal employee shall be reduced in rank or compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed. The legislative intent is, therefore, clear. By virtue of the amendments brought by Act 67 of 1993 to Sections 59 and 92, the Commissioner is put in complete control both as the appointing authority as well as the disciplinary authority.

- (vii) Prior to Act 67 of 1993, Section 509 of the 1957 Act vested in the Central Government power to make 'first appointments.' It provided that notwithstanding anything contained in Section 60 or in Section 89 or in Section 92, the first appointment to the post mentioned therein, may be made by the Central Government. The 1993 amendment repealed the aforesaid section. Consequent to its repeal, part A of the Schedule to the 1959 Regulations became redundant, as it

related to cases where appointments were made under Section 509. The 1993 amendment is reflective of the legislative intent to usher in a new regime *qua* disciplinary authority and, therefore, the phrase “*subject to regulations that may be made in this behalf*” as used in clause (d) of Section 59 would have to be construed as referring to those regulations which are made after the amendment.

(viii) By not referring to the larger Bench, the High Court did not commit any error because the earlier coordinate bench decision dealt with an issue as to who would be the appropriate authority to grant sanction for prosecution under the P.C. Act. Besides the learned Single Judge whose decision was affirmed by the Division Bench of the High Court had overlooked that by the 1993 Amendment, Section 92 was also amended to make Commissioner the appointing authority.

Therefore, the restriction placed by the first proviso to sub-section (1) of Section 95 did not affect the powers of the Commissioner to take disciplinary action.

## **ISSUES**

**26.** Upon consideration of the rival submissions including the facts and the statutory provisions/regulations, in our view, the answer to the question posited in paragraph 4 (supra) is dependent on determination of the following issues:

- (i) Whether the 'Corporation', named as disciplinary authority of Category A Officers in the 1959 Regulations, continues to be the disciplinary authority notwithstanding substitution of clause (d) of Section 59 by Act 67 of 1993, with effect from 01.10.1993?
- (ii) Whether to reconcile the conflict between sub-section (1) of Section 95 and Section 59 (d), as substituted, it is necessary to construe the disciplinary authority specified in the

substituted clause (d) of Section 59 as subject to the existing 1959 Regulations?

(iii) Whether the High Court ought to have referred the matter to a larger bench as its view was at variance with an earlier decision rendered by a bench of co-equal strength? If yes, its consequence?

## **DISCUSSION/ ANALYSIS**

### **Issue No.(i)**

**27.** Prior to substitution of clause (d) of Section 59 by Act 67 of 1993, the 1957 Act did not specify a disciplinary authority though Section 92, subject to Section 89, specified the officers/ authorities who could appoint. Sub-section (1) of Section 95 of the 1957 Act provides that municipal officer or other municipal employees are liable to be punished for any breach of departmental regulations, etc. by such authority as may be prescribed by the regulations provided that no such officer or employee shall be compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed.

**28.** Prior to amendment brought in by Act 67 of 1993,

Section 92 of the 1957 Act read as follows:

“92. (1) Subject to the provisions of Section 89, the power of appointing municipal officers and other municipal employees, whether temporary or permanent, --

(a) to category A posts, shall vest--

(i) in the Delhi Electricity Supply Committee, and the Delhi Water Supply and Sewage Disposal Committee respectively in the case of officers and other employees appointed in connection with the affairs of the Delhi Electricity Supply Undertaking and the Delhi Water Supply and Sewage Disposal Undertaking,

(ii) in the Corporation in the case of all other municipal officers and employees;

(b) to category B and category C posts shall vest in the General Manager (Electricity), or the Commissioner, as the case may be:

Provided that the power of appointing officers and other employees immediately subordinate to the Municipal Secretary or the Municipal Chief Auditor to category B posts or category C posts shall vest in the Standing Committee:

Provided further that the Standing Committee may delegate to the Municipal Secretary or the Municipal Chief Auditor the power of appointing officers and other employees immediately subordinate to such Secretary or Auditor, to category C posts.

(2) The claims of the members of the Scheduled Caste shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments of municipal officers and other municipal employees.”

**29.** Post Act 67 of 1993, Section 92 stood amended to read thus:

“92. Power to make appointments. --

(1) Subject to the provisions of Section 89, the power of appointing municipal officers and other municipal employees whether temporary or permanent shall vest in the Commissioner:

Provided that the power of appointing officers and other employees immediately subordinate to the Municipal Secretary or the Municipal Chief Auditor to category B posts or category C posts shall vest in the Standing Committee:

Provided further that the Standing Committee may delegate to the Municipal Secretary or the Municipal Chief Auditor the power of appointing officers and other employees immediately subordinate to the said Secretary or Auditor, to category C posts.

(2) The claims of the members of the Scheduled Castes shall be taken into consideration consistently with the maintenance of efficiency of administration, in the making of appointments of municipal officers and other municipal employees.”

**30.** What is clear is, that by Act 67 of 1993 the ‘Commissioner’ was made not only the appointing authority in place of the ‘Corporation’, but also the disciplinary authority by virtue of substitution of clause (d) of Section 59.

**31.** Prior to Act 67 of 1993, the 1957 Act did not specify the disciplinary authority though sub-section (1) of Section 95 provided that the municipal officers and

other employees may be punished for breach of departmental regulations, etc. by such authority as may be prescribed by the regulations. However, the 1959 Regulations do specify the disciplinary authorities.

**32.** The question that would therefore arise is whether the disciplinary authority specified in clause (d) of Section 59 would be the disciplinary authority, or the one specified in the 1957 Regulations.

**33.** In ordinary course, in the event of a conflict between the statute and the regulations, the statute would prevail<sup>10</sup>. But here there is a twist. The statutory provision i.e., clause (d) of Section 59 itself provides that it shall be subject to any regulations that may be made in this behalf.

**34.** In the aforesaid context, the argument on behalf of the appellant is that clause (d) of Section 59, consequent to substitution, has incorporated itself in the existing Act and, therefore, it must be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that

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<sup>10</sup> Ispat Industries Ltd. v. Commissioner of Customs, (2006) 12 SCC 583, paragraphs 27 to 29

thereafter there is no need to refer to the amending Act at all; in consequence, though clause (d) of Section 59 specifies the disciplinary authority, it being subject to the Regulations, the disciplinary authority specified in the existing 1959 Regulations would alone be competent to impose the punishment of dismissal. *Per contra*, on behalf of the respondents, it is submitted, clause (d) was inserted w.e.f. 01.10.1993; it specifies the disciplinary authority, though subject to the regulations that may be made; the words '*that may be made in this behalf*' in clause (d) are of significance which imply that clause (d) is subject to Regulations that may be made in future and not the existing ones; in consequence, unless the Regulations are re-framed or amended after 01.10.1993, specifying a disciplinary authority other than the one specified in clause (d), the authority specified in clause (d) shall be the disciplinary authority; besides, the normal rule of construction is that in absence of intention to the contrary, statutory provision must prevail over regulations framed under the statute.

**35.** To appropriately determine issue No.(i), it is necessary to have a look at few judicial precedents regarding construction of a statute/ statutory provision amended by substituting an existing provision.

### **Amendment by Substitution**

**36.** In general, an amending provision performs one or more of three kinds of notional function in relation to the legislation being amended--(1) the addition of words; (2) the removal of words; and (3) substitution of some words for other words. An amendment is a method of changing the law, and the method chosen as the most apt form of notation to record the change should not dictate how the change is construed or applied. Therefore, one must look at substance and not form.<sup>11</sup>

**37.** In ***Shamarao V. Parulekar v. District Magistrate, Thana, Bombay and Another***<sup>12</sup> before a Constitution Bench of this Court an order of detention under the Preventive Detention Act, 1950 was in question. That Act was due to expire on 01.04.1951. But

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<sup>11</sup> Craies on Legislation, Chapter 14, Section 3, paragraph 14.3.1, Ninth Edition, published by Thomson/ Sweet & Maxwell, South Asian Edition 2019.

<sup>12</sup> (1952) 2 SCC 1: 1952 SCC OnLine SC 64, paragraph 7

there were subsequent amendments of the Act which extended its life up to 01.10.1952. The amending Act provided, *inter alia*, that the detention orders which had been confirmed previously, and which were in force immediately before the commencement of the amending Act, '*shall continue to remain in force for so long as the principal Act is in force*'. The question which arose for consideration was whether this indicated the original date of expiry of the principal Act or the extended date as brought by amendment in the principal Act. This Court had no difficulty in holding that it obviously related to the latter, notwithstanding that the 'principal Act' was defined as meaning 'Act of 1950'. It was held that the phrases '*principal Act*' and '*Act of 1950*', must be understood as meaning the 1950 Act as amended, which was to expire on 01.10.1952. While holding so, this Court laid down the guiding principle for construction of an amended statute, often referred to as the 'pen and ink theory', in the following words:

"The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where

that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all.”

**38.** In *Ram Narain v. Simla Banking and Industrial Company Limited*<sup>13</sup> a three-Judge Bench of this Court while accepting the ‘pen and ink theory’ to construe an amended statute clarified that, if the amending Act does not provide for retrospective operation of the amended provision, the amended provision would not relate back to the date of the original Act. The relevant observations are extracted below:

“13. ... It is perfectly true as stated therein that whenever an amended Act has to be applied subsequent to the date of the amendment the various unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. This is for the purpose of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part. But this is not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done if such retrospective operation is given by the amending Act either expressly or by necessary implication. ...”

(Emphasis supplied)

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<sup>13</sup> (1956) 2 SCC 75

**39.** In ***Firm A.T.B. Mehtab Majid & Co. v. State of Madras***<sup>14</sup> a Constitution Bench of this Court took the view that once the old rule is substituted by the new rule, it ceases to exist and does not automatically revive when the new rule is declared invalid. Explaining the rationale for the aforesaid view, a three-Judge Bench of this Court in ***Koteswar Vittal Kamath v. K. Rangappa Baliga & Co.***<sup>15</sup> observed that amendment by ‘substitution’ consists of two steps. First, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place and, therefore, even if the new rule be invalid, the first step of the old rule ceasing to exist comes into effect; in consequence, on declaration of the new rule as invalid, the old rule is not revived.

**40.** In ***Bhagat Ram Sharma v. Union of India***<sup>16</sup>, this Court observed that there is no real distinction between “repeal” and an “amendment”. By quoting *Sutherland's Statutory Construction*<sup>17</sup>, it was held that amendment is,

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<sup>14</sup> 1962 SCC OnLine SC 51

<sup>15</sup> (1969) 1 SCC 255

<sup>16</sup> 1988 Supp SCC 30: AIR 1988 SC 740

<sup>17</sup> 3<sup>rd</sup> Edition Volume 1 at page 477:

“The distinction between repeal and amendment as these terms are used by the courts, is arbitrary. Naturally the use of these terms by the court is based largely on how the legislatures have developed and applied

in fact, a wider term and it includes abrogation or deletion of a provision in an existing statute. If the amendment of an existing law is small, the Act professes to amend, if it is extensive, it repeals a law and re-enacts it. It was held that an amendment of substantive law is not retrospective unless expressly laid down or by necessary implication inferred. Additionally, it was clarified that mere use of the word “substitution” does not imply that the amended provision would relate back to the appointed day.

**41.** In ***Gottumukkala Venkata Krishnamraju v. Union of India & Others***<sup>18</sup> this Court after noticing the ‘pen and ink’ theory of construction held that, in certain situations, the court having regard to the purport and objects sought to be achieved by the legislature may

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these terms in labelling their enactments. When a section is being added to an Act or a provision added to a section, the legislatures commonly entitle the Act as an amendment... When a provision is withdrawn from a section, the legislatures called the Act an amendment, particularly when a provision is added to replace the one withdrawn. However, when an entire Act or section is abrogated and no new section is added to replace it, legislatures label the Act accomplishing this result a repeal. Thus as used by the legislatures, amendment and repeal may differ in kind -- addition as opposed to withdrawal or only in degree -- abrogation of part of a section as opposed to abrogation of a whole section or Act; or more commonly, in both kind and degree -- addition of a provision to a section to replace a provision being abrogated as opposed to abrogation of a whole section or Act. This arbitrary distinction has been followed by the courts, and they have developed separate rules of constructions for each. However, they have recognized that frequently an Act purporting to be an amendment has the same qualitative effect as a repeal -- the abrogation of an existing statutory provision -- and have therefore applied the term ‘implied repeal’ and the rules of construction applicable to repeals to such amendments.”

<sup>18</sup> (2019) 17 SCC 590, paragraph 18

construe the word ‘substitution’ as an ‘amendment’ having a prospective effect. The court further observed that it is not a universal rule that the word ‘substitution’ necessarily or always connotes two severable steps, one of repeal and another of a fresh enactment, even if it implies two steps.

**42.** In *Pernod Ricard India Private Limited v. State of Madhya Pradesh and Others*<sup>19</sup>, this Court held that a repealed provision would cease to operate from the date of repeal and the substituted provision would commence to operate from the date of its substitution. However, this principle is subject to specific statutory prescription. Statute can enable the repealed provision to continue to apply to transactions that have commenced before the repeal. Similarly, a substituted provision which operates prospectively, if it affects vested rights, subject to statutory prescriptions, can also operate retrospectively.

**43.** In *Property Owners Association & Others v. State of Maharashtra & Others*<sup>20</sup> the theory of two-

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<sup>19</sup> (2024) 8 SCC 742, paragraph 18

<sup>20</sup> (2024) 18 SCC 1

step process of amendment by substitution, as propounded in **Koteswar Vittal Kamat** (*supra*), was placed before a nine-Judge Bench of this Court to argue that if the words “*the principles specified in clause (b) or clause (c) of Article 39*” were omitted from Article 31-C of the Constitution of India by the Forty-Second Amendment and substituted with different words, the invalidation of substituted words by the **Minerva Mills**<sup>21</sup> decision cannot revive words specifically omitted by Parliament. After considering number of decisions including three-Judge Bench decisions of this Court in **State of Maharashtra v. Central Provinces Manganese Ore Co. Ltd.**<sup>22</sup> and **Indian Express Newspapers (Bombay) P Ltd. v. Union of India**<sup>23</sup>; and

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<sup>21</sup> *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625

<sup>22</sup> (1977) 1 SCC 643

“18. We do not think that the word substitution necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. Indeed, the natural meaning of the word ‘substitution’ is to indicate that the process cannot be split up into two pieces like this. If the process describes as substitution fails, it is totally ineffective as to leave intact what was sought to be displaced. That seems to be the ordinary and natural meaning of the words ‘shall be substituted’. This part could not become effective without the assent of the Governor General. The State Governor’s assent was insufficient. It could not be inferred that, what was intended was that, in case the substitution failed or proved ineffective, some repeal, not mentioned at all, was brought about and remained effective so as to create what may be described as a vacuum in the statutory law on the subject matter. Primarily the question is one of gathering the intent from the use of words in the enacting provisions seen in the light of the procedure gone through. Here, no intention to repeal, without a substitution, is deducible. In other words, there could be no repeal if substitution failed. The two were a part and parcel of a single indivisible process and not bits of a disjointed operation.”

<sup>23</sup> (1985) 1 SCC 641

Constitution Bench decision in **Supreme Court Advocates-on-Record Assn. v. Union of India (NJAC case)**<sup>24</sup>, the Court rejected the argument made on behalf of Property Owners Association, and held:

**“105.** ... It is not appropriate to separate an amendment which substitutes certain words with certain other words into multiple steps and examine the legal effect of invalidation on each of these steps independently. This is because when a legislature enacts a substitution, it is only removing certain text to make space for the new text it wishes to enact. Simply put, the legislature would not remove the text in question without at the same time inserting alternate text. Given that the legislative intent is composite and indivisible, to remove and insert simultaneously, a judicial approach which disaggregates these two steps and treats them differently would amount to the court re-writing the law contrary to the legislative intent. As the decisions from the United States note, in such cases, there are two expressions of legislative intent, the original text and the amended text. If the amended text is invalidated, the only valid expression of legislative intent is the original text. If a court were to find that even the original text could not be given legal effect because it had been repealed, this would result in a third outcome, a legal vacuum which was neither intended by the legislature that enacted the original text nor by the legislature which adopted the amended text. Crucially, this third outcome would fail to give effect to either legislative intent despite there being no constitutional fault in the original provision. As the decisions in *Laxmibai [Laxmibai v. State of M.P., 1951 SCC OnLine MP 72 : AIR 1951 Nag 94]*, *Central Provinces Manganese Ore [State of Maharashtra v. Central Provinces Manganese Ore Co. Ltd., (1977) 1 SCC 643 : (1977) 39 STC 340]*, and *D.K. Trivedi & Sons [D.K. Trivedi & Sons v. State of Gujarat, 1986 Supp SCC 20]* note, if a court were to not only invalidate the newly inserted text but also hold that the old text stands repealed it could lead to absurd outcomes or render the text wholly unworkable. The practical effect of such an outcome would be that a judicial decision invalidating an unconstitutional amendment would also inadvertently nullify a valid

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<sup>24</sup> (2016) 5 SCC 1

and constitutional provision which the legislature would never have repealed without providing a replacement.

**106.** Insofar as the argument that the original rule had been repealed by the legislature itself and thus ought not to be given effect, as noted above, this reasoning is negated by the inference that the legislature would never have repealed the original text without simultaneously adopting the amended text. While a court cannot give effect to text that the legislature has repealed, as noted in *Shamarao Parulekar [Shamarao V. Parulekar v. DM, Thana, (1952) 2 SCC 1]* , a case where a legislature has engaged in substitution, and the newly enacted text has been invalidated, is materially different. There may exist a narrow sub-set of cases where it is evident from the legislative circumstances or external aids to statutory interpretation, that the legislature would have in fact repealed the provision or words in question *independent of* its enactment of an alternative provision. Therefore, it is incumbent on courts to ask the question posed by Beg, J. in *Central Provinces Manganese Ore [State of Maharashtra v. Central Provinces Manganese Ore Co. Ltd., (1977) 1 SCC 643 : (1977) 39 STC 340]* , is there “*intention to repeal, without a substitution*”?

**107.** Although some of the precedents discussed frame the question as “Would the legislature have repealed the original text if it knew a court would invalidate the amended text?”, a more appropriate framing of the question would be, “Would the legislature have repealed the original text without giving effect to the amended text?” for this is the result of a court invalidating the amended text. If in cases where a legislature has repealed text and inserted other text, there is clear evidence that the legislature would have repealed the text in question independent of its decision to give effect to new or alternate language, then a court can continue to give effect to the repeal despite invalidating the new text. This is because, in such cases, the legislative intent is not composite or indivisible, and it is evident that the legislature contemplated that the original text would be repealed independent of whether the new text was given effect or not. However, absent such clear legislative intent, where a legislature substitutes a text by amendment and the amendment is invalidated, it is presumed that the unamended text stands revived.

**108.** This analysis of whether legislative intent is composite or not is relevant to the case of substitutions. However, there is another reason why the argument of the appellants

that repealed text can never be enforced after a court invalidates an amendment may be flawed, and that is the case of a repeal simpliciter. Let us imagine a situation where Parliament were to, by constitutional amendment, repeal protections concerning tenure or salary granted to constitutional functionaries such as Judges or Election Commissioners. This would be a case of an amendment that only repealed constitutional text. Such an amendment would likely violate the basic structure of the Constitution. If this Court were to invalidate such an amendment, could it be contended that the protections do not revive? The only logical relief in such a case is the revival of those protections. These protections would be enforceable despite the fact that they have been omitted from the statute book or constitutional text by the legislature. This would not be a case of the court re-writing the law but merely nullifying the effect of the repeal. Thus, it cannot be said that a court cannot nullify the effect of a repeal. The case of substitutions is admittedly more complicated, as the court must investigate whether the legislative intent to repeal and enact is composite and indivisible. However, once it is demonstrated that the legislature would not have repealed without simultaneously enacting, there can be no doubt that a court can reverse both the effects of the enactment and the repeal.

**109.** Finally, in addition to looking at the totality of the legislative circumstances, the court must also examine the consequence of the original text reviving or not reviving vis-à-vis the principles espoused in the judgment. Ordinarily, where an unconstitutional provision is struck down, it is presumed that the original text is constitutional and thus there are no adverse consequences flowing from its reviving. However, there may exist cases where the underlying or original rule itself is unconstitutional or that to revive the situation that existed prior to the amendment would either severely undermine the legal principles set out in the judgment invalidating the amendment or result in some other adverse consequences. In such cases, courts have the flexibility to appropriately shape reliefs. ...”

(Emphasis supplied)

**44.** Survey of the judicial pronouncements, in our view, settle certain principles of construction of a statutory provision which has been brought in through

amendment by substituting an existing provision. These principles, *inter alia*, are:

(a) Use of the word 'substitute' or 'substitution' in the amending Act is not necessarily a reflection of two severable steps, one of repeal and the other of insertion. It may be a single indivisible step of making the existing provision inoperative by replacing it with the new provision. The Court must therefore look at the legislative intent - whether it is to repeal the existing provision independent to the insertion of new one. If the legislative intent is composite and indivisible, to remove and insert simultaneously, a judicial approach of segregating these two steps and treating them differently would amount to re-writing the law contrary to the legislative intent.

(b) Mere use of the word 'substitute' or 'substitution' in the amending Act does not make the substituted provision relate back

to the date of enforcement of the provision which it seeks to substitute.

(c) Unless the legislative intent is to the contrary, the inserted provision brought by way of substitution is to operate from the date it is placed in the statute.

(d) The construction of the amended provision is governed by the legislative intent and not the nomenclature put to the amendment.

### **Sub-Issues**

**45.** Having noticed the legal principles on construction of a substituted provision, we shall now consider the following sub-issues:

(a) Whether clause (d) of Section 59, as substituted by Act 67 of 1993, would be deemed to be in existence since the date of enforcement of the 1957 Act?

(b) Whether substituted clause (d) of Section 59 of the 1957 Act would be subject to the existing regulations i.e., the 1959 Regulations.

### **Sub-Issue (a)**

**46.** It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. When retrospective operation is not expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention to give retrospectivity to the statute or its provision. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy

sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated.<sup>25</sup>

**Clause (d) of Section 59 not retrospective**

**47.** Now we shall consider whether the legislature intended to substitute clause (d) of Section 59 with retrospective effect. Sub-section (2) of Section 1 of Act 67 of 1993<sup>26</sup> provides that “*it shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.*”

**48.** What is important is, though the legislature by sub-section (2) of Section 1 of Act 67 of 1993 enabled the Central Government to appoint different dates for different provisions of the Act to come into force, the Central Government appointed 01.10.1993 as the date for coming into force all provisions of Act 67 of 1993 *vide*

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<sup>25</sup> Zile Singh v. State of Haryana & Others, (2004) 8 SCC 1

<sup>26</sup> The Delhi Municipal Corporation (Amendment) Act, 1993

notification No. U-14011/177/93-Delhi II dated 30<sup>th</sup> September 1993 published in Delhi Gazette on 30.09.1993. The Notification dated 30<sup>th</sup> September 1993 reads thus:

“In exercise of the powers conferred by sub-section (2) of Section 1 of the Delhi Municipal Corporation (Amendment) Act, 1993 (67 of 1993), the Central Government hereby appoints the 1<sup>st</sup> day of October, 1993 as the date on which the said Act shall come into force.”

**49.** Section 43 of Act 67 of 1993, which seeks to amend Section 59 of the 1957 Act, reads as follows:

“43. In section 59 of the principal Act, -

(a) in the opening portion, the words “*other than those pertaining to the Delhi Electric Supply Undertaking*” shall be omitted;

(b) for clause (d), the following clause shall be substituted, namely:-

“(d) *subject to any regulation that may be made in this behalf, be the disciplinary authority in relation to all municipal officers and other municipal employees.*”

**50.** The existing clause (d) of Section 59, which was substituted by the afore-extracted clause, reads as under:

“(d) *exercise the powers and perform the duties conferred or imposed by or under this Act upon the General Manager (Electricity) or the General Manager (Transport) in his absence or on failure by him to exercise or perform the same.*”

**51.** Section 68 of Act 67 of 1993 amended Section 92 of the 1957 Act. Section 68 reads as follows:

“68. In section 92 of the principal Act, for sub-section (1), the following sub-section shall be substituted, namely:-

- (1) Subject to the provisions of section 89, the power of the appointing municipal officers and other municipal employees whether temporary or permanent shall vest in the Commissioner:

Provided that the power of appointing officers and other employees immediately subordinate to the Municipal Secretary or the Municipal Chief Auditor to category B posts or category C posts shall vest in the Standing Committee:

Provided further that the Standing Committee may delegate to the Municipal Secretary or the Municipal Chief Auditor the power of appointing officers and other employees immediately subordinate to the said Secretary or Auditor, to category C posts.”

**52.** Prior to the amendment, Section 92 of the 1957 Act, which is extracted in paragraph 29 above, gave power of appointment to the Commissioner to category B and C posts. Whereas the amendments brought by Act 67 of 1993, subject to the provisions of Section 89, made Commissioner not only the appointing authority of all municipal officers and other municipal employees but also their disciplinary authority with effect from

01.10.1993. There is nothing in Act 67 of 1993, or in the notification bringing it into force, which may indicate that the inserted provision shall have retrospective operation. Besides mere use of the word 'substitute' or 'substitution' as discussed above would not make the substituted provision relate back to the date of enforcement of the provision which it replaced. We, therefore, answer sub-issue (a) in the negative.

**Sub-Issue (b)**

**53.** Now, the question that arises for consideration is whether substituted clause (d) of Section 59 would be subject to the existing Regulations. The 1959 Regulations, referred to as the existing Regulations, were notified by the Central Government under Section 480 of the 1957 Act. Section 480 on the date of notification of the 1959 Regulations stood thus:

**“S.480. Supplemental provisions respecting regulations. –**

(1) Any regulation which may be made by a corporation under this Act, may be made by the Central Government within one year of the establishment of a corporation; and any regulation so made may be altered or rescinded by a corporation in the exercise of its powers under this Act.

(2) No regulation made by a corporation under this Act shall have effect until it has been approved by the Central Government and published in the Official Gazette.”

**54.** Section 98 of the 1957 Act confers power on the Corporation to make regulations. Sub-section (1) of Section 98 provides that the Corporation may make regulations to provide for any one or more of the following matters, namely:

- (a) ... ;
- (b) ... ;
- (c) ... ;
- (d) the procedure to be followed in imposing any penalty under sub-section (1) of Section 95, suspension pending departmental inquiries before the imposition of such penalty and the authority by whom such suspension may be ordered; the officer or authority to whom an appeal shall lie under sub-section (4) of that section;
- (e) any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service or persons appointed to services and posts under the Corporation and any other matter for which in the opinion of the Corporation provisions should be made by regulations.

**55.** A conjoint reading of Sections 480 and 98 makes it clear that the Central Government had the power to make regulations, within one year of the establishment of a Corporation, which the Corporation was empowered to make under the Act. The 1959 Regulations are

therefore referable to powers under Section 480 read with Section 98 (d) & (e) of the 1957 Act.

**56.** The first Proviso to sub-section (1) of Section 95 of the 1957 Act makes it clear that no officer or employee facing disciplinary action can be reduced in rank, compulsorily retired, removed or dismissed by any authority subordinate to that by which he was appointed. Thus, the power to make Regulations under Section 98(d) & (e) is circumscribed by the first proviso to sub-section (1) of Section 95.

**57.** Section 92 of the 1957 Act, subject to the provisions of Section 89, specifies the appointing authorities. Therefore, in the 1959 Regulations, Regulation 2 (a) defines ‘Appointing Authority’ as follows:

“Appointing authority in relation to a municipal officer or other municipal employee means the authority empowered by or under the Act to make appointments to the post which such officer or employee for the time being holds.”  
(Emphasis supplied)

**58.** However, the Disciplinary Authority was not specified in the unamended 1957 Act and, therefore, by virtue of sub-section (1) of Section 95, read with clauses (d) & (e) of Section 98, were to be prescribed by

regulations subject to the first proviso to sub-section (1) of Section 95. In that context, Regulation 2 (c) defines ‘Disciplinary Authority’ as under:

“Disciplinary Authority in relation to the imposition of a penalty on a municipal officer or other municipal employee means the authority competent under these regulations to impose on him that penalty.”

(Emphasis supplied)

**59.** What is important is that the requirement to specify the Disciplinary Authority in the Regulations arose because prior to its amendment by Act 67 of 1993, the 1957 Act did not specify any disciplinary authority.

**60.** By Act 67 of 1993, the Commissioner, besides being made the Disciplinary Authority was made the Appointing Authority, subject to Section 89, of all municipal officers and other employees. Additionally, Section 95 was amended, thereby providing for an appeal to the Administrator against penalty orders upon those whose appointing authority was the Commissioner. Section 70 of Act 67 of 1993, which inserts a proviso to sub-section (4) of Section 95, reads thus:

“70. In section 95 of the principal Act, in sub-section (4), the following proviso shall be inserted at the end, namely:

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‘Provided that in case of an officer or other employees appointed by the Commissioner an appeal shall lie to the Administrator.’”

**61.** Under sub-section (4) of Section 95 of the 1957 Act an officer or other employee upon whom penalty has been inflicted could appeal to such officer or authority as may be prescribed by the regulations. The 1959 Regulations vested power to impose all kinds of penalty on officers of Category A in the ‘Corporation’ and its Appellate Authority was the Central Government. Whereas for minor penalties, Deputy Commissioner was the Disciplinary Authority and Commissioner was the Appellate Authority. In so far as Category B & C posts were concerned, the Commissioner could impose all kinds of penalties and appeal therefrom lay to the Standing Committee. However, minor penalties could be imposed by the Deputy Commissioner against which appeal lay to the Commissioner. Post 1993 amendment, the power to appoint and to punish vested in the Commissioner by virtue of the amendments in Section 92 and Section 59 (d). Therefore, a proviso to sub-section (4) of Section 95 was added to declare that when an

officer or employee appointable by the Commissioner is punished, an appeal would lie to the Administrator<sup>27</sup>.

**Legislative intent was to make Commissioner the Disciplinary Authority**

**62.** In our view, nominating Commissioner as the disciplinary authority, not specified prior to Act 67 of 1993, and the other amendments declaring that Commissioner, subject to Section 89, shall be the appointing authority of all municipal officers and other municipal employees and that appeal against orders of penalty/ punishment imposed upon the employees, whose appointing authority is the Commissioner, would lie to the Administrator, make the legislative intent clear that henceforth the Commissioner shall be the Disciplinary Authority of those whom he can appoint under Section 92.

**63.** From the discussion above, it is clear that,- (a) clause (d) of Section 59, though brought in by substitution in the 1957 Act, did not relate back to the

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<sup>27</sup> Section 2(1) of 1957 Act was also amended by Act 67 of 1993 to define Administrator:  
“Administrator means the Lieutenant Governor of the National Capital territory of Delhi”

date of enforcement of the 1957 Act; rather, it came into force with effect from 01.10.1993; and (b) the legislative intent was to make the Commissioner, subject to Section 89, the Appointing Authority as well as the Disciplinary Authority of all municipal officers and other municipal employees.

**Interpretation of the phrase “may be made”**

**64.** We shall now construe the phrase “*subject to any regulation that may be made in this behalf*” employed in clause (d) of Section 59 as inserted by Act 67 of 1993. The issue under consideration is whether the declaration that Commissioner shall be the Disciplinary Authority is subject to the existing 1959 Regulations or to any regulation that may be made in future.

**65.** While construing an amendment, it must be borne in mind that the legislature knows the existing law when it enacts a particular piece of legislation.<sup>28</sup> Therefore, while construing the amended provision, if the words employed so permit, an interpretation which serves the

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<sup>28</sup> Shree Bhagwati Steel Rolling Mills v. Commissioner of Central Excise and Another, (2016) 3 SCC 643, paragraph 21

purpose of the amendment must be preferred. This we say so because the task of interpretation of a statutory provision is an attempt to discover the intention of the legislature from the language used,<sup>29</sup> and in case of doubt the Objects and Reasons of the Act should be taken into consideration.<sup>30</sup>

**66.** The High Court in the impugned order had noticed the statement of Objects and Reasons of the Amending Act and had extracted a portion thereof, which reads as follows:

“The need for reorganization of administrative and municipal set up in Delhi was being felt and the matter has been under the consideration of the Government for some time. For making an in-depth study, the Government appointed a Committee to go into the various issues connected with the administrative and municipal set up of Delhi and to recommend measures, *inter alia*, for streamlining of the municipal set up. The Committee on reorganization of the Delhi set up (popularly known as Balakrishnan Committee) went into the matter in great detail and recommended a decentralized municipal administration.”

**67.** After extracting the statement of Objects and Reasons, the High Court proceeded to analyze as under:

“25. From the above, it would be seen that the amendments to the Act were proposed in 1993, *inter alia*, on the basis of the S. Balakrishnan Committee Report - which recommended measures for, *inter alia*, streamlining of the

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<sup>29</sup> Commissioner of Income Tax, Bangalore v. J.H. Gotla, Yadagiri, (1985) 4 SCC 343, paragraph 46

<sup>30</sup> Doypack Systems (P) Ltd. v. Union of India, (1988) 2 SCC 299

municipal set up. Chapter IV of Part 1 of the S. Balakrishnan Committee Report enlists “*Drawbacks and Deficiencies in the Existing Set-up*”. In relation to the Delhi Municipal Corporation, it was, inter alia stated:

*“In 1966, when the elected representatives were made responsible to some extent for the administration of Delhi the Act did not confer powers of control or supervision over the Corporation by the Delhi Administration, despite the fact that local self-government is a transferred subject. In the view of some, this has resulted, to some extent, in the uncoordinated functioning of various services under the Corporation. It also appears that this shortcoming in the Corporation set-up coupled with the present scheme of relationship between the Commissioner of Municipal Corporation and the officials under him on the one hand and the Mayor on the other as incorporated in the Act has contributed to lack of control and coordination which are so necessary for the efficient functioning of a local body of the nature of the Municipal Corporation of Delhi. Further details of the deficiency in its working will be found in Part II of the Report.”*

26. Chapter XI in Part-II of the S. Balakrishnan Committee Report specifically deals with the Municipal Corporation of Delhi. A perusal of the said report would show that the said Committee strongly advocated and recommended the division of the Municipal Corporation of Delhi into several corporations. The Committee gave several arguments to support its said recommendations. It observed in paragraph 11.5.7, inter alia, as follows:

*“11.5.7. We will now take up for consideration the second suggestion, namely, that the monolithic Municipal Corporation of Delhi should be abolished and the municipal services entrusted to separate municipalities set up at various centres in Delhi. There are several arguments to support this, and these are briefly set out below: -*

*(i) ...; (ii) ...; (iii) ...; (iv) ...; (v) ...;*

*(vi) We have reasons to believe that, even for the most dynamic Commissioner, the administration of the Corporation has become extremely difficult. This is mainly because of hostile postures reported to have been adopted by the Councilors towards the Commissioner and the executive wing and also because of the problems posed by the staff in the Corporation who cannot, under the present conditions, be easily transferred to other places. As a result, we have been told, vested interests have developed among some of the members of the staff dealing with important segments of work who manage to maintain close contacts or influence with powerful councilors. Enforcement*

*of discipline has become difficult as a consequence, and this breeds corruption and inefficiency. If, instead of one monolithic Corporation, there are a number of smaller municipalities in Delhi at various centres, it could be possible for transfers of personnel from one place to another, thereby restricting the scope for vested interest to develop at least to some extent.”*

27. Thus, it would be seen that the S Balakrishnan Committee recognized the position that even for the most dynamic Commissioner, the administration of the Corporation had become difficult, mainly because of the hostile postures reported to have been adopted by the Councilors towards the Commissioners and the Executive Wing.

28. The Councilors form the elected/ political arm of the Corporation (See - Section 3 of the Act). The Municipal Government of the area of the Corporation vests in the corporation (See - Section 41). Sections 42 and 43 of the Act set out the obligatory and discretionary functions of the Corporation. A perusal of these sections show that the Corporation - which consists of Councilors and Alderman, is the policy making authority, whereas the Executive Authority primarily vests in the Commissioner by virtue of Section 59 of the Act.

29. The Committee also recognizes and documented the fact that under the then existing dispensation, the staff in the Corporation could not be easily transferred. The Committee took note of this situation that vested interests had developed among some members of the staff dealing with important segments of work, and they managed to maintain close contact with, and had influence over powerful Councilors. The Committee also recognized the fact that enforcement of discipline had become difficult as a consequence, and that bred corruption and inefficiency. The Committee argued that if a number of smaller municipalities are set up in Delhi at various centres, it would be possible to transfer the personnel from one place to another, thereby restricting the scope for vested interests to develop, at least, to some extent.

30. The aforesaid extracts from the report of the S. Balakrishnan Committee are extremely telling and relevant to understand the background in which the Act was amended by the Delhi Municipal Corporation (Amendment) Act, 1993. The reins of the Executive Wing of the Corporation were placed in the hands of the Commissioner.

Yet he could not function effectively due to influences of the Councilors, who provided a protective shield to the delinquent municipal officers and other municipal employees against disciplinary action. The Councilors did not permit the Commissioner to set his house in order. Evidently, the parliament recognized the serious structural deficiencies in the pre-existing Act, *inter alia*, in relation to the management and supervision of the working of the Municipal Officers and other municipal employees, and in relation to maintenance of discipline and efficiency in the Corporation. Rather than agreeing to create several smaller Corporations (as suggested by the S Balakrishnan Committee Report, *inter alia*, to deal with the aforesaid structural lacuna in the Corporation), the Parliament chose to deal with - more effectively and directly, the aforesaid problem by, firstly, vesting the power of appointment of Municipal Officers and other municipal employees (except those in respect of whom specific provision was made) in the Commissioner and, simultaneously vesting the power to act as the Disciplinary Authority - in respect of all Municipal Officers and other Municipal Employees (except the specifically excluded ones), in the Commissioner.

31. ...

32. ...

33. ...

34. The amendment, particularly to Sections 59 and 92 of the Act by the Delhi Municipal Corporation (Amendment) Act, 1993, has to be viewed in the context that it sought to remove several defects and deficiencies in the statutory scheme with regard to the hierarchical structure of the Corporation, and the functioning of the Corporation; the Commissioner, and its officers/ employees. It is the above noted mischief - as taken note of by the S. Balakrishnan Committee, which has sought to be remedied by amendment of, *inter alia*, Sections 59 (d) and 92 of the Act. It is in the aforesaid light that the powers vested in the Commissioner by the amendment to Section 59 have to be viewed and interpreted.”

**68.** Based on the purposive intent of the amending Act and the meaning of the phrase “may be made”, the High

Court held that substituted clause (d) of Section 59 would not be subject to the existing Regulations but to those that may be made in future.

**69.** At this stage, we may put on record that there is no challenge to the observations of the High Court regarding the object sought to be achieved by the Amending Act 67 of 1993.

**70.** In the aforesaid context, we shall construe the true meaning of the phrase “*subject to any regulation that may be made in this behalf*” employed by Parliament in clause (d) of Section 59, as substituted.

**71.** In ***Stroud’s Judicial Dictionary***, ‘may be’ has been interpreted thus:

“Guarantee of ‘any balance that may be due’, construed by Pollock C.B., and Martin B. (dissenting, Bramwell B.), as referring to a future balance (Broom v. Batchelor, 25 L.J. Ex. 299) Pollock CB said: “‘May be’ is in my judgment, clearly future. I have been unable to find direct authority in any dictionary, but in *Cruden’s Concordance of the Bible*, from 60 to 80 references are given, and the expression ‘may be’ is found in various parts of the Bible, nine out of 10 of which have manifestly a reference to the future, and not to the past or present, and not one is necessarily future. The *Concordance of Shakespeare* gives no references in respect to the words ‘may and be’. But as far as I can bring my knowledge of the English language to bear upon the subject, ‘may be’ is much oftener used with reference to the future than the past or the present”.

On the other hand, Bramwell B, said “‘may be’ is the present tense, and, prima facie, means ‘now may be’. It is

occasionally used in the future tense, no doubt, as, for instance, 'may be due today', or 'may be due tomorrow'. I apprehend you may use it to indicate future applications; but in that case it must be understood as applied in the present tense. A thing 'may be black', or it 'may be fit to eat', or it 'may be fit to cook'. If you use the words 'may be', without indicating the time, to my mind the expression applies to the present, or, more correctly, not to a question with reference to the future”.

“*Seemle*, a testamentary gift to such members of a class as 'may be born', has a similar meaning to one where the phrase is 'to be born'. In *Storrs v. Benbow* (22 L.J. Ch. 825), Cranworth C., said that such a gift, for children, might be interpreted in three ways--it might mean children (i) *in esse* at the date of the will, or (ii) that might come into being in the lifetime of the testator, or (iii) that might be born at any time. The last meaning must, generally, be rejected because 'a line must be drawn somewhere, otherwise the distribution of the testator's estate would be stopped and executors would not know how to act', and the amount required would be indefinite. The second interpretation, when expanded to include children *en ventre* at the death of the testator, is probably the more general meaning: 'I think it clear that the expression 'may be born' may include children already born; but I rather lean to the opinion--which I collect from the judgment in *Early v. Benbow* 2 Coll. 342, to have been that of my learned brother--that the words themselves, in the absence of the context to explain them, are to be taken as words of futurity" (per Turner L.J., *Townsend v. Early*, 3 D.G.F. & J. 11).”

**72.** In *Vijay Kumar Shukul v. Lakhpatt Ram and another*<sup>31</sup>, Pollock C.B. view in *Brown v. Batchelor* as quoted in *Stroud's Judicial Dictionary (supra)* was adopted to hold that words “such rent as may be mutually agreed upon between the parties” in sub-

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<sup>31</sup> (1990) 4 SCC 246, paragraph 7

section (4) of Section 29-A<sup>32</sup> of UP Act No.13 of 1972 envisage an agreement after the coming into force of Section 29-A. The relevant portion of the judgment is extracted below:

“7. In our opinion, the words “such rent as may be mutually agreed upon between the parties” in sub-section (4) of Section 29-A envisage an agreement with regard to rent entered by the landlord and tenant after the commencing of Section 29-A. An agreement prior to the commencement of Section 29-A would not preclude determination of rent under sub-section (5) of Section 29-A. In this context it may be mentioned that the words ‘may be’ used in sub-section (4) of Section 29-A are much oftener used with reference to the future than the past or the present. In sub-section (4) of Section 29-A the words ‘may be’ are preceded by the word ‘as’ and are followed by the words ‘mutually agreed upon’ which indicate that the words are used with reference to the future...”

(Emphasis supplied)

**73.** Having regard to the interpretation of the words ‘may be’ provided in ***Stroud’s Judicial Dictionary***, which was adopted by this Court in *Vinod Kumar Shukal*

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<sup>32</sup> Relevant provisions of Section 29-A read as under:

“29-A. ... (2) This section applies only to land let out, either before or after the commencement of this section, where the tenant, with the landlord’s consent has erected any permanent structure and incurred expenses in execution thereof.

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(4) The tenant of any land to which this section applies shall be liable to pay to the landlord such rent as may be mutually agreed upon between the parties, and in the absence of agreement, the rent determined in accordance with sub-section (5).

(5) The District Magistrate shall on the application of the landlord or the tenant determine the annual rent payable in respect of such land at the rate of ten per cent per annum of the prevailing market value of the land, and such rent shall be payable, except as provided in sub-section (6) from the date of expiration of the term for which the land was let or from the commencement of this section, whichever is later.

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(7) The provisions of this section shall have effect, notwithstanding anything to the contrary contained in any contract or instrument or in any other law for the time being in force.”

(*supra*), and the legislative intent of changing the existing administrative set up, we are of the considered view that the phrase '*subject to any Regulation that may be made in this behalf*' refers to the Regulations that are made after the substitution of clause (d) of Section 59 by Act 67 of 1993 and not the existing 1959 Regulations.

**74.** Besides, if Parliament intended to make newly inserted clause (d) subject to the existing Regulations, it would have eschewed words 'may be' and could have simply said '*subject to the regulations made under this Act*' like in Section 41 of the 1957 Act where, in sub-section (1) of Section 41, it is stated: "*Subject to the provisions of this Act and the rules, regulations and bye-laws made thereunder the municipal government of Delhi shall vest in the Corporation*'. Use of the words 'may be' before 'made' signifies the legislative intent of not making clause (d) of Section 59 subject to the existing regulations. There is another reason to support the above conclusion, which is, if we interpret clause (d) as suggested by the learned counsel for the appellant, it will render the words '*may be made*' redundant or superfluous. Any interpretation

which would render some of the words in a statutory provision nugatory and/or superfluous must be eschewed<sup>33</sup>. We are, therefore, in agreement with the view taken by the High Court. Sub -Issue (b) is decided in the negative.

**Section 24 of the General Clauses Act, 1897 would not apply**

**75.** At this stage, we would consider another argument of the petitioner i.e., Section 24<sup>34</sup> of the General Clauses Act, 1897 would come to the rescue of the 1959 Regulations since Section 24 applies even to partial repeal by amendment.

**76.** In our view, Section 24 would have no application where the regulations are inconsistent with the re-enacted statutory provision. Here, by substituted clause

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<sup>33</sup> Royal Hatcheries Pvt. Ltd. & Ors. v. State of A.P. & Ors., 1994 Supp (1) SCC 429, paragraph 8.

<sup>34</sup> **Section 24. Continuation of orders, etc., issued under enactments repealed and reenacted.**-- Where any Central Act or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or bye-law made or issued under the repealing Act or regulation, shall, so far as it is not inconsistent with the provisions re-enacted continue in force, and be deemed to have been made or issued under the provisions so re-enacted unless and until it is superseded by any appointment, notification, order, scheme, rule, form or bye law, made or issued under the provisions so re-enacted and when any Central Act or Regulation which by a notification under section 5A of the Scheduled Districts Act, 1874 (XIV of 1874), or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section.

(d) of Section 59, disciplinary authority not specified earlier in the 1957 Act has been specified subject to any Regulations that may be made in this behalf. If the intention of the legislature was not to override the existing Regulations, they might not have appointed Commissioner as the disciplinary authority or might not have used the phrase '*any Regulation that may be made*', which implies made after the substitution of clause (d). Moreover, if we accept the argument of the learned counsel for the appellant, it would be like subscribing to the idea that legislature is giving with one hand and taking it back from the other. In ***Meera Gupta (Smt.) v. State of West Bengal and others***<sup>35</sup> it was observed that the legislature cannot be accused to have indulged in trickery or futility in giving something with one hand and taking it away with the other. We, therefore, reject this submission of the appellant.

**77.** In view of the analysis above, we hold that consequent to the substitution of clause (d) of Section 59 by Act 67 of 1993, with effect from 01.10.1993,

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<sup>35</sup> (1992) 2 SCC 494, paragraph 12

notwithstanding the existing 1959 Regulations, it is the Commissioner who is the disciplinary authority of the appellant and as such competent to impose punishment of dismissal from service. Issue No.(i) is decided accordingly.

**Issue No.(ii)**

**78.** The next argument on behalf of the appellant is that if the disciplinary authority as specified in substituted clause (d) of Section 59 is not construed as subject to the existing 1959 Regulations, it would give rise to conflict between Section 59(d), as substituted, and Section 95(1) of the 1957 Act, or, in other words, render the words “*by such authority as may be prescribed by regulations*” occurring in sub-section (1) of Section 95 meaningless; therefore, to harmonize the two provisions, the disciplinary authority specified in Section 59(d), as substituted, must be construed as subject to the existing 1959 Regulations.

**79.** In ***G.P. Singh’s Treatise: Principles of Statutory Interpretation***<sup>36</sup> it is written that while construing a

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<sup>36</sup> Chapter 2 at pages 144-146, 13<sup>th</sup> Edition, published by Lexis Nexis Butterworths Wadhwa

statute, it must be read as a whole and one provision of the Act should be construed with reference to the other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the courts to avoid 'a head on clash' between two sections of the same Act and, 'whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonize'. It should not be lightly assumed that 'Parliament had given with one hand what it took away with the other'. *The provisions of one section of a statute cannot be used to defeat those of another 'unless it is impossible to effect reconciliation between them'. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction. That, effect should be given to both, is the very essence of the rule. Thus, a*

construction that reduces one of the provisions to a 'useless lumber' or 'dead letter' is not harmonious construction. To harmonize is not to destroy. A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific. The question as to the relative nature of the provisions general or special must be determined with reference to the area and extent of their application either generally or specially in particular situations. The principle is expressed in the maxims *Generalia Specialibus Non Derogant*, and *Generalibus Specialia Derogant*. If a special provision is made on a certain matter, that matter is excluded from the general provision. If two sections of an Act cannot be reconciled, as they may be absolute contradictions, it is often said that the last must prevail. But this should be accepted only in the last resort. However, a more logical is indicated by Lord Herschell, L.C.: '*You have to try and reconcile them as best as you may. If you cannot, you have to determine which is the leading provision, and which the*

*subordinate provision and which must give way to the other*'.<sup>37</sup>

**80.** In our view, there is no such conflict here because Section 95 (1) specifies punishments that may be imposed on a municipal officer or other municipal employee by such authority as may be prescribed by the Regulations. By itself it does not specify any disciplinary authority. Therefore, this provision admits of specification of the disciplinary authority by the Regulations. Regulations are piece of subordinate legislation. What can be achieved by a subordinate legislation under the Act can always be achieved by an amendment of the Act by the competent legislature. Moreover, existence of a Regulation framed under the Act cannot fetter the legislative power to amend the Act in a way that it overrides the Regulation. Interestingly, prior to Act 67 of 1993, the 1957 Act did not specify the disciplinary authority. Therefore, by virtue of Section 95(1) read with Section 98(1)(d) & (e), the Central Government, in exercise of powers under Section 480,

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<sup>37</sup> At pages 151-152 of Principles of Statutory Interpretation (supra)

notified the 1959 Regulations. But framing/ notifying the Regulations did not fetter the power of Parliament to amend the 1957 Act and thereby specify the disciplinary authority.

**81.** In the case on hand, Parliament by substituting clause (d) of Section 59 has specified the Disciplinary Authority subject to any regulation that may be made thereafter. In our view, therefore, Section 59(d), as substituted, and Section 95(1) have been crafted to operate in different fields. Section 59(d) provides as to who would be the disciplinary authority subject to any regulation that may be made in this behalf whereas Section 95 (1) specifies punishments that can be imposed on a Municipal Officer or other Municipal Employees by such authority as may be prescribed by the Regulations. So long Regulations are not framed after the amendment specifying any disciplinary authority other than the one specified in clause (d) of Section 59, punishments referred to in sub-section (1) of Section 95 can be inflicted by the disciplinary authority specified in clause (d) of Section 59. We, therefore, do not perceive any conflict

arising between clause (d) of Section 59, as substituted, and Section 95 (1) of the 1957 Act by not making the provisions of clause (d) subject to the existing 1959 Regulations. Issue no.(ii) is answered accordingly.

**Issue No.(iii)**

**82.** In view of our answers to Issue Nos.(i) and (ii), we find ourselves in agreement with the impugned decision of the High Court and, therefore, Issue No.(iii) is rendered academic, which we do not propose to address. Suffice to observe that any view taken to the contrary is hereby overruled. Moreover, we may put on record that decision rendered in **G.S. Matharoo (supra)** was challenged before this Court through Special Leave to Appeal (Crl.) Nos. 7932-7933/2012 which was dismissed *vide* order dated 26.08.2014 by leaving all questions of law open for consideration. Therefore, the law laid down in **G.S. Matharoo** (supra) has not been affirmed by this Court.

**CONCLUSIONS**

**83.** Based on the analysis above, we conclude as under:

- (a) Clause (d) of Section 59 of the 1957 Act, as substituted by Act No. 67 of 1993, came into force on 01.10.1993 and the substituted provision did not relate back to the date of enforcement of the provision which it replaced.
- (b) The phrase '*subject to any Regulation that may be made in this behalf*' used in the substituted clause (d) of Section 59 of the 1957 Act refers to the Regulations that may be made after the substitution i.e., 01.10.1993, and not the existing 1959 Regulations.
- (c) In consequence, the Commissioner was the Disciplinary Authority on the date when the appellant was dismissed from service and as such competent to pass the dismissal order.
- (d) Law declared to the contrary by the High Court in ***G.S. Matharoo (supra)*** is overruled.

### **ORDER**

**84.** In view of our conclusions above, the impugned judgment of the High Court does not merit interference. The appeal is, accordingly, dismissed. Interim order, if

any, stands discharged. Pending application (s), if any, also stand disposed of.

.....**J.**  
**(Sanjay Karol)**

.....**J.**  
**(Manoj Misra)**

**New Delhi;**  
**JUNE 17, 2026**