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

% **Reserved on: 6th October, 2022**
Pronounced on: 23rd December, 2022

\+ W.P.(C) 3522/2014

SIDDHARTH RAO ... Petitioner

Through: Mr. Ravinder K. Yadav, Mr. Vinay Mohan Sharma, Mr. Baljeet Singh, Ms. Arti Anupriya, Mr. Vineet Yadav, Mr. Kartikey, Ms. Charu Sharma, Mr. Raghav Anthwal, Mr. Abhimanyu Yadav and Mr. Paras Juneja, Advocates

versus

THE GOVERNMENT OF NCT OF DELHI & ORS ...Respondents

Through: Mr. Yeeshu Jain, ASC with Ms. Jyoti Tyagi, Advocate alongwith Mr. Raj Kumar, Sr. Assistant

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant Civil Writ Petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India praying *inter alia* as under:

> *"a) quashing the impugned order dated 06.12.2013 passed by respondent no. 1&2 thereby terminating Petitioner from his service and holding all his appointments in Delhi Legislative*

Assembly illegal and also order dated 17.05.2010 thereby relieving the petitioner from the post of secretary, Delhi Legislative Assembly; and

b) Issue appropriate writ of mandamus thereby directing the respondents to forbear from acting upon the impugned order dated 17.05.2010 and 06.12.2013, and to treat petitioner as having continued in services throughout and to pay his salary and allowances and to give all other consequential benefits of continuity in service treating the said orders as non-est."

FACTUAL MATRIX

2. The matter has arisen out of the facts as detailed hereunder:

a. Petitioner was employed as Publicity Officer with SSB/Central Secretariat, Directorate General of Security, R.K. Puram, Delhi.

b. On 16.12.1998, the then Speaker of Delhi Legislative Assembly (hereinafter referred as "DLA") wrote to Secretary Services, Delhi Government, recommending that the services of the petitioner may be obtained on deputation. Pursuant to which the Petitioner was appointed as Officer on Special Duty (hereinafter referred to as "OSD") to the Speaker.

c. The Speaker, vide letter dated 29.12.1998, wrote to Secretary, Cabinet Secretariat for services of petitioner on deputation. Accordingly, the Cabinet Secretariat relieved the petitioner to join DLA on 31.12.1998.

d. The petitioner joined DLA as Joint Secretary (LA) on 01.01.1999 and on 25.02.1999, vide letter No. 18-A(1)/99-LAS(Estt.)/1376/84, terms and conditions of deputation against the post of Joint Secretary was issued upon sanction of Lieutenant Governor (hereinafter referred to as "Lt. Governor"). Consequently, the pay of petitioner was fixed by DLA Secretariat vide order dated 22.03.1999 in the pay scale of 12,000-375-16,500 wef 01.01.1999.

e. On 21.08.2001, the Speaker, DLA requested the Prime Minister to transfer the petitioner permanently in DLA. Subsequently, on 21.10.2001, the Cabinet Secretariat conveyed to DLA of cadre clearance of Ministry of Home Affairs for permanent absorption of the petitioner.

f. On completion of deputation period on 31.12.2001, petitioner was permanently absorbed in DLA vide order dated 07.11.2001 of the DLA Secretariat. The name of the petitioner was struck off from his parent cadre with the approval of Ministry of Home Affairs consequent to his permanent absorption in DLA.

g. On 05.04.2002, terms and conditions of the permanent absorption of the petitioner as Joint Secretary (LA) was settled by Ministry of Home Affairs.

h. On 13.11.2002, opinion was sought by Speaker, DLA from Lok Sabha to promote the petitioner to the post of Secretary. On 02.12.2002, the Lok Sabha Secretary General opined that corresponding to the view that executives should have no direct control over the recruitment and conditions of service of the employees of the secretariat. However, the letter imposed the discretion on the Speaker, DLA to take the final view.

i. On 02.12.2002, the petitioner was promoted as Secretary.

j. The petitioner was relieved from services on 17.05.2010, and was terminated from the services on 06.12.2013.

k. The said order of termination has been challenged herein on the grounds of want of compliance to Principles of Natural Justice and the lack of competence of the authority.

SUBMISSIONS

3. Learned counsels for the parties have raised their contentions and submissions in writing as well as through oral submissions during the proceedings. In response to the writ petition, counter affidavit has been filed by the respondent no. 1 and rejoinder thereto has been filed by the petitioners. Written Submissions have also been filed by the respective parties. The entirety of the pleadings on the record have been perused and the submissions made therein by the parties are detailed hereunder.

Petitioner's Submissions

4. Learned counsel for the petitioner submitted that the petitioner was Secretary, DLA was relieved by the Services Department, Government of NCT of Delhi, vide Impugned Order dated 17.05.2010 without assigning any reason. This order was challenged by petitioner by filling W.P.(C) 3364/2013 before this Court.

5. It is submitted that during the pendency of the said Writ Petition Secretary Services, Government of NCT of Delhi terminated the services of petitioner vide Impugned Order dated 06.12.2013 when Model Code of Conduct was in progress vide notification F. No. CEO/COE/102(66)/ 2013/45689-45817 notified by the Office of the Chief Electoral Officer, Delhi on 04.10.2013. That the election process continued till 11.12.2013. Order dated 06.12.2013 of termination of service of the petitioner was passed without conducting any Inquiry in violation of Article 311 of the Constitution of India. The W.P.(C) 3364/2013 was disposed of with liberty to take recourse to an appropriate remedy, vide Order dated 22.01.2014. The respondents in complete disregard to the law, even stopped the complete salary of the petitioner w.e.f. 01.06.2010.

6. It is submitted that the present Writ Petition has been filed challenging Order dated 06.12.2013 and 17.05.2010 passed by respondent no. 2, who is neither the Appointing Authority nor Disciplinary Authority of petitioner.

7. It is submitted that the services of the petitioner on deputation basis were sought by then Speaker, DLA to take up the position of Officer on

Special Duty to the Speaker with a rank equivalent to Joint Secretary at DLA Secretariat, which was an ex-cadre, sanctioned vacant post. At that time petitioner was working as Publicity Officer (Senior Class 1 Officer) with Cabinet Secretariat, Directorate General of Security, R K Puram, New Delhi. Petitioner was relieved to take up the position at DLA vide letter dated 31.12.1998. On 01.01.1999 Petitioner accordingly joined Delhi Legislative Assembly Secretariat on deputation basis.

8. It is submitted that consequent to sanction of the Lt. Governor, Delhi, approval of terms and conditions of the deputation issued vide letter No. 18-A(1)/99-LAS(Estt.)/1376/84 dated 25.02.1999, pay of the petitioner as Joint Secretary (LA) was fixed by Delhi Legislative Assembly Secretariat vide order dated 22.03.1999. Letter dated 25.02.1999 was forwarded to Deputy Secretary, Finance, Government of NCT of Delhi, Deputy Secretary, Services, Government of NCT of Delhi, the Pay and Accounts Officer-IX, Government of NCT of Delhi, along with others. In the said letter it was mentioned as under:

> *"... I am directed to convey the sanction of Lt. Governor, Delhi to the deputation of Sh. Siddharath Rao, Publicity Office in the SSB, Directorate to the vacant post of Joint Secretary, Legislative Assembly Secretariat, Delhi in the pay scale of Rs. 12,000-375-16,500 w.e.f.01.01.1999..."*

9. It is submitted that the then Speaker, on the basis of performance of the petitioner, requested the then Prime Minister of India to permanently transfer the services of petitioner from Cabinet Secretariat, Director General of Security, SSB Directorate to Delhi Assembly Secretariat vide letter dated 21.08.2001.

10. It is submitted that consequent upon Cadre Clearance from the Ministry of Home Affairs for permanent absorption of petitioner as Joint Secretary (LA), petitioner was permanently absorbed in the Delhi Legislative Assembly on completion of deputation period on 31.12.2001 vide order dated 07.11.2001 of DLA Secretariat.

11. It is submitted that the name of the petitioner was struck off from his parent cadre, Cabinet Secretariat, Directorate General of Security, with the approval of Ministry of Home Affairs, consequent to his permanent absorption in Delhi Vidhan Sabha w.e.f 01.01.2002 under the provisions of Rule 26 (2), CCS (Pension) Rules, 1972 vide Order dated 05.02.2002. Terms and Conditions of permanent absorption of petitioner were settled vide Order dated 05.04.2002 of Ministry of Home Affairs, Government of India.

12. It is submitted that the then Speaker of Delhi Assembly sought opinion from the Lok Sabha regarding promotion of new Secretary, when the then Secretary, S.K. Sharma, had to be repatriated to Lok Sabha after completion of his deputation period. The Lok Sabha through its Secretary General gave opinion vide letter dated 02.12.2002. In the said letter, it was opined that Executive should have no direct control over the recruitment and conditions of service of the employees of the Secretariat, it was further opined as under:

> *"7. Against the afore stated backdrop, I fully share your perception for appointment of an Officer with sufficient background in running the Legislature as the Assembly Secretary. In the circumstances, I have no hesitation in recommending the first option proposed by you i.e., to promote*

> *and appoint an officer as Assembly Secretary from the Assembly Secretariat who has got sufficient experience of working for the Legislature. However, as the Presiding officer of the Legislature, it is for you to take the final view in the matter."*

13. It is submitted that consequent to the approval of Speaker and repatriation of S.K. Sharma, the petitioner was promoted and directed to take over the charge of post of Secretary, DLA with immediate effect vide Order dated 02.12.2002. It is submitted that the Speaker is the head of the Legislative Assembly and this principle finds incorporation in the Constitution of India in the form of Article 187.

14. It is submitted that no consultation of the UPSC is required in case of any officer who is already a member of an All-India Service or a Central Service under Regulation 3(b). A perusal of Regulation 5(I)(a) indicates that it shall be necessary to consult the UPSC in regard to the making of any Order imposing penalty of removal from service, dismissal from service. It is also submitted that the Ministry of Home Affairs, Government. of India has conveyed sanction for the creation of the posts for the Secretariat of the Legislative Assembly of NCT of Delhi. Petitioner in the year 1999 was posted as a Publicity Officer in Cabinet Secretariat in the then pre-revised scale of Rs. 10,000- 15,200 (S-19) applicable to Group A services. On 16.12.1998, the then Speaker of DLA wrote to Secretary, Services, Delhi Government recommending that the services of the Petitioner may be obtained as Secretary to the Speaker on deputation. The pay-scale of the post of Secretary to the Speaker was Rs. 6,500-10,500 which was lowered to the scale of Rs. 10,000-15,400 being

drawn by the Petitioner in SSB. Thereafter, the Speaker wrote to Secretary, Cabinet Secretariat requesting to release the Petitioner immediately to join Legislative Assembly as OSD to the Speaker. Accordingly, on 01.01.1999 the Petitioner submitted his joining report as OSD to the Speaker on being relieved by the SSB vide Order dated 31.12.1998.

15. The Speaker on 21.08.2001 wrote to then Prime Minister of India requesting him to transfer the services of the Petitioner from Cabinet Secretariat so that his services as OSD to the Speaker and Joint Secretary (LA) could continue in the Legislative Assembly Secretariat. Joint Deputy Director (EA), Cabinet Secretariat, Office of the Directorate General of Security vide letter dated 29.10.2001 conveyed to the Legislative Assembly Secretariat regarding the Cadre clearance for the permanent absorption of the Petitioner against the post of Joint Secretary (LA) and OSD to the Speaker, DLA in the Delhi Legislative Assembly Secretariat, subject to the conditions contained therein. Orders of permanent absorption of Petitioner were issued by the then Secretary, Delhi Legislative Assembly Secretariat on 07.11.2001 stipulating that Petitioner will stand permanently absorbed on completion of his deputation on 31.12.2001. The Cabinet Secretariat struck off the Petitioner's name from the strength of SSB w.e.f 01.01.2002.

16. It is submitted that the post of Joint Secretary (LA), Delhi Legislative Assembly is an Ex-Cadre post and Head of Department, i.e., Secretary (LA) is Competent Authority in respect of Ex-Cadre post. Order dated 07.11.2001 of DLA Secretariat was passed for permanent

absorption of the Petitioner as Joint Secretary (LA), DLA. On 02.12.2002, the then Secretary, S.K.Sharma, Delhi Legislative Assembly Secretariat was ordered to repatriate to his parent department, i.e. Lok Sabha Secretariat under the orders of the then Speaker, wherein also ordered that the petitioner will take over the charge of the post of Secretary, DLA with immediate effect.

17. It is submitted that the Petitioner filed Rejoinder Affidavit stating therein that the spirit of Article 98 and 187 of the Constitution of India will apply to the Legislative Assembly of Delhi. The interpretation of a provision of the Constitution cannot be against the spirit and purpose of the provision. Post of Assembly Secretary and other Ex-Cadre posts like Joint Secretary, Legislation, reporters etc. are created and sanctioned exclusively for the Assembly as these posts are neither transferable nor Executive have any control on them. The control is only of the Speaker, even in case of other posts which are borrowed from other departments of the Government for administrative purpose, are also part of DLA Secretariat and they work only under the control and command of the Speaker, till their attachment. Even Marshalls deployed from Delhi Police remain and function under the control of Speaker till they are working with the Assembly.

18. It is stated that no officer of the Government of NCT of Delhi can be appointed to the post of the Secretary, Assembly, there are notings to this effect in the files related to the creation of the post of the Assembly Secretary, appointment of S.K.Sharma and Petitioner to the post of Assembly Secretary and in the file related to the removal of P.N.Gupta

from the post of Assembly Secretary. It is also submitted that the UPSC has not been consulted in appointment of any of the Assembly Secretary till date. P.N. Gupta, Assembly Secretary, retired w.e.f. 28.02.1999 as his service period was curtailed under the orders of the Speaker. Thereby, establishing the fact that authority of the Speaker is supreme and final in case of services of the Assembly Secretary. S.K.Sharma, Former Secretary Delhi Legislative Assembly was appointed by the then Speaker, objections were raised in the appointment of. S.K.Sharma by the Government of NCT of Delhi, including Chief Secretary and Lt. Governor. These objections were overruled by the Speaker as per the provisions of Article 187 of the Constitution of India. Appointing Authority for the staff of Delhi Legislative Assembly is Speaker and not the Service Department, Government of NCT of Delhi.

19. It is submitted that the Petitioner was permanently absorbed in the DLA only after the approval of the Competent authority, i.e., Cabinet Secretariat with Cadre clearance by the Ministry of Home Affairs, Government of India. DLA Secretariat is under the complete control and command of the Speaker, whereas the Department of Legislative Affairs is a department of Government of NCT of Delhi allocated to one of the ministers only to transact and communicate business of the government like introduction of Bills etc. with the Assembly Secretariat. No minister can control the functions of the Legislative Assembly either directly or indirectly, in no way a Minister of the government, including the Law Minister or the Parliamentary Affairs Minister of the Government, cannot be considered a Minister In-charge of the Assembly/Parliamentary

Secretariat, as the same would be against the spirit of Article 98 and 187 of the Constitution.

20. It is submitted that no alleged Audit Report was ever tabled on the floor of the Delhi Legislative Assembly. Appointment of Petitioner was made in consultation with Secretary General, Lok Sabha.

21. It is further submitted that the Show Cause Notice dated 14.03.2013 is illegal and void-ab-initio, as show cause notice can only be issued either by the Appointing Authority or the Disciplinary Authority, and in the case of Petitioner, Speaker, Delhi Legislative Assembly is the appropriate Authority and the respondent no. 2 has no jurisdiction.

22. It is submitted that the Impugned Orders dated 06.12.2013 and 17.05.2010 are liable to be set aside as they are contrary to statutory provisions and violative of Article 14, 16, 19, 21, 187, 311 of the Constitution of India; Respondent No. 2 is neither Appointing Authority nor Disciplinary Authority of Petitioner; under transaction of business rules, DLA is not subject matter allotted to any minister. Respondent 1 and 2 have no role in the administration of DLA more particularly in case of Ex-cadre post; Petitioner was a permanent employee of DLA; and, Speaker is the only Appointing and Disciplinary Authority of staff of the Legislative Assembly.

23. It is submitted that the Respondent No. 2 never objected to the transfer of the Petitioner on deputation to the Delhi Legislative Assembly, and his subsequent joining on 01.01.1999, Order dated 07.11.2001 and his subsequent permanent absorption on 31.12.2001. Respondents are

barred under law of limitation, delay and latches and on the Principle of Estoppel.

24. Hence, the Writ Petition of the Petitioner may be allowed in terms of the prayer clause thereby setting aside the order dated 17.05.2010 & 06.12.2013 with all consequential benefits including reinstatement in service to the post of secretary Delhi Legislative Assembly as he was holding on 17.05.2010 and protecting pay scale, grade, and promotion benefits avenues, along with cost.

Respondents' Submissions

25. Learned ASC appearing for the Respondents submitted that the petitioner was relieved from officiating post of the Secretary, Delhi Legislative Assembly vide order dated 17.5.2010 and after giving Show Cause Notice dated 14.3.2013, the petitioner was terminated vide order dated 6.12.2013. Both the orders dated 17.5.2010 and 6.12.2013 are under challenge in the present writ petition. It is pertinent to mention here that against the Show Cause Notice dated 14.3.2013 informing about the misconduct, the petitioner raised no dispute nor offered any explanation nor even attended the personal hearings granted to him on 05.08.2013 and 19.08.2013 respectively.

26. It is submitted that the core question is whether the Speaker of Legislative Assembly of Delhi has any power to recruit OSD on non-existent post, to grant absorption to the post of Joint Secretary and further appointment to the post of Secretary more-so in the absence of any

Recruitment Rules for the post of Joint Secretary and Secretary in the DLA.

27. It is submitted that the powers provided under Article 187 of Constitution of India to the States for having separate secretarial staff are not provided to the National Capital Territory of Delhi which is not a State in terms of Schedule-I, Part-I but is a Union Territory in terms of Schedule-I, Part-II of the Constitution of India. The Article 187, thus, has no applicability to the Legislative Assembly of Union Territory i.e NCT of Delhi. It is submitted that unlike in States, the posts can be created in the Legislative Assembly of NCT of Delhi with the approval of Lt. Governor, Delhi, who is the Competent Authority by virtue of delegation of powers in this regard under Article 309 of the Constitution.

28. It is submitted that since the constitution of Legislative Assembly w.e.f 14.12.1993, there is no separate secretarial cadre or any sanction for creation of separate secretarial cadre for DLA and Speaker or any other authority in the DLA has no competence to either create a post, or make appointment to the post including the post of Secretary.

29. It is submitted that for all appointments to Central Civil Services, Class I and Central Civil Posts, Class I, the Appointing Authority was the President of India who delegated such powers to Chief Commissioner of Delhi vide Ministry of Home Affairs Order dated 13.07.1959 and amended on 05.08.1963. The said powers, conferred upon Chief Commissioner, Delhi were transferred to be exercised by Lt. Governor of Delhi vide Gazette Notification dated 7.9.1966.

30. It is submitted that even after the enactment of Government of National Capital Territory of Delhi Act, 1991, this position regarding appointment to Group-A post continued to vest with Lt. Governor, Delhi. Hence for all practical purposes, the Lt. Governor is the Appointing Authority for all appointments to Central Civil Services, Class I and Central Civil Posts, Class I.

31. It is submitted that the President of India in exercise of powers under clause (3) of Article 320 of Constitution of India has framed UPSC (Exemption from Consultation) Regulation, 1958 wherein the Group 'A' posts have not been exempted. Thus, for appointment to the post of Joint Secretary and Secretary in Delhi Legislative Assembly, the consultation with the UPSC was must and the appointment by way of absorption of the petitioner to the post of Joint Secretary and promotion to the post of Secretary is contrary to law.

32. It is submitted that having joined the SSB as Publicity Officer on 08.12.1997, the petitioner was already on probation for a period of two years which were to expire on 08.12.1999. During the probation period, the officer is not considered as in regular service of the Government and only CCS (Leave Rules) are applicable. The transfer of such an officer on deputation as OSD, that too on non-existent post, without his being on regular service of the Government is bad in law.

33. It is submitted that the post of OSD to Speaker was a non-existent post which was never sanctioned or created in the Delhi Legislative Assembly and appointment to the non-existent post is not the

appointment to the service. The Speaker vide letter dated 16.12.1998 written to Services Department first attempted to seek the services of the petitioner as Secretary in Delhi Legislative Assembly and finding the reply dated 23.12.1998 from Services Department that petitioner was already withdrawing higher pay scale i.e (10,000 - 15,400) than that of Secretary i.e (6500 -10,500), the request was returned since there was no vacant post in the scale of Rs. 10,000- 15,400 and it was conveyed that the petitioner may be taken in some other department on equivalent pay scale.

34. It is submitted that second attempt was made immediately vide letter dated 29.12.1998 whereby the Speaker sought the services of the petitioner as OSD with a rank equivalent to the Joint Secretary in Delhi Legislative Assembly in the pay scale of Rs. 12000 – 16500. This time, the said letter was sent to Central Secretariat with the statement that *"The Delhi Legislative Assembly after obtaining due consent and approval of the Government of NCT of Delhi…"*. It is submitted that it was a blatant lie in the mouth of the Speaker or the person playing behind him.

35. It is submitted that vide this letter, the Speaker unilaterally created the post of OSD, fixed the salary and the emoluments unto himself while making a false statement that due consent and approval has been obtained from GNCTD of Delhi. Without any approval and/or consultation from the Lt. Governor, without bringing this fact to the notice of Services Department, the petitioner was relieved on 31.12.1998, i.e., within one day after letter dated 29.12.1998 and the very next day i.e., on 1.1.1999, the petitioner joined the non-existent post of OSD in Delhi Legislative

Assembly. It is reiterated that neither the competent authority, i.e, Lt. Governor nor the Services Department nor the administrative department of the DLA i.e, Law & Justice, was made aware of this posting and relieving from SSB to DLA.

36. It is submitted that it is strange enough to observe that even before completion of 3 years of deputation which was to complete on 31.12.2001 from 1.1.1999, the petitioner gave his willingness for absorption to the post of Joint Secretary much in advance and a note dated 20.08.2001 was forwarded to the petitioner himself for approval. Without there being any sanctioned post of Joint Secretary, the petitioner granted approval for his own absorption as Joint Secretary on 21.08.2001 however when the file was down marked on 22.08.2001, the Office Superintendent (Admin) sought for copy of the Recruitment Rules of the post of Joint Secretary. Without waiting for the formal procedure to be followed, having due knowledge that there are no Recruitment Rules for the post of Joint Secretary, a letter dated 21.08.2001 was written to the Prime Minister of India seeking permanent absorption of petitioner in the DLA.

37. It is submitted that without being intimated, involved, consented and at the back of the competent authority, i.e, Lt. Governor, the SSB HQ vide letter dated 29.10.2001 allowed permanent absorption of petitioner in DLA whose deputation period as OSD was pending till 31.12.2001. Vide Order dated 07.11.2001, the DLA issued an order, much in advance, that petitioner will be permanently absorbed as Joint Secretary on completion of his deputation period ending on 31.12.2001.

38. It is submitted that on 02.12.2002, the petitioner was given the charge of Secretary with immediate effect. It is reiterated that since there were no Recruitment Rules to the post of Joint Secretary and the Secretary, the absorption on the post of Joint Secretary and the Speaker giving the charge of Secretary to the petitioner with upgraded pay scales is bad in law. In the absence of Recruitment Rules, the post of Group-A cannot be created unilaterally without the competent authority and the concurrence of UPSC must have been taken for Class 'A' posts for granting re-structured pay scale, if any.

39. It is submitted that the petitioner has filed additional documents to contend that Lt. Governor has granted sanction for terms and conditions of deputation of petitioner and argued that the deputation to the post of OSD was to the knowledge of the Lt. Governor and consent was accorded. It is submitted that the letter dated 25.02.1999 issued by the DLA does not match with its office noting as the file was never presented before the Lt. Governor for granting sanction for terms and conditions of deputation of petitioner. Hence, the said contention written in the letter appears to be a forged and fabricated. It is reiterated that the Lt. Governor did not grant any sanction for settling the terms and conditions of deputation of petitioner.

40. It is submitted that the CAG vide its report dated 12.1.2005 raised objections regarding the ad-hoc appointment made de-hors the procedure and rule. The CAG also observed the reply of DLA regarding Audit query No. 29 dated 01.12.2004 that post is created by the Lt. Governor who is competent to create post. CAG also observed the contradictory

stand of the DLA that in view of the exigencies of work of legislature, the competent authority i.e the Speaker/HOD made these appointments on purely temporary, emergent and ad-hoc basis till regular arrangements were made after finalization of the Recruitment Rules. The CAG informed the DLA that no appointment to any post on ad-hoc basis be made on the ground that no Recruitment Rules exist for the same. The office of Lt. Governor was again not informed and made aware of any such query or the reply so furnished by the DLA.

41. It is submitted that the facts thus revealed the deputation of the petitioner was made on the non-existent post of OSD, after completion of probation period as OSD, he was immediately absorbed on the post of Joint Secretary and immediately within a year, he was given the charge of Secretary with all upgradation in pay scales. Nowhere the approval was taken from competent authority for such deputation as OSD, absorption to Joint Secretary and promotion to Secretary, the appointment was vitiated by fraud and having seen all these aspects and gone through the documents, the Lt. Governor granted approval for issuance of Show Cause Notice on 23.01.2013. In order to make the petitioner duly aware of the seriousness of his misconduct, not only the judgments with citations were referred but the petitioner was duly informed that petitioner is not entitled to claim protection under Article 311 (2) of the Constitution of India. The Show Cause Notice provided for grant of personal hearing after the petitioner furnished his reply. The Show Cause Notice was issued pursuant to the detailed note put up by the Services Department and having considered the gravity of the matter, the Lt.

Governor accorded its permission to issue Show Cause Notice on 23.01.2013.

42. It is submitted that the petitioner preferred not to reply except making little submissions regarding jurisdiction while returning the original Show Cause Notice to the Services Department and stated that he will submit an elaborated report to Lt. Governor on each and every issue mentioned in the Show Cause Notice. No response was given to the Lt. Governor nor the petitioner claimed any protection under Article 311(2) of Constitution but by his conduct, accepted the contentions made in the Show Cause Notice. In such circumstances, the file was again sent to the Lt. Governor as to the grant of personal hearing which was to be offered after petitioner's furnishing reply. The Lt. Governor granted approval for grant personal hearing even in the absence of reply to the Show Cause Notice and despite grant of personal hearing twice, the petitioner preferred not to avail the same, hence as of now, the petitioner cannot contend that principles of natural justice has been violated and/or he is entitled to any protection under Article 311(2) of the Constitution of India. It is submitted that the detailed note was put up by the Services Department on 09.10.2013, the file was referred to the Chief Secretary who referred the same to Vigilance Department on 11.10.2013 and the note was approved by the Vigilance Department on 15.10.2013. It is submitted that complete material, facts and records were placed before the Lt. Governor and having gone through the records and satisfying itself about the gravity of the facts, the Lt. Governor approved for issuance of termination order on 02.12.2013.

43. It is submitted that in ***Rajinder Kishan Gupta v. Lt. Governor,* 2009 SCC OnLine Del 2799**, a Division Bench of this Court made observations regarding the satisfaction of the Lt. Governor while granting approval for dispensing with inquiry under Section 5 of the LA Act, 1894. It was observed that:

> *"...In any case, it was for the Lt. Governor to decide on the basis of the material made available to him on file, as to whether dispensing with inquiry was to be ordered or not. The Court, in exercise of writ jurisdiction under Article 226 of the Constitution would not interfere with the subjective satisfaction of the Lt. Governor and cannot go behind it, so long as it finds that the relevant material was placed before him at the time he applied his mind and took appropriate decision. Even if two views were possible, on the basis of the material placed before the Lt. Governor, the Court would not interfere with the decision taken by him unless it was shown that the decision was mala fide or was based on extraneous consideration. In the present case, there are no allegation of malafide either against the Lt. Governor or against any particular officer of the respondents and the decision is not based upon any extraneous or irrelevant consideration."*

44. In ***Union of India v. Praveen Gupta,* (1997) 9 SCC 78**, the Hon'ble Supreme Court has observed that:

> *"It is now settled legal position that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. Therefore, there was no need to pass any reasoned order to reach the conclusion that there is urgency so as to dispense with inquiry under section 5A in exercise of power under section 17(4)".*

45. It is submitted that there was no practice or procedure for anyone, including the Speaker, to write successive recommendation letters dated 19.05.2010, 14.06.2010, 07.09.2010, 08.06.2011 and 15.02.2011.

46. On the arguments of the petitioner that OSDs are still functioning in the government, it is submitted that in whichever department, the OSDs are functioning, owing to the exigencies of the department, the OSDs are sent on deputation for limited period, with the prior approval of the competent authority and are withdrawing their original pay scale from their respective parent department. Nowhere such a fraud has been played in the government system where the OSD was sought without the approval of the appointing authority i.e the Lt. Governor, the pay scale was restructured unilaterally equivalent to the Joint Secretary, the intimation was not even given to the controlling department of Delhi Legislative Assembly i.e Law and Justice, without the Recruitment Rules, the absorption was made on the post of Joint Secretary and without the Recruitment Rules, the post of Secretary was grabbed with further restructuring of the pay scales.

47. It is submitted that all this was done in a hurried manner, with ulterior motive, de-hors the rules, without any approval by the competent authority and by suppressing material facts. The conduct of the petitioner was unbecoming of a government servant. It is submitted that there was no stage for initiating an inquiry as having received the Show Cause Notice about his misconduct, the petitioner did neither dispute nor give any explanation but admitted the same by way of his conduct. Hence, the service of the petitioner was rightly terminated by the competent

authority, i.e, Lt. Governor and the Speaker of the Delhi Legislative Assembly have no right to create posts, appoint officers and grant promotion de-hors the rules.

48. Therefore, the instant petition is devoid of merits and is liable to be dismissed.

ISSUES

49. Having heard the learned counsels for the parties and perused the material on record, this Court has framed the following questions for consideration:-

1) Whether the Speaker of Legislative Assembly of Delhi has any power to recruit OSD, to grant absorption to the post of Joint Secretary and further to appointment to the post of Secretary in the absence of any Recruitment Rules for the post of Joint Secretary and Secretary in Delhi Legislative Assembly?

2) Having answered the above, whether the appointment of the petitioner was legal?

3) Whether the termination in the instant case was just and proper in accordance with law?

ANALYSIS

50. For a better appreciation of the case at hand, it is pertinent to peruse and analyse the provisions of law and their background, before delving deeper into the facts of the case.

ISSUE I: HISTORY OF DELHI LEGISLATURE, CONSTITUTIONAL PROVISIONS & ANALYSIS

51. The political and administrative set up of Delhi has undergone various changes after independence. Pre-independence Delhi, had a number of Municipalities and its administration was being looked after by Chief Commissioner. Post-independence Delhi, was given the status of Part-C State. The Delhi State Legislative Assembly came into being on 7th March, 1952 under the Government of Part-C States Act, 1951. There was a provision for a Council of Ministers to aid and advice the Chief Commissioner in the exercise of his functions in relation to matters in respect of which the State Assembly was given powers to make laws. However, legislative powers granted to Part-C States were limited and the legislative powers of Delhi Assembly had been further curtailed as is evident from the proviso to Section 21 of the Part-C States Act, 1951.

52. In pursuance of the recommendations of the State Reorganisation Commission (1955), Delhi ceased to be a Part-C State with effect from 1st November, 1956. The DLA and the Council of Ministers were abolished. Thus, Delhi became a Union Territory under the direct administration of the President. In accordance with another recommendation of the Commission, the Delhi Municipal Corporation Act, 1957 was enacted constituting Municipal Corporation for the whole of Delhi with members elected on the basis of adult franchise.

53. At that juncture, there was considerable public pressure and demand for providing a democratic set up and a responsive administration

for Delhi. In partial fulfillment of this demand and on the basis of recommendations of Administrative Reforms Commission, the Delhi Administration Act, 1966 was enacted. The Act provided for a deliberative body called Metropolitan Council having recommendatory powers. At the apex, there was Lt. Governor or Administrator who was appointed by the President of India under Article 239 of the Constitution. There was an Executive Council consisting of one Chief Executive Councillor and three Executive Councillors. The Metropolitan Council was a unicameral democratic body consisting of Members, majority of which were elected and a few were nominated by the President.

54. The Metropolitan Council system suffered from many inherent lacunas, including lack of legislative powers, and mere advisory role in governance of Delhi. The demand for a full-fledged State Assembly with Council of Ministers to aid and advice the Lt. Governor continued. Accordingly, on 24th December 1987, the Government of India appointed the Sarkaria Committee (later on called Balakrishan Committee) to make recommendations regarding the administration of Union Territory of Delhi.

55. The Committee submitted its report on 14th December 1989 and recommended that Delhi should continue to be a Union Territory but should be provided with a Legislative Assembly and a Council of Ministers responsible to such Assembly with appropriate powers to deal with matters of concern to the common man. The Committee also recommended that with a view to ensure stability and permanence, the

arrangements should be incorporated in the Constitution to give the National Capital a special status among the Union Territories.

56. In accordance with the recommendation of the Balakrishnan Committee, the Parliament passed the Constitution (Sixty-ninth Amendment) Act, 1991, which inserted the new Articles 239AA and 239AB in the Constitution providing, *inter alia*, for a Legislative Assembly for Delhi. Another comprehensive legislation subsequently passed by Parliament called the Government of National Capital Territory of Delhi Act, 1991, supplements the Constitutional provisions relating to the Legislative Assembly and the Council of Ministers and matters related thereto.

57. The Statement of Objects and Reasons of the Constitution (Sixty-ninth Amendment) Act, 1991 is reproduced hereunder:

> *"The question of re-organisation of the Administrative set-up in the Union territory of Delhi has been under the consideration of the Government for some time. The Government of India appointed on 24-12-1987 a Committee to go into the various issues connected with the administration of Delhi and to recommend measures inter alia for the streamlining of the administrative set-up. The Committee went into the matter in great detail and considered the issues after holding discussions with various individuals, associations, political parties and other experts and taking into account the arrangements in the national Capitals of other countries with a federal set-up and also the debates in the Constituent Assembly as also the reports by earlier Committees and Commissions. After such detailed inquiry and examination, it recommended that Delhi should continue to be a Union territory and provided with a Legislative Assembly and a Council of Ministers responsible to such*

> *Assembly with appropriate powers to deal with matters of concern to the common man. The Committee also recommended that with a view to ensure stability and permanence the arrangements should be incorporated in the Constitution to give the National Capital a special status among the Union territories.*
>
> *2. The Bill seeks to give effect to the above proposals."*

58. It may also be useful to refer to the Parliamentary Debate of Rajya Sabha when the Sixty-Ninth Amendment of the Constitution was tabled. The Minister concerned stated as follows:

> *"At no time in the past has it ever been considered possible to make Delhi a full-fledged State. The Constituent Assembly went into the matter in great depth. It was observed during debates that "in the capital city of a large federation like ours the arrangement should be that in the area over which the federal Government has to function daily, practically in all details, that Government should have unfettered power, power which is not contested by another and subordinate Legislature." The States Re-organisation Committee and all other committees have reached the same conclusion. Several important national and international institutions like the President, the Parliament, the Supreme Court, etc., as well as all foreign diplomatic missions, international agencies etc. are located in Delhi. It is also a place to which high dignitaries from other nations pay official visits frequently and it is in the national interest that the highest possible standards should be maintained in the administration of the National Capital. It is also in the national interest that the Centre should have control over the National Capital in all matters irrespective of whether they are in the State field or Union field.*

If Delhi is made, a full-fledged State it would be constitutionally impossible for, the Central Government to intervene in any matter relatable to the State List, such as public order, public health, essential supplies municipal services, etc. This complete constitutional prohibition will make it impossible for the Central Government to discharge its national and international responsibilities in relation to Capital, if Delhi becomes a full State. The Balakrishnan Committee has gone into the matter in depth and has given several reasons why Delhi, cannot be made a full-fledged State. It has categorically stated that it will be against the national international responsibility a relation State."

59. Article 239, as applicable for administration of Union Territories, reads as under:

"239. Administration of Union territories.—

(1) Save as otherwise provided by Parliament by law, every Union territory shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify.

(2) Notwithstanding anything contained in Part VI, the President may appoint the Governor of a State as the administrator of an adjoining Union territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers."

60. Article 239AA reads as under:

"239AA. Special provisions with respect to Delhi.

(1) As from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991, the Union territory of Delhi shall be called the National Capital Territory of Delhi (hereafter in this Part referred to as the National Capital

Territory) and the administrator thereof appointed under article 239 shall be designated as the Lieutenant Governor.

(2) (a) There shall be a Legislative Assembly for the National Capital Territory and the seats in such Assembly shall be filled by members chosen by direct election from territorial constituencies in the National Capital Territory.

(b) The total number of seats in the Legislative Assembly, the number of seats reserved for Scheduled Castes, the division of the National Capital Territory into territorial constituencies (including the basis for such division) and all other matters relating to the functioning of the Legislative Assembly shall be regulated by law made by Parliament.

(c) The provisions of articles 324 to 327 and 329 shall apply in relation to the National Capital Territory, the Legislative Assembly of the National Capital Territory and the members thereof as they apply, in relation to a State, the Legislative Assembly of a State and the members thereof respectively; and any reference in articles 326 and 329 to "appropriate Legislature" shall be deemed to be a reference to Parliament.

(3) (a) Subject to the provisions of this Constitution, the Legislative Assembly shall have power to make laws for the whole or any part of the National Capital Territory with respect to any of the matters enumerated in the State List or in the Concurrent List in so far as any such matter is applicable to Union territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2 and 18.

(b) Nothing in sub-clause (a) shall derogate from the powers of Parliament under this Constitution to make laws with respect to any matter for a Union territory or any part thereof.

(c) If any provision of a law made by the Legislative Assembly with respect to any matter is repugnant to any provision of a law made by Parliament with respect to that matter, whether passed before or after the law made by the Legislative Assembly, or of an earlier law, other than a law made by the Legislative Assembly, then, in either case, the law made by Parliament, or, as the case may be, such earlier law, shall prevail and the law made by the Legislative Assembly shall, to the extent of the repugnancy, be void:

Provided that if any such law made by the Legislative Assembly has been reserved for the consideration of the President and has received his assent, such law shall prevail in the National Capital Territory:

Provided further that nothing in this sub-clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislative Assembly.

(4) There shall be a Council of Ministers consisting of not more than ten per cent. of the total number of members in the Legislative Assembly, with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion:

Provided that in the case of difference of opinion between the Lieutenant Governor and his Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the Lieutenant Governor in any case where the matter, in his opinion, is so urgent that it is necessary for him to take

immediate action, to take such action or to give such direction in the matter as he deems necessary.

(5) The Chief Minister shall be appointed by the President and other Ministers shall be appointed by the President on the advice of the Chief Minister and the Ministers shall hold office during the pleasure of the President.

(6) The Council of Ministers shall be collectively responsible to the Legislative Assembly.

(7) (a) Parliament may, by law, make provisions for giving effect to, or supplementing the provisions contained in the foregoing clauses and for all matters incidental or consequential thereto.

(b) Any such law as is referred to in sub-clause (a) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending, this Constitution.

(8) The provisions of article 239B shall, so far as may be, apply in relation to the National Capital Territory, the Lieutenant Governor and the Legislative Assembly, as they apply in relation to the Union territory of Puducherry, the administrator and its Legislature, respectively; and any reference in that article to "clause (1) of article 239A" shall be deemed to be a reference to this article or article 239AB, as the case may be."

61. On a reading of Article 239 and Article 239AA of the Constitution together with the provisions of the Government of National Capital Territory of Delhi Act, 1991 and the Transaction of Business of the Government of NCT of Delhi Rules, 1993, it becomes manifest that Delhi

continued to be a Union Territory even after the Constitution (Sixty-ninth Amendment) Act, 1991 inserting Article 239AA making special provisions with respect to Delhi.

62. Having perused the above, it is pertinent to refer to Article 309 of the Constitution, which reads as under:

> *"309. Recruitment and conditions of service of persons serving the Union or a State.—*
>
> *Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:*
>
> *Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act."*

63. As provided under Article 309 of the Constitution as well as Entry 70 of List I and Entry 41 of List II, there are only two kinds of services, one of the Union and the other of each State. The appropriate legislature may regulate the recruitment and conditions of service of person so appointed to the public services and posts in connection with the affairs

of the Union or any of the State. Therefore, the services under the NCT of Delhi are necessarily the services of the Union and they are expressly covered only by Entry 70 of List I. The Legislative Assembly of NCT of Delhi has no legislative competence to legislate in respect of any subjects covered under Entries 1, 2 and 18 of State List and Entry 70 of the Union List. In view of Section 41 of the Government of National Capital Territory of Delhi Act, 1991, the Lt. Governor is required to act in his discretion in respect of these matters and not on the aid and advice of the Council of Ministers.

64. Furthermore, sub-clause (a) of clause (3) of Article 239AA of the Constitution also qualifies the matters enumerated in the State List or in the Concurrent List as applicable to Union Territories. Under the said provision, a reference may be made to Entry 41 of the State List which deals with the State Public Services, State Public Service Commission which evidently do not exist in the NCT of Delhi.

65. Additionally, the Union Territories Cadre consisting of Indian Administrative Services and Indian Police Services personnel is common to Union Territories of Delhi, Chandigarh, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli, Puducherry and States of Arunachal Pradesh, Goa and Mizoram which is administered by the Union through the Ministry of Home Affairs. Similarly, DANICS and DANIPS are common services catering to the requirement of the Union Territories of Daman & Diu, Dadra Nagar Haveli, Andaman and Nicobar Islands, Lakshadweep including the NCT of Delhi which is also administered by the Central Government through

the Ministry of Home Affairs. As such, it is clear that the National Capital Territory of Delhi does not have its own State Public Services. Hence, it is well established that the matters connected with 'Services', especially as applicable in the instant matter to the position of Secretary, DLA are relatable to Entry 41 of List-II of the Constitution and fall outside the purview of the Legislative Assembly of NCT of Delhi.

66. The petitioner has *inter alia* placed reliance on Article 187 of the Constitution, which is reproduced hereunder:

> *"187. Secretariat of State Legislature.—*
>
> *(1) The House or each House of the Legislature of a State shall have a separate secretarial staff:*
>
> *Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.*
>
> *(2) The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State.*
>
> *(3) Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause."*

67. Article 187 of Constitution of India applies to the States for having separate secretarial staff and cannot be made applicable to the National Capital Territory of Delhi which is not a State but is a Union Territory under the Constitution of India. The Article 187, thus, has no applicability to the Legislative Assembly of NCT of Delhi. The posts can be created in Legislative Assembly of NCT of Delhi with the approval of Lt. Governor, Delhi, who is the Competent Authority by virtue of delegation of powers in this regard under Article 309 of the Constitution. As already discussed, the DLA has no separate secretarial cadre and as such, either the Speaker or any authority of the DLA has no competence either to create such a post or to male appointments to such post.

68. In *Arguendo,* even if it is assumed that Article 187 of the Constitution is applicable to the NCT of Delhi, still as is evident, the Legislature can regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff by making a law and not by executive fiat. Until a provision is made by the Legislature, the Lt. Governor, in such a case, after consultation with the Speaker of the Legislative Assembly, may make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff. Therefore, despite assuming the applicability of the Article 187 to the DLA, the Speaker cannot be said to be vested with powers to make appointments to its Secretariat.

69. The Department of Personnel and Training, Government of India vide the notification No. 13012/1/98-Estt.(D) dated 20.04.1998 has notified that all civil posts under the Union shall be classified as under:-

a. Posts carrying a pay or scale of pay with a maximum of not less than Rs. 13,500 shall be classified as Group 'A' posts, and

b. Posts carrying a pay or scale of pay with a maximum of not less than Rs. 9,000 but less than Rs. 13,500 shall be classified as Group 'B' posts.

70. The pay scale for both the posts, i.e., of OSD (non-existent) and Joint Secretary was Rs. 12000-16500 and even that of the post of Secretary was Rs. 18,400-22,400. Therefore, all these posts were Group 'A' posts as classified under Rule 6 of CCS (CCA) Rules, 1965.

71. Rule 8 of the CCS (CCA) Rules, 1965, framed under the proviso to Article 309 of the Constitution, prescribes the 'Appointing Authority' for appointment to Group 'A' posts, i.e., the President of India. The proviso therein vests the President with the powers to delegate its powers. In exercise of this power, the President, vide Ministry of Home Affairs order No. 25/35/55-Estt.(A) dated 13.07.1959 (as amended by Order No. F.7/26/63-Estt.(A) dated 05.08.1963) delegated his powers to Chief Commissioner and ordered that "*all appointments to Central Civil Service and Posts Class 1 (Group-A) under Delhi, Manipur and Tripura Administration shall be made by the Chief Commissioner of Delhi, Manipur and Tripura respectively*".

72. The said powers conferred upon the Chief Commissioner, Delhi were then transferred to be exercised by Lt. Governor of Delhi vide Gazette Notification dated 07.09.1966. With the enactment of

Government of National Capital Territory of Delhi Act, 1991, this position regarding appointment to Group-A posts continued to vest with Lt. Governor, Delhi. Hence, the Lt. Governor is the Appointing Authority for all appointments to Group 'A' posts in Delhi.

73. In the instant case, after having analysed the constitutional provisions, it is concluded that appointments to the position of Secretary, DLA fall outside the purview of the office of Speaker, DLA who, to the most, could have a say to the extent of being consulted and even not that of his concurrence. The appropriate Appointing Authority is the Lt. Governor of the NCT of Delhi.

74. Therefore, the first issue being that whether the Speaker of DLA has any power to recruit OSD, to grant absorption to the post of Joint Secretary and further appointment to the post of Secretary in the absence of any recruitment rules for the post of Joint Secretary and Secretary in DLA is answered accordingly in the aforesaid terms.

ISSUE II: LEGALITY OF APPOINTMENT OF PETITIONER

75. Having answered the above, the next issue that arises for adjudication is whether the appointment of the petitioner was legal. As is evident form a perusal of the record, and as averred by the respondents, in none of the appointments of petitioner against the abovementioned posts, the Lt. Governor's consent and approval for such appointment was obtained and therefore, these appointments were *per se* illegal and *void ab-initio* being in violation of the Rules made under Article 309 of the

Constitution and also because the non-compliance goes to the root of all these illegal appointments.

76. Without proceeding further, merely on the ground of the appointment of the petitioner not being carried out by the appropriate Appointing Authority, the said appointment is invalidated and becomes illegal. Be it as it may, other averments and factors are being analysed regarding his appointment to the posts of OSD, Joint Secretary and the Secretary in DLA.

77. As submitted, one post of Joint Secretary in DLA Secretariat was created by Government of India, Ministry of Home Affairs vide their letter No. U 14014/2/93-Delhi dated 29/3/1995. One post of Secretary in the Assembly Secretariat was also created by the Government of India, Ministry of Home Affairs vide their letter No. U 14014/2/93-Delhi dated 06.10.1995. Most of the posts in DLA Secretariat were sanctioned and created by Government of India, Ministry of Home Affairs during the year 1995. The post of OSD to Speaker was a non-existent post which was never sanctioned or created in the DLA and hence, the appointment to a non-existent post cannot be considered to be an appointment to the service.

78. It is also a settled position of law that appointments made without following the due process or rules for appointment do not confer any right on the appointee. Unless the appointment is in terms of the relevant rules and after a proper competition amongst qualified persons, the same would not confer any right on the appointee. For regular vacancies to be filled

up, regular process of recruitment must be followed in compliance with the constitutional scheme. The mandate of Article 309 of the Constitution of India has been flouted in all the appointments of petitioner in the DLA Secretariat and this infirmity goes to the root of all these appointments.

79. Article 320 of the Constitution of India deals with the functions of the UPSC and mandates its consultation for methods of recruitment to civil services and civil posts. Relevant portion of the Article 320(3) reads as under:

> *(3) The Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted—*
>
> *(a) on all matters relating to methods of recruitment to civil services and for civil posts;*
>
> *(b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;*
>
> ***
>
> *Provided that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor, as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted."*

80. The aforementioned proviso empowers the President to make regulations specifying the matters in which it shall not be necessary to consult the UPSC. In exercise of these powers, the President has made Regulations called "Union Public Service Commission (Exemption from Consultation) Regulation, 1958" notified vide notification No. 18/451-Estt.(B) dated 01.09.1958. Clause 2 of these Regulations provides that it shall not be necessary to consult the Commission with regard to any matter mentioned in clause (a) and (b) of clause (3) of Article 320 of the Constitution in the case of the services and posts specified in Schedule 1 to these Regulations. In the Schedule 1, none of the posts of the Secretariat of DLA, which falls under the purview of Commission, is mentioned. Therefore, USPC has to be consulted on all appointments against the Group 'A' and Group 'B' posts made by adopting any method or mode i.e. through direct recruitment, deputation, absorption, contract, promotion etc.

81. In the instant case, the consultation with the UPSC was must but not undertaken at the time of appointment by way of absorption of the petitioner to the post of Joint Secretary and promotion to the post of Secretary and hence, the said appointments are contrary to law.

82. Further, this Court finds force in the argument that having joined the SSB as Publicity Officer on 08.12.1997, the petitioner was already on probation for a period of two years which was yet to expire on 08.12.1999. During the probation period, the officer is not considered to be in regular service of the Government and only CCS (Leave Rules) are applicable. The transfer of such officer on deputation as OSD that too on

a non-existent post, without his being on regular service of the Government is bad in law. The appointment of the petitioner being against a non-existent post and not being appointment to the service, much less substantive appointment to the service, could not have been appointment in the absence of the post.

83. In ***State of Punjab v. Jagdip Singh,*** **AIR 1964 SC 521,** the Hon'ble Supreme Court adjudicated upon the issue that the PEPSU Government confirmed the petitioners as Tehsildars, against the Punjab Tehsildari Rules, and the successor government rectified the mistake. The Hon'ble Court observed as under:

> *"In our opinion where a government servant has no right to a post or to a particular status, though an authority under the government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."*

84. It is also clear that no absorption against any post can be made unless there are Recruitment Rules for the post and further that such Rules prescribe 'absorption' as mode of recruitment to the post. Further absorption can be made only with the concurrence of UPSC which shall give concurrence only if the initial selection on deputation basis had also been made with its concurrence. In the instant case, all these conditions have been flouted.

85. The technical resignation of the petitioner was accepted only in February, 2002 as communicated vide letter dated 05.02.2002 by the Assistant Director (EA-II), (S.S.B.). The Deputy Secretary (Admin) and

Secretary, DLA Secretariat recorded in their notes on the file on 31.10.2001 and 06.11.2001 respectively, requesting the then Speaker for permanent absorption of the petitioner, even predating the acceptance of the petitioner's technical resignation by the authorities in the SSB i.e. his parent Department.

86. The record reveals that the then Speaker approved the proposal at his own level, though there were no Recruitment Rules in existence for the post of Joint Secretary nor any consultation with UPSC was carried out which is the constitutional body and consultation with which is mandated under Article 320 of the Constitution. The consent and approval of Lt. Governor, who is the Appointing Authority was also not obtained. Thereafter, orders of permanent absorption were issued by the then Secretary, DLA Secretariat on 07.11.2001, stipulating that the petitioner will stand permanently absorbed on completion of his deputation on 31.12.2001. Once again, copies of this order were neither endorsed to the Lt. Governor, or to the Services Department or to the Legislative Affairs Department of the Government of NCT of Delhi to ensure that the illegalities of this appointment are not brought to the notice of the Departments/Government including the cadre controlling Department of Legislative Affairs.

87. On 02.12.2002, the then Secretary, DLA Secretariat was ordered to be repatriated to his parent department i.e., Lok Sabha Secretariat under the orders of the then Speaker. It was also ordered that "*Sh. Rao will assume the charge of the post of Secretary, Delhi Legislative Assembly with immediate effect*". Subsequently, vide order dated 12.12.2002, the

pay of the petitioner was fixed in the scale of Secretary i.e. Rs. 18,400-500-22,400.

88. During the CAG Audit for the period from April 1999 to March 2004, objections were raised on the illegal appointment of the petitioner. The CAG vide its report dated 12.01.2005 raised objections regarding the *ad-hoc* appointment made *de-hors* the procedure and rules and observed the contradictory stand of the DLA that in view of the exigencies of work of legislature, the competent authority i.e the Speaker/HOD made these appointments on purely temporary, emergent and *ad-hoc* basis till regular arrangements were made after finalization of Recruitment Rules. The CAG made it clear that no appointment may be made to any Group 'A' post on an *ad-hoc* basis on the ground that no Recruitment Rules exist for the same.

89. It is also evident that the petitioner has filed additional documents to contend that Lt. Governor has granted sanction for terms and conditions of deputation of petitioner and argued that the deputation to the post of OSD was to the knowledge of the Lt. Governor and consent was accorded. However, the Respondents have submitted that the said letter dated 25.02.1999 issued by the DLA does not match with its office noting as the file was never presented before the Lt. Governor for granting sanction for terms and conditions of deputation of petitioner hence the said contention written in the letter appears to be a forged and fabricated. It is, thus, clear that the Lt. Governor did not grant any sanction for settling the terms and conditions of deputation of petitioner.

90. The facts, thus, reveal that the deputation of the petitioner was made on the non-existent post of OSD, after completion of probation period as OSD, he was immediately absorbed on the post of Joint Secretary and immediately within a year, he was given the charge of Secretary with all upgradation in pay scales. Nowhere the approval was taken from competent authority for such deputation as OSD, absorption to Joint Secretary and promotion to Secretary, the appointment was vitiated by fraud and is void *ab initio.*

91. Issue III is, therefore, answered in the aforesaid terms.

ISSUE III: LEGALITY OF THE TERMINATION ORDER

92. The only moot issue that now remains for consideration of this Court is whether the termination in the instant case was just and proper and in accordance with law.

93. It has been stated by learned counsel for the Respondents that the deputation of the petitioner was made on the non-existent post of OSD, and after completion of probation period as OSD, he was immediately absorbed on the post of Joint Secretary and immediately within a year, he was given the charge of Secretary with all upgradation in pay scales.

94. As stated by the learned counsel for the respondents at bar, the said notice was issued pursuant to the detailed note put up by the Services Department and after having considered the gravity of the matter the Lt. Governor accorded its permission to issue the same.

95. After considering the facts and suspecting that the appointment was vitiated by fraud and having seen all these aspects as well as after having gone through these documents, the first Show Cause Notice was issued to the Petitioner on 23.01.2013 as approved by the Lt. Governor. The petitioner was duly informed that he was not entitled to claim protection under Article 311 (2) of the Constitution of India. The notice also provided for grant of personal hearing once the petitioner had furnished his reply.

96. Another Show Cause Notice dated 14.03.2013 is on record and has been perused by this Court. The said notice includes the instances of irregularities, illegalities, misrepresentations in the appointment of the petitioner and the petitioner was directed to show cause within a period of 15 days as to why his services and appointments should not be terminated.

97. The petitioner, while returning the original notice to the Services Department, sent his reply dated 02.04.2013 agitating therein the question of jurisdiction and stating that he would submit an elaborate report to the Lt. Governor on each and every issue mentioned in the said notice. However, no such response/report was given to the Lt. Governor nor the petitioner claimed any protection under Article 311(2) of the Constitution before the Lt. Governor.

98. Again, it is submitted by the learned ASC for the respondents that on the question of the grant of personal hearing which was to be offered after petitioner's furnishing reply, the file was sent to the Lt. Governor.

The Lt. Governor granted approval for grant of personal hearing even in the absence of reply to the notice.

99. Accordingly, the petitioner vide a letter dated 05.08.2013 was provided with an opportunity of personal hearing on 13.8.2013 stating therein that it would be the last opportunity being granted to him for personal hearing. The petitioner chose not to appear for personal hearing.

100. It was again decided that another final opportunity be granted to the petitioner for personal hearing. Vide a letter dated 19.8.2013, the petitioner was granted opportunity for final hearing scheduled on 30.8.2013. Again, the petitioner did not choose to appear for the personal hearing to explain his case.

101. As has been submitted the detailed note was put up by the Services Department on 09.10.2013, the file was referred to the Chief Secretary who referred the same to Vigilance Department on 11.10.2013 and the note was approved by the Vigilance Department on 15.10.2013. It is submitted that complete material, facts and records were placed before the Lt. Governor and having gone through the records and satisfying itself about the gravity of the facts, the Lt. Governor approved for issuance of the termination order on 2.12.2013.

102. Despite being granted the opportunity to respond to the Show Cause Notice as well as the opportunity of personal hearing twice, the petitioner preferred not to avail the same, hence at this juncture, the petitioner cannot agitate that the principles of natural justice have been violated to his disadvantage. Therefore, the said defense fails.

103. As has been relied upon by the Respondents, in the case of ***Rajinder Kishan Gupta v. Lt. Governor*, 2009 SCC OnLine Del 2799**, this Court has observed about the satisfaction of the Lt. Governor while granting approval for dispensing with inquiry under Section 5 of the Land Acquisition Act, 1894. Although not directly applicable to the instant facts and circumstances, a reference can be placed on it. It was observed that:

> *"...In any case, it was for the Lt. Governor to decide on the basis of the material made available to him on file, as to whether dispensing with inquiry was to be ordered or not. The Court, in exercise of writ jurisdiction under Article 226 of the Constitution would not interfere with the subjective satisfaction of the Lt. Governor and cannot go behind it, so long as it finds that the relevant material was placed before him at the time he applied his mind and took appropriate decision. Even if two views were possible, on the basis of the material placed before the Lt. Governor, the Court would not interfere with the decision taken by him unless it was shown that the decision was mala fide or was based on extraneous consideration. In the present case, there are no allegation of malafide either against the Lt. Governor or against any particular officer of the respondents and the decision is not based upon any extraneous or irrelevant consideration."*

104. In the case of ***Union of India v. Praveen Gupta*, (1997) 9 SCC 78**, the Hon'ble Supreme Court has observed that:

> *"It is now settled legal position that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. Therefore, there was no need to pass any reasoned order to reach the conclusion that there is urgency so as to dispense with inquiry under section 5A in exercise of power under section 17(4)".*

105. On the other hand, the judgment of ***P.K. Bhandari v. The Hon'ble Speaker Lok Sabha,*** **1997 SCC OnLine Del 447,** relied upon by the petitioner is not applicable to the facts of the present case as the said judgment relates to the powers exercised by the Speaker of Lok Sabha while appointing Secretary General in Lok Sabha, as governed under Lok Sabha (Recruitment and conditions of Service Rules) 1955. The same is the case for the judgment in ***Bhagvan Singh Guleria v. Union of India,*** **2011 SCC OnLine Del 2250,** where the issue was the interpretation of Article 98 of Constitution which provides for powers of Speaker of Lok Sabha and Chairman of Rajya Sabha under Article 98(3). In the present case, the powers are not exercised either by Speaker of Lok Sabha or the Chairman of Rajya Sabha under Article 98(3) but by the Speaker of Delhi Legislative Assembly.

106. In ***State of Punjab v. Jagdip Singh, (Supra)*** the issue before the Hon'ble Supreme Court was that the PEPSU Government had confirmed the petitioners as Tehsildars against the Punjab Tehsildari Rules and the successor government had rectified the mistake. The Hon'ble Court observed that:

> ***"8.*** *The question then is as to the effect of a void order of confirmation. When an order is void on the ground that the authority which made it had no power to make it cannot give rise to any legal rights, and as suggested by the learned Advocate-General, any person could have challenged the status of the respondents as Tahsildars by instituting proceedings for the issue of a writ of quo warranto under Article 226 of the Constitution. Had such proceedings been taken it would not have been possible for the respondents to justify their status as permanent Tahsildars and the High Court would have issued a writ of quo warranto depriving the respondents of their status*

> *as permanent Tahsildars. Now, where the Government itself realises that an order made by an authority under the Government is void, is it powerless to do anything in the matter? Is it bound to give effect to a void order and treat as confirmed Tahsildars persons who have no legal right to be treated as confirmed Tahsildars? Is it not open to the Government to treat the confirmation as void and notify the persons affected and the public in general of the fact of its having done so by issuing a notification of the kind it made on October 31, 1957? In our opinion where a government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give he will not in law be deemed to have been validly appointed to the post or given the particular status…"*

107. It is also a settled position of law that when the appointment is void *ab-initio*, no enforceable legal right can be accrued to the petitioner on basis of illegal appointments and the petitioner cannot claim observance of same procedure towards termination of service of regularly appointed persons.

108. The petitioner has also sought the protection of Article 311 of the Constitution, which is reproduced hereunder:

> ***"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State**.— (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.*
>
> *(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been*

informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

109. It is a settled position of law that when an appointment is not an appointment in the eye of law, the appointee cannot claim right to the post and also cannot claim the constitutional guarantee provided under Article 311 of the Constitution of India. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in ***R. Vishwanatha Pillai***

***v. State of Kerala*, (2004) 2 SCC 105,** the relevant paragraphs of which are reproduced hereunder:

> ***"15.*** *...His appointment was no appointment in the eye of the law. He cannot claim a right to the post as he had usurped the post meant for a reserved candidate by playing a fraud and producing a false caste certificate. Unless the appellant can lay a claim to the post on the basis of his appointment he cannot claim the constitutional guarantee given under Article 311 of the Constitution. As he had obtained the appointment on the basis of a false caste certificate he cannot be considered to be a person who holds a post within the meaning of Article 311 of the Constitution of India. Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit or illegality, such an appointment is no appointment in law and in such a situation Article 311 of the Constitution is not attracted at all."*

110. Therefore, if the very appointment to the post is vitiated by fraud, forgery or illegality, it would necessarily follow that no constitutional rights under Article 311 can possibly be invoked. In such a situation, the

question is whether the person concerned is at all a civil servant of the Union and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry door into the civil service of the Union is barred, the cloak of protection under Article 311 cannot be available.

111. Even if, *in arguendo*, the said Article is attracted and applied in the instant case, still the termination order cannot be invalidated, since:

a. as regards the protection under clause (1), the termination order not dismissed or removed by an authority subordinate to that by which he was appointed. In fact, it was by the appropriate appointing authority who terminated the petitioner.

b. as regards the second protection under clause (2), the termination as followed by Show Cause Notices being issued to the petitioner as well as opportunity of personal hearings being grated to the petitioner.

c. In any case, as far as the non-conducting of inquiry is concerned, under proviso (b) of clause 2, and clause (3), the question of reasonable practicability of holding an inquiry is left on the judgment of the appropriate authority and his decision has been declared as final in this regard.

112. The entire saga of the series of appointments, absorption and promotion of the petitioner is tainted with irregularities and illegalities,

de-hors the rules or due process of law, without approval by the competent authority and is vitiated. In view of the irregularities and illegalities therein, Show Cause Notices were invoked against him as ordered by the Lt. Governor being the appropriate appointing authority and even the opportunity of being heard was granted to the petitioner. Even after having received the Show Cause Notices about his misconduct, the petitioner neither disputed nor gave any explanation to defend himself. Hence, the service of the petitioner was rightly terminated by the competent authority, i.e., the Lt. Governor.

CONCLUSION

113. In view of the aforesaid analysis, it is evident that the appointment of the petitioner is in the teeth of law and cannot be saved. Still for the sake of argument, even if the termination order is tested on the anvil of violation of Principles of Natural Justice, there are documents on record to establish that the petitioner was granted ample opportunities by way of replying to the Show Cause Notice as well by way of personal hearings granted to him, which he chose to turn a blind eye and a deaf ear to. Therefore, the petitioner's termination cannot be termed as illegal.

114. Hence, in light of the foregoing discussion and analysis, there are no cogent reasons to entertain the petition and allow the prayers sought therein.

115. In the aforesaid terms, the instant petition stands dismissed.

116. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 23, 2022
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