

COMMITTEE ON SUBORDINATE LEGISLATION

(SIXTH LOK SABHA)

SEVENTEENTH REPORT

Presented on the 22nd March, 1979



**LOK SABHA SECRETARIAT
NEW DELHI**

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Corrigenda to the Seventeenth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) presented to the House on the 22nd March, 1979.

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COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION (1978-79)

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SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

REPORT

I

INTRODUCTION

I, the Chairman of the Committee on Subordinate Legislation, having been authorised by the Committee to present the Report on their behalf, present this their Seventeenth Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on the 25th January and 27th February, 1979.

3. The Committee considered and adopted this Report at their sitting held on the 21st March, 1979. The Minutes of the sittings, which form part of the Report, are appended to it.

4. A statement showing the summary of recommendations/ observations of the Committee is also appended to the Report.

II

(i) The Lakshadweep Administration Information Officer (Class II Post) Recruitment Rules, 1975 (G.S.R. 91 of 1976); and

(ii) The Research Officer (Lakshadweep Administration Recruitment Rules, 1976 (G.S.R. 992 of 1976).

5. It was observed that the Lakshadweep Administration Information Officer (Class II Post) Recruitment Rules, 1975 and the Research Officer (Lakshadweep Administration) Recruitment Rules, 1976 did not contain the usual provision regarding 'saving' clause.

6. Normally the recruitment rules contain a 'Saving' Clause on the following lines regarding reservations and other concessions provided to the Scheduled Castes/Tribes:

“Saving:—Nothing in these rules shall affect reservations and other concessions required to be provided for the Scheduled Castes, the Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard.”

7. The Ministry of Information and Broadcasting and the Ministry of Home Affairs with whom the matter was taken up have amended the rules to the desired effect vide G.S.R. No. 1679 dated the 13th November, 1976 and G.S.R. 1974 dated the 17th December, 1977 respectively.

8. The Committee note with satisfaction that, on being pointed out, the Ministries of Information and Broadcasting and Home Affairs have issued amendments to the Lakshadweep Administration Information Officer (Class II Post) Recruitment Rules, 1975 and the Research Officer (Lakshadweep Administration) Recruitment Rules, 1976 by inserting therein the 'saving clause' regarding reservations and other concessions to the Scheduled Castes/Tribes. The Committee, however, desire that the Ministries concerned should be careful in such matters in future and that they should also ensure that prior to the issuance of the rules, they are complete in all respects.

III

- (i) The Andaman and Nicobar Islands [Junior Analyst (Work Study) Chief Commissioner's Secretariat] Recruitment Rules, 1975 (G.S.R. 13 of 1976);
- (ii) The Deputy Collector in Lakshadweep Administration Recruitment Rules, 1976 (G.S.R. 581 of 1976); and
- (iii) The Research Officer (Lakshadweep Administration) Recruitment Rules, 1976 (G.S.R. 992 of 1976).

9. The disqualification clause of the rules under reference reads as under:—

- “(1) No person who has more than one wife living or who having a spouse living marries in any case in which such marriage is void by reason of its taking place during the lifetime of such spouse, shall be eligible for appointment to the said post; and
- (2) No woman whose marriage is void by reasons of the husband having a wife living at the time of such marriage or who has married a person who has a wife living at the time of such marriage, shall be eligible for appointment to the said post:

Provided that the Central Government may if satisfied that there are special grounds for so ordering, exempt any person from the operation of this rule.”

10. Normally, the disqualification clause in recruitment rules reads as under:

“Disqualification—No person,

- (a) who has entered into or contracted a marriage with a person having a spouse living, or
- (b) who, having a spouse living, has entered into or contracted a marriage with any person,

shall be eligible for appointment to post:

Provided that the Central Government may, if satisfied that such marriage is **permissible under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing,** exempt any person from the operation of this rule.”

11. It was observed that in the disqualification clause as usually worded, one of the conditions for grant of exemption was that “such marriage is permissible under the personal law applicable to such person and the other party to the marriage”. There was no mention of this condition in the rules under reference.

12. The Ministry of Home Affairs with whom the matter was taken up have amended the rules to the desired effect (*vide* G.S.R. No. 1335 dated 18-9-1976, Notification No. U-14012/1/77-ANL dated 21-11-1977 and G.S.R. No. 1674 dated 17-12-1977).

13. The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have amended the disqualification clause of all the above three Recruitment Rules on usual lines.

IV

THE ALLOTMENT OF GOVERNMENT RESIDENCES (GENERAL POOL IN DELHI) SECOND AMENDMENT RULES, 1976 (S.O. 229-E of 1976).

14. The Allotment of Government Residences (General Pool in Delhi) Second Amendment Rules, 1976 were published in the Gazette of India, Part II, Section 3(ii), dated the 25th March, 1978 and were made effective from the 1st January, 1976. The explanatory memorandum appended to the rules reads as under:—

“The Amendment* to the second proviso to sub-rule (5) of new S.R. 317-E-3, is of a clarifying nature and seeks to make the proviso conform to the orders issued earlier with effect

*Appendix III.

from 1st January, 1976, by the Central Government in O.M. No. 12031(1)/74-Pol.II, dated the 9th September, 1975, read with Office Memorandum of even number dated the 15th November, 1975 and the 9th December, 1975, in regard to allotment of Government residences to its employees owning residential accommodation at their places of posting. Retrospective effect to the amendment as from 1st January, 1976, when S.R. 317-E-3, aforesaid came into force, has, therefore, become necessary to make the rule consistent with the earlier orders."

15. The Committee have repeatedly emphasised that if in any particular case the rules have to be given retrospective effect in view of unavoidable circumstances, a clarification should be given, either by way of an explanation in the rules or in the form of a foot-note to the relevant rules to the effect that no one will be adversely affected as a result of the retrospective effect given to the rules.

16. The explanatory memorandum appended to the rules under reference did not contain the above clarification.

17. The matter was referred to the Ministry of Works and Housing and their attention was drawn to para 10 of the Second Report of the Committee on Subordinate Legislation (Fourth Lok Sabha) where they have recommended as under:—

"The Committee are not satisfied with the explanation of the Ministries concerned and are of the view that normally all rules should be published before the date of their enforcement or they should be enforced from the date of their publication. The Ministries/Departments should take appropriate steps to ensure the publication of rules before they come into force. However, if, in any particular case, the rules have to be given retrospective effect in view of any unavoidable circumstances, a clarification should be given, either by way of an explanation in the rules or in the form of a foot note to the relevant rules to the effect that no one will be adversely affected as a result of retrospective effect being given to such rules."

18. The Ministry of Works & Housing in their reply dated the 30th June, 1977 have stated as under:—

"..... the purpose of framing the above mentioned rules has been explained in the explanatory Memorandum added at the end of the said rules. It will be observed therefrom

that the amendment is of a clarifying nature and was issued to make the provisions of the Allotment Rules conform to the orders issued earlier. It was also explained in the said Memorandum that giving retrospective effect to this amendment became necessary to make the rules consistent with the earlier orders. It would not be correct to amend the explanatory Memorandum to add a certificate that nobody is likely to be effected adversely. In the circumstances explained in the Memorandum, it became necessary to give retrospective effect to the rules in question. This Ministry have, however, noted the recommendations of the Committee and would keep this in view in future."

19. The Committee are inclined to accept the contention of the Ministry of Works and Housing that the amendment under reference being of a clarificatory nature, the retrospective effect to it had become necessary to make the Allotment of Government Residences (General Pool in Delhi) Second Amendment Rules, 1976, consistent with the earlier orders. The Committee, therefore, agree not to insist upon the Ministry to amend the Explanatory Memorandum appended to the Rules for the affirmation that no one would be adversely affected as a result of retrospective effect given to the said Rules.

20. The Committee note the assurance given by the Ministry that the recommendation of the Committee made in para 10 of their Second Report (Fourth Lok Sabha) in this regard would be complied with in future.

V

THE MAJOR PORT OF NEW TUTICORIN (REGULATION OF THE USE OF LANDING PLACES) RULES, 1977 (G.S.R. 973 OF 1977).

(A)

21 Rule 2(4) of the Major Port of New Tuticorin (Regulation of the use of Landing Places) Rules, 1977 reads as under:—

"(4) The rent shall be payable in the manner specified in the permit or the lease deed, as the case may be, and failure to pay the rent in the manner so specified may, after giving a reasonable opportunity of being heard to the person concerned, result in the cancellation of the lease

and the levy of penal rent which shall be specified in the said permit or the lease deed."

22. The Ministry of Shipping and Transport (Transport Wing) were asked to state whether they had any objection to specifying the rates of penal rent in the rule itself as envisaged in clause (jj) of sub-section (1) of section 6 of the Indian Ports Act, 1908 rather than leaving it to the authorities to specify in the permit or the lease deed.

23. In their reply dated the 9th August, 1978, the Ministry have agreed to amend as under Rule 2(4) of the New Tuticorin (Regulation of the use of Landing Places) Rules, 1977 so as to provide for the rate of penal rent in the rule itself:—

"(4) The rent shall be payable in the manner specified in the permit card or lease deed, as the case may be, and failure to pay the rent in the manner so specified may, after giving a reasonable opportunity of being heard to the person, result in the levy of penal rent at the rate of fifteen percent of the amount of rent due, but not paid, from the date on which it becomes due to the date of actual payment which shall in no case exceed seven days. For any reason if the payment is delayed beyond seven days from the date on which it becomes due, the lesser shall have the right to terminate the lease deed or permit card and to resume the land so allotted in which case the lessee shall not be entitled to claim any compensation on any account or to remove and take away the improvements, if any, thereon."

24. The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend sub-rule (4) of rule 2 of the Major Port of New Tuticorin (Regulation of the use of Landing Places) Rules, 1977 so as to make clear that if the lessee or the permit card holder failed to pay the rent on the due date, he shall become liable to pay the penal rent in the first instance failing which provision for cancellation of the lease deed/permit card could be invoked by the lesser in which case the lessee shall not be entitled to any compensation on any account or to remove and take away any improvements made on the land.

The Committee desire the Ministry to issue the amendment at an early date.

(B)

25. Under rule 2(8) of the Major Port of New Tuticorin (Regulation of the use of Landing Places) Rules 1977, an application for renewal of the lease is required to be made one month before the expiry of the said lease. It is not clear from the rule as to what would happen to the existing lease in case the application for renewal is not disposed of by the expiry of the period of that lease.

26. The Ministry of Shipping and Transport (Transport Wing) with whom the matter was taken up, in their reply dated the 5th July, 1978 have stated as under:—

“.....a proposal to amend Rule No. 2(8) to make a provision to the effect that in the event of non-disposal of the lease application by the port at the appropriate time, the previous lessee who has submitted an application for continuance of lease, shall continue to be the lessee on the same terms and conditions, till the port decides the further lease arrangement, is being considered.”

27. The Committee note that on a reference made to the Ministry of Shipping and Transport (Transport Wing), the Ministry are considering a proposal to amend sub-rule (8) of Rule 2 of the Major Port of New Tuticorin (Regulation of the use of Landing Places) Rules, 1977 to provide that in the event of non-disposal of the application for lease by the Port authorities at the appropriate time, the previous lessee who has submitted an application for continuance of lease, shall continue to be the lessee on the same terms and conditions, till the Port authorities took further decision. The Committee desire the Ministry to finalise the proposed amendment expeditiously, if not already done, and issue the same without any further delay in order to obviate the possibility of any hardship that may be caused to the existing lessees in this regard.

VI

THE JUTE (LICENSING AND CONTROL) AMENDMENT ORDER, 1977 (S.O. 794-E OF 1977)

28. Sub-Clause (1) of Clause 3 of the Jute (Licensing and Control) Order, 1961 provides that the Jute Commissioner may, by notification in the Official Gazette direct that, with effect from such date as he may specify in the notification, no person shall carry on business in raw jute or jute textiles involving the purchase, sale or storage for sale of raw jute or jute textiles except under and in accordance with the terms and conditions of a licence issued under this Order.

29. First proviso to the above sub-clause as added by the Jute (Licensing and Control) Amendment Order, 1977 provides that the Jute Commissioner may, by notification in the Official Gazette, exempt any such person or class of such persons from the provisions of this sub-clause.

30. It was felt that the proviso, as worded was likely to result in discrimination between 'such persons' similarly placed. The attention of the Ministry of Industry (Department of Industrial Development) was invited to paras 56—61 of the Ninth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) where in similar circumstances the Committee had recommended the omission of the words "any drug manufacturing unit" from para 25(1) of the Drugs (Prices Control) Second Amendment Order, 1970.

The Ministry of Industry (Department of Industrial Development) have accepted the suggestion and omitted the words 'such person or' from the first proviso to sub-clause (1) of Clause 3 of the above Order and the necessary consequential amendment in the second proviso thereto.

31. **The Committee note with satisfaction that, on being pointed out, the Ministry of Industry (Department of Industrial Development) have amended the Jute (Licensing and Control) Order, 1961 so as to omit the words 'such person or' from the first proviso to sub-clause (1) of clause 3 of the said Order. The Committee also note that the Ministry have carried out the necessary consequential amendment in the second proviso thereto in order to obviate the chances of discrimination between 'such persons' similarly placed.**

VII

THE INDIAN COINAGE RULES, 1975 (S.O. 1844 OF 1975)

32. The short title to the Indian Coinage Rules, 1975 did not contain any reference to the denomination and metallic composition of the coins covered by the above Rules.

33. In this connection, attention of the Ministry of Finance (Department of Economic Affairs) was invited to para 206 of the Twelfth Report of the Committee on Subordinate Legislation (Fifth Lok Sabha) where the Ministry, in similar case, had agreed to give a reference to the denomination and metallic composition of the coins involved in the short title to the various rules issued under the Indian Coinage Act, 1906 *apart from the year of their issue*, for the purpose of distinction.

34. In their reply, the Ministry of Finance (Department of Economic Affairs) to whom the matter was referred, have stated as under:—

“..... the omission in the rules published under S. O. 1844 in the Gazette of India, Part II Section 3 (ii) dated the 21st June, 1975 is regretted. It will be ensured that the denomination and metallic composition of the coins are indicated in the rules to be published in future.”

35. The Committee are unhappy to note that the Ministry of Finance (Department of Economic Affairs) in spite of having express their regret and having assured the Committee earlier in the case of the Indian Coinage Rules, 1974 (dealt with in paras 16—18 of the Nineteenth Report—Fifth Lok Sabha) for an identical lapse on their part, have again failed to indicate the denomination and the metallic composition of the coins involved in the short title to the Indian Coinage Rules, 1975 which is in utter disregard to the Committee's earlier recommendation. The Committee deprecate the tendency on the part of the Ministry to take so lightly recommendations of the Committee. The Committee cannot help reiterating their earlier recommendation that in addition to the year of issue, the denomination and metallic composition of coins should invariably be given in the short titles to all such rules framed under the Indian Coinage Act, 1906.

VIII

AMENDMENT TO THE COLLIERY CONTROL ORDER, 1945 (G.S.R. 491-E OF 1975)

36. It was noticed that the Colliery Control (Amendment) Order, 1975 which was issued in exercise of the powers conferred by section 3 read with section 16 of the Essential Commodities Act, 1955 had not been laid on the Table of the House. Sub-section (6) of section 3 of the Act requires that all Orders issued under that section shall be laid on the Table as soon as possible after they are made.

37. The Ministry of Energy (Department of Coal) with whom the matter was taken up on the 25th May, 1976 laid the Order on the Table of Lok Sabha on the 3rd August, 1977 i.e., after a period of about 15 months since the lapse had been brought to their notice.

38. In the statement of reasons for delay in laying the Order, the Ministry *inter alia* have stated that—

“On 25th May, 1976, the Lok Sabha Secretariat brought to the notice of this Department that the above Order does

not bear a short title and since this had been issued in exercise of the powers conferred by section 3 read with section 16 of the Essential Commodities Act, 1955, this has not been laid on the Table of both the Houses of Parliament in accordance with the instructions contained in sub-section 6 of section 3 of the Essential Commodities Act, 1955. In pursuance of this, action was initiated in this Department and the draft amendment order was sent to the Ministry of Law to remove the defects pointed out by the Lok Sabha Secretariat. While the order was about to be issued, it was decided in the meantime that in view of the impending changes in the Office of the Coal Controller the powers of the Coal Controller, to issue sanction for export of Hard Coke may also be done away with as in the case of non-coking coal. In accordance with this decision, the papers were again referred to the Ministry of Law. It therefore, took some time to finalise the Order amending the earlier Order dated 12th September, 1975 and another Order dated 18th July, 1977 in which power of the Coal Controller to issue orders for export of hard coke have been taken away. A copy of the Order G.S.R. 491 (E) dated 12th September, 1975 along with the Order G.S.R. 529-E dated 18th July, 1977 incorporating in the earlier order the short title, which has since been published in the Gazette of India Extraordinary dated 18th July, 1977 are now laid on the Table of the House."

39. The Committee consider it a clear case of negligence and lack of care on the part of the Ministry of Energy (Department of Coal). Had it not been brought to the notice of the Ministry, the statutory obligation of laying the Order on the Table of the House would not have, perhaps, been complied with. The Committee are surprised to know that the Ministry was not even aware of the requirements of the statute under which they had issued the amendment to the Colliery Control Order, 1945.

40. The Committee also note that even after the lapse had been brought to their notice it took the Ministry more than a year to lay the Order on the Table of Lok Sabha without much justification. The Committee cannot but deprecate such a casual approach on the part of the Ministry and expect them to be careful in future in such cases.

41. As regards the giving of short title to the Rules, the Committee note that, on being pointed out, the Ministry have since done so.

IX

THE SEAMEN'S PROVIDENT FUND (AMENDMENT) SCHEME,
1977 (G.S.R. 1591 OF 1977)

42. Paragraph 58 (E) (4) of the Seamen's Provident Fund Scheme, 1966, as inserted by the Seamen's Provident Fund (Amendment) Scheme, 1977 reads as under:—

“58(E)(4) If the Commissioner is satisfied that the withdrawal granted under this paragraph has been utilised for a purpose other than that for which it was granted, or that the conditions of non-refundable withdrawal have not been fulfilled within a reasonable time, the Commissioner shall forthwith take steps to recover the amount due with interest at the rate not exceeding 7 per cent per annum thereon, from the wages of the member in such number of instalments as the Commissioner may direct the employer, for subsequent service, or the Shipping Master, to deduct each such instalment from the wages of the member and on the receipt of such direction the employer or the Shipping Master, as the case may be, shall deduct accordingly. The amount so deducted shall be remitted by the employer or the Shipping Master, as the case may be, to the Commissioner within such time and in such manner as may be specified in this behalf by the Commissioner, for being credited to the member's account.”

43. The Ministry of Shipping and Transport (Transport Wing) were asked to state whether they had any objection to provide for giving a reasonable opportunity of being heard to the person concerned before action to recover the amount under sub-paragraph 4 of paragraph 58(E) of the above Scheme is taken against him.

44. In their reply dated the 21st August, 1978, the Ministry have stated as under:—

“... reasonable opportunity is always expected to be given under the General Administrative Law and the Constitutional Law to the Seamen concerned to show sufficient cause why the Non-refundable withdrawal sanctioned/paid to them under para 58-E of the Seamen's Provident Fund (Amendment) Scheme, 1977, for meeting the expenses in connection with the marriage of member/s or their families should not be recovered together with interest

at the prescribed rate from the wages payable to them for their subsequent service, through their respective employers or the Shipping Master of the Ports concerned for not having utilised the Non-refundable withdrawal for the purpose for which it was granted. Action as envisaged in sub-para 4 of para 58-E of the Seamen's Provident Fund (Amendment) Scheme, 1977 will be initiated only after the seamen concerned fail to satisfy the Commissioner with regard to the *bonafide* use of the amounts sanctioned/paid to them as Non-refundable Withdrawal, under this sub-para 58-E of the Seamen's Provident Fund (Amendment) Scheme, 1977. However, no case has so far come under such consideration in the Organisation. In this connection attention is also drawn to para 58(c) 8 and 9 of Scheme.

In view of the above, there does not appear to be need for specific provision for giving reasonable opportunity of being heard to the person concerned before action is taken against him to recover the amount under sub-para 4 of para 58-E of the Seamen's Provident Fund (Amendment) Scheme, 1977.'

45. The Committee note from the reply of the Ministry of Shipping and Transport (Transport Wing) that action for recovery of the amount withdrawn from the Provident Fund under sub-para 4 of para 58-E of the Seamen's Provident Fund (Amendment) Scheme, 1977, would be initiated only after the seamen concerned failed to satisfy the Commissioner with regard to the bona fide use of the amounts sanctioned/paid to them as non-refundable withdrawal.

46. The Committee point out that in a similar case, on a suggestion made by them, the Ministry of Industry (Department of Industrial Development) have agreed to amend sub-rule (2) of rule 14-B of the Central Silk Board Contributory Provident Fund Rules, 1955 so as to provide therein for issue of a show cause notice to a subscriber before ordering recovery of the amount withdrawn or such part thereof as had not been applied for the purpose for which it was withdrawn vide paras 35—38 of Committee's Fifteenth Report (Sixth Lok Sabha). The Committee, therefore, desire the Ministry of Shipping and Transport (Transport Wing) also to amend paragraph 58 (E) (4) of the Seamen's Provident Fund (Amendment) Scheme, 1977 on the same lines.

IMPLEMENTATION OF RECOMMENDATIONS CONTAINED IN PARAS 8—10 OF THE TENTH REPORT OF COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) REGARDING THE UNIVERSITY GRANTS COMMISSION (DISQUALIFICATION, RETIREMENT AND CONDITIONS OF SERVICE OF MEMBERS) SECOND AMENDMENT RULES, 1976 (G.S.R. 295 OF 1976).

47. The University Grants Commission (Disqualification, Retirement and Conditions of Service of Members) Second Amendment Rules, 1976 were published in the Gazette of India Part II, Section 3(i), dated the 28th February, 1976 but were deemed to have come into force on the 15th January, 1973 *vide* sub-rule (2) of rule 1 thereof. The Explanatory Memorandum appended to the rules, stated that as there was only one post of Vice-Chairman in the University Grants Commission, no body else's interests would be adversely affected if the revised scale of pay was given retrospective effect and that there was no likelihood of the decision being challenged in any court of law because there was no financial or procedural irregularity in that.

48. The question of giving retrospective effect to the rules was taken up with the concerned Ministry of Education and Social Welfare (Department of Education), and their attention was drawn to the observations of the Committee on Subordinate Legislation made in para 8—11 of their Nineteenth Report (Fifth Lok Sabha) that retrospective effect to subordinate legislation cannot be given without an express authorisation therefor in the parent Act and that the purpose of appending an explanatory memorandum to subordinate legislation is not to provide legal authority for retrospective effect but to apprise the public of the circumstances in which retrospective effect has been given.

49. Not being satisfied with the reply of the Ministry of Education, the Committee in paras 8—10 of their Tenth Report (Sixth Lok Sabha) observed as under:—

“The Committee note that the Ministry of Education and Social Welfare (Department of Education) have admitted in their reply that the University Grants Commission Act, 1956, does not empower the Central Government to give retrospective effect to rules framed under Section 25 of the Act. As without such authorisation, no subordinate legislation can operate retrospectively, the retrospective effect given to the University Grants Commission (Dis-

qualification, Retirement, and Conditions of Service of Members) Second Amendment Rules, 1976 is without due legal authority.

The Ministry seem to be labouring under a false notion that they have not committed any financial or procedural irregularity in view of the circumstances having been explained in the explanatory memorandum to the Rules. The Committee need hardly point out in this regard that mere mention of the circumstances necessitating retrospective effect to the rules in the explanatory memorandum or there being no likelihood of retrospective action being challenged in a court of law, does not impart legal authority for giving retrospective effect to the rules. The Committee had clarified this position in para 8 of their Nineteenth Report (Fifth Lok Sabha) also which had been brought to the notice of all Ministries/Departments of Government by the Department of Parliamentary Affairs. The Committee desire the Ministries/Departments to keep the observations of the Committee in view while giving retrospective effect to the Rules in future.

The Committee note that the Ministry of Education and Social Welfare (Department of Education) have agreed to incorporate a provision in the University Grants Commission Act to empower the Central Government to give retrospective effect to the rules. The Committee desire the Ministry to bring the amending legislation for the purpose by the end of this year. The Committee further desire that provision be made in the Act for validating the rules already made and given retrospective effect."

50. In their action taken note dated the 15th November, 1978 on the above recommendations, the Ministry of Education and Social Welfare (Department of Education) have stated as under:—

"Government have already agreed to incorporate a provision in the University Grants Commission Act to empower them to give retrospective effect to the Rules, as and when the Act is next amended. Till then, no retrospective effect will be given to any Rule framed under the Act. Having regard to the fact that Parliament is fully occupied with important legislative programmes, Government do not consider it advisable to go in for an amending legislation for this purpose alone. Further, the Report of

the UGC Review Committee is presently under consideration of Government and it is likely that acceptance of some of its recommendations may involve amendment of the UGC. Act. Thus, a consolidated legislation would be introduced as early as possible and the recommendations of the Committee on Subordinate Legislation would also be implemented at that time."

51. The Committee are unhappy to note that the Ministry of Education and Social Welfare (Department of Education) who had agreed to amend the University Grants Commission Act, 1956 to empower the Government to give retrospective effect to the rules framed thereunder have failed to do so within the time limit fixed by them in para 10 of their Tenth Report (Sixth Lok Sabha). The Committee are not convinced by the reply of the Ministry that since the Report of the University Grants Commission Review Committee is under their consideration and that the acceptance of some of its recommendations might involve amendment of the Act, a consolidated legislation would be introduced as early as possible. The Committee desire that the Ministry should now bring forth the amending legislation exclusively for giving retrospective effect to the rules framed thereunder during the present Session of Lok Sabha (viz., Budget Session) itself, in case other proposed amendments are likely to take further time in their finalisation.

SOMNATH CHATTERJEE,

Chairman,

Committee on Subordinate Legislation.

NEW DELHI;

The 21st March, 1979.

APPENDIX I

(Vide para 4 of the Report)

Summary of main Recommendations|Observations made by the Committee

S. No.	Para	Summary
1	2	3
1.	8	The Committee note with satisfaction that, on being pointed out, the Ministries of Information and Broadcasting and Home Affairs have issued amendments to the Lakshadweep Administration Information Officer (Class II Post) Recruitment Rules, 1975 and the Research Officer (Lakshadweep Administration) Recruitment Rules, 1976 by inserting therein the 'saving clause' regarding reservations and other concessions to the Scheduled Castes/Tribes. The Committee, however, desire that the Ministries concerned should be careful in such matters in future and that they should also ensure that prior to the issuance of the rules, they are complete in all respects.
2.	13	The Committee note with satisfaction that, on being pointed out, the Ministry of Home Affairs have amended the disqualification clause of all the three Recruitment Rules on usual lines.
3(i)	19	The Committee are inclined to accept the contention of the Ministry of Works and Housing that the amendment under reference being of a clarificatory nature, the retrospective effect to it had become necessary to make the Allotment of Government Residences (General Pool in Delhi) Second Amendment Rules, 1976, consistent with the earlier orders. The Committee, therefore, agree not to insist upon the Ministry to amend the Explanatory Memorandum appended to the Rules for the affirmation that no one would be adversely affected as a result of retrospective effect given to the said Rules.

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(ii)	20	The Committee note the assurance given by the Ministry that the recommendation of the Committee made in para 10 of their Second Report (Fourth Lok Sabha) in this regard would be complied with in future.
4.	24	<p>The Committee note with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) have agreed to amend sub-rule (4) of rule 2 of the Major Port of New Tuticorin (Regulation of the use of Landing Places) Rules, 1977 so as to make clear that if the lessee or the permit card holder failed to pay the rent on the due date, he shall become liable to pay the penal rent in the first instance failing which provision for cancellation of the lease deed/permit card could be invoked by the lesser in which case the lessee shall not be entitled to any compensation on any account or to remove and take away any improvements made on the land.</p> <p>The Committee desire the Ministry to issue the amendment at an early date.</p>
4(ii)	27	<p>The Committee note that on a reference made to the Ministry of Shipping and Transport (Transport Wing), the Ministry are considering a proposal to amend sub-rule (8) of Rule 2 of the Major Port of New Tuticorin (Regulation of the use of Landing Places) Rules, 1977 to provide that in the event of non-disposal of the application for lease by the Port authorities at the appropriate time, the previous lessee who has submitted an application for continuance of lease, shall continue to be the lessee on the same terms and conditions, till the Port authorities took further decision. The Committee desire the Ministry to finalise the proposed amendment expeditiously, if not already done, and issue the same without any further delay in order to obviate the possibility of any hardship that may be caused to the existing lessees in this regard.</p>

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The Committee note with satisfaction that, on being pointed out, the Ministry of Industry (Department of Industrial Development) have amended the Jute (Licensing and Control) Order, 1961 so as to omit the word 'such person or' from the first proviso to sub-clause (1) of clause 3 of the said Order. The Committee also note that the Ministry have carried out the necessary consequential amendment in the second proviso thereto in order to obviate the chances of discrimination between 'such persons' similarly placed.

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The Committee are unhappy to note that the Ministry of Finance (Department of Economic Affairs) in spite of having expressed their regret and having assured the Committee earlier in the case of the Indian Coinage Rules, 1974 (dealt with in paras 16—18 of the Nineteenth Report—Fifth Lok Sabha) for an identical lapse on their part, have again failed to indicate the denomination and the metallic composition of the coins involved in the short title to the Indian Coinage Rules, 1975 which is in utter disregard to the Committee's earlier recommendation. The Committee deprecate the tendency on the part of the Ministry to take so lightly recommendations of the Committee. The Committee cannot help reiterating their earlier recommendation that in addition to the year of issue, the denomination and metallic composition of coins should invariably be given in the short titles to all such rules framed under the Indian Coinage Act, 1906.

7(1)

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The Committee consider it a clear case of negligence and lack of care on the part of the Ministry of Energy (Department of Coal). Had it not been brought to the notice of the Ministry, the statutory obligation of laying the Order on the Table of the House would not have, perhaps, been complied with. The Committee are surprised to know that the Ministry was not

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		even aware of the requirements of the statute under which they had issued the amendment to the Colliery Control Order, 1945.
7(ii)	40	The Committee also note that even after the lapse had been brought to their notice it took the Ministry more than a year to lay the Order on the Table of Lok Sabha without much justification. The Committee cannot but deprecate such a casual approach on the part of the Ministry and expect them to be careful in future in such cases.
7(iii)	41	As regards the giving of short title to the Rules, the Committee note that, on being pointed out, the Ministry have since done so.
8(i)	45	The Committee note from the reply of the Ministry of Shipping and Transport (Transport Wing) that action for recovery of the amount withdrawn from the Provident Fund under sub-para 4 of para 58-E of the Seamen's Provident Fund (Amendment) Scheme 1977, would be initiated only after the seamen concerned failed to satisfy the Commissioner with regard to the <i>bona fide</i> use of the amounts sanctioned/paid to them as non-refundable withdrawal.
8(ii)	46	The Committee point out that in a similar case, on a suggestion made by them, the Ministry of Industry (Department of Industrial Development) have agreed to amend sub-rule (2) of rule 14B of the Central Silk Board Contributory Provident Fund Rules, 1955 so as to provide therein for issue of a show cause notice to a subscriber before ordering recovery of the amount withdrawn or such part thereof as had not been applied for the purpose for which it was withdrawn <i>vide</i> paras 35—38 of Committee's Fifteenth Report (Sixth Lok Sabha). The Committee, therefore, desire the Ministry of Shipping and Transport (Transport Wing) also to amend paragraph 58(E)(4) of the Seamen's Provident Fund (Amendment) Scheme, 1977 on the same lines.

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The Committee are unhappy to note that the Ministry of Education and Social Welfare (Department of Education) who had agreed to amend the University Grants Commission Act, 1956 to empower the Government to give retrospective effect to the rules framed thereunder have failed to do so within the time limit fixed by them in para 10 of their Tenth Report (Sixth Lok Sabha). The Committee are not convinced by the reply of the Ministry that since the Report of the University Grants Commission Review Committee is under their consideration and that the acceptance of some of its recommendations might involve amendment of the Act, a consolidated legislation would be introduced as early as possible. The Committee desire that the Ministry should now bring forth the amending legislation exclusively for giving retrospective effect to the rules framed thereunder during the present Session of Lok Sabha (*viz.*, Budget Session) itself, in case other proposed amendments are likely to take further time in their finalisation.

APPENDIX II

(Vide para 3 of the Report)

MINUTES OF THE THIRTY-SECOND SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1978-79)

The Committee met on Thursday, the 25th January, 1979 from 15.30 to 17.00 hours.

Present

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Shri Durga Chand
3. Chaudhary Hari Ram Makkasar Godara
4. Shri T. S. Negi
5. Shri G. S. Reddi
6. Shri Saeed Murtaza
7. Shri P. A. Sangma
8. Shri Sachindralal Singha
9. Shri Ramji Lal Suman
10. Shri Krishnarao Thakur
11. Shri C. N. Viswanathan

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

3. The Committee then considered Memoranda Nos. 196 to 200 on the following subject:

S. No.	Memo No.	Subject
1	2	3
3.	198	(1) The Lakshadweep Administration Information Officer (Class II Post) Recruitment Rules, 1975 (G.S.R. 91 of 1976).

*Omitted portions of the Minutes are not covered by the Report.

1.	2.	3.
		(ii) The Research Officer (Lakshadweep Administration) Recruitment Rules, 1976 (G.S.R. 992 of 1976).
4.	199	(i) The Andaman and Nicobar Islands [Junior Analyst (Work Study) Chief Commissioner's Secretariat] Recruitment Rules, 1975 (G.S.R. 13 of 1976). (ii) The Deputy Collector in Lakshadweep Administration Recruitment Rules, 1976 (G.S.R. 581 of 1976). (iii) The Research Officer (Lakshadweep Administration) Recruitment Rules, 1976 (G.S.R. 992 of 1976).
5.	200	Implementation of recommendations contained in paras 8—10 of the Tenth Report of Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the University Grants Commission (Disqualification, Retirement and Conditions of Service of Members) Second Amendment Rules, 1976 (G.S.R. 295 of 1976).
		* * * *
		(iii) (a) The Lakshadweep Administration Information Officer (Class II post) Recruitment Rules, 1975 (G.S.R. 91 of 1976), (b) The Research Officer (Lakshadweep Administration) Recruitment Rules, 1976 (G.S.R. 992 of 1976—Memorandum No. 198).

6. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministries of Information and Broadcasting and Home Affairs had issued amendments to the Lakshadweep Administration Information Officer (Class II Post) Recruitment Rules, 1975 and the Research Officer (Lakshadweep Administration) Recruitment Rules, 1976 by inserting therein the 'saving clause' regarding reservations and other concessions to Scheduled Castes/Tribes. The Committee, however, desired the Ministries concerned to be careful in such matters in future. The Ministry concerned should ensure before issuing the rules that they were complete in all respects.

*Omitted portions of the Minutes are not covered by the Report.

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(iv) (a) The Andaman and Nicobar Islands [Junior Analyst (Work Study) Chief Commissioner's Secretariat] Recruitment Rules(1975 (G.S.R. 13 of 1976).

(b) The Deputy Collector in Lakshadweep Administration Recruitment Rules, 1976 (G.S.R. 581 of 1976),

(c) The Research Officer (Lakshadweep Administration) Recruitment Rules, 1976 (G.S.R. 992 of 1976)—(Memorandum No. 199).

7. The Committee considered the above Memorandum and noted that on being pointed out, the Ministry of Home Affairs had amended the disqualification clause of the above rules on the usual lines.

(v) Implementation of recommendations contained in paras 8—10 of the Tenth Report of Committee on Subordinate Legislation (Sixth Lok Sabha) regarding the University Grants Commission (Disqualification, Retirement and Conditions of Service of Members) Second Amendment Rules, 1976 (G.S.R. 295 of 1976)—(Memorandum No. 200).

8. The Committee considered the above Memorandum and noted with concern that the Ministry of Education who had agreed to amend the University Grants Commission Act to empower Government to give retrospective effect to the rules framed thereunder had failed to do so within the time limit fixed by the Committee in para 10 of their Tenth Report (Sixth Lok Sabha). The Committee were not convinced by the reply of the Ministry that Report of the University Grants Commission Review Committee was under their consideration and that acceptance of some of the recommendations might involve amendment of the Act and that a consolidated legislation would be introduced as early as possible. The Committee desired the Ministry to bring forth the amending legislation exclusively as per Committee's recommendation during the next Session of the Lok Sabha viz., Budget Session, 1979 in case other proposed amendments were likely to take further time for finalisation.

The Committee then adjourned.

MINUTES OF THE THIRTY-THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1978-79)

The Committee met on Tuesday, the 27th February, 1979 from 15.30 to 16.00 hours.

Present

Shri Somnath Chatterjee—*Chairman*

MEMBERS

2. Kumari Maniben Vallabhbhai Patel
3. Shri G. S. Reddi
4. Shri P. A. Sangma
5. Shri Sachindralal Singha

SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

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4. The Committee then considered Memoranda Nos. 201 to 210 on the following subjects:—

S. No.	Memo. No.	Subject
(i)	201	The Allotment of Government Residences (General Pool in Delhi) Second Amendment Rules, 1976 (S.O. 229-E of 1976).
(ii)	202	The Major Port of New Tuticorin (Regulation of the use of Landing Places) Rules, 1977 (G.S.R. 973 of 1977).
(iii)	203	The Jute (Licensing and Control) Amendment Order, 1977 (S.O. 794-E of 1977).
(iv)	204	The Indian Coinage Rules, 1975 (S.O. 1844 of 1975).
(v)	205	Amendment to the Colliery Control Order, 1945 (G.S.R. 491-E of 1975).
(vi)	206	The Seamen's Provident Fund (Amendment) Scheme, 1977 (G.S.R. 1591 of 1977).

*Omitted portions of the Minutes are not covered by the Report.

**(i) THE ALLOTMENT OF GOVERNMENT RESIDENCES:
(GENERAL POOL IN DELHI) SECOND AMENDMENT
RULES, 1976 (S.O. 229-E of 1976)—(MEMORANDUM
No. 201).**

5. The Committee considered the above Memorandum and accepted the explanation given by the Ministry of Works and Housing that the amendment under reference was of a clarificatory nature and retrospective effect to it had become necessary to make the rules consistent with the earlier orders. The Committee agreed not to insist upon the Ministry to amend the explanatory memorandum appended to the rules for giving the affirmation that no one had been adversely affected as a result of retrospective effect given to the rules. However, the Committee noted that the Ministry had assured that the recommendations of the Committee contained in para 10 of the Second Report (Fourth Lok Sabha) in this regard would be duly complied with in future.

**(ii) THE MAJOR PORT OF NEW TUTICORIN (REGULATION
OF THE USE OF LANDING PLACES) RULES, 1977
(G.S.R. 973 of 1977)—(MEMORANDUM No. 202).**

(A)

6. The Committee considered the above Memorandum and noted with satisfaction that, on being pointed out, the Ministry of Shipping and Transport (Transport Wing) had agreed to amend rule 2(4) of the Major Port of New Turicorin (Regulation of the use of Landing Places) Rules, 1977 as follows:—

“(4) The rent shall be payable in the manner specified in the permit card or lease deed, as the case may be, and failure to pay the rent in the manner so specified may, after giving a reasonable opportunity of being heard to the person, result in the levy of penal rent at the rate of fifteen per cent of the amount of rent due, but not paid, from the date on which it becomes due to the date of actual payment which shall in no case exceed seven days. For any reason if the payment is delayed beyond seven days from the date on which it becomes due, the lesser shall have the right to terminate the lease deed or permit card and to resume the land so allotted in which case the lessee shall not be entitled to claim the compensation on any account or to remove and take away the improvements, if any, thereon.”

The Committee approved the amendment proposed by the Ministry and desired them to issue it at an early date.

(B)

7. The Committee noted that the Ministry of Shipping and Transport (Transport Wing) had under consideration a proposal to amend Rule 2(8) to make a provision to the effect that in the event of non-disposal of the application for lease by the port authorities at the appropriate time, the previous lessee who had submitted an application for continuance of lease, shall continue to be the lessee on the same terms and conditions, till the port authorities took further decision. The Committee desired the Ministry to finalise the amendment expeditiously, if not already done, and issue the same without any further delay to obviate the possibility of any hardship likely to be caused to the existing lessees in this regard.

(iii) THE JUTE (LICENSING AND CONTROL) AMENDMENT ORDER, 1977 (S.O. 794-E of 1977)—(MEMORANDUM No. 203).

8. The Committee considered the above Memorandum and noted with satisfaction that on being pointed out, the Ministry of Industry (Department of Industrial Development) had amended the Jute (Licensing and Control) Order so as to omit the words 'such person' from the first proviso to sub-clause (1) of Clause 3 of the 'Order' and carried out the necessary consequential amendment in the second proviso thereto to obviate the chances of discrimination between 'such persons' similarly placed.

(iv) THE INDIAN COINAGE RULES, 1975 (S.O. 1844 of 1975)—(MEMORANDUM No. 204).

9. The Committee considered the above Memorandum and noted that earlier in the case of the Indian Coinage Rules, 1974 also, for an identical lapse on their part, the Ministry had expressed regret and assured that in future notifications, the denomination and metallic composition of the coins involved would be indicated in the short title to the amending rules *vide* paras 17 and 18 of Nineteenth Report of the Committee (Fifth Lok Sabha). The Committee deplored that the Ministry had failed to indicate the denomination and the metallic composition of the coins involved in the short title to the above rules, in utter disregard to Committee's earlier recommendation. The Committee decided to deprecate the tendency on the part of the Ministry to take so lightly the recommendations of the Committee. The Committee further decided to reiterate their earlier recommendation that in addition to the year of issue, the denomination and metallic composition of coins should also be given in all rules framed under the Indian Coinage Act.

(v) AMENDMENT TO THE COLLIERY CONTROL ORDER, 1945 (G.S.R. 491-E of 1975)—(MEMORANDUM No. 205).

10. The Committee considered the above Memorandum and found it to be a clear case of negligence and lack of care on the part of the Ministry of Energy (Department of Coal). Had it not been brought to the notice of the Ministry by the Committee, the Statutory obligation of laying the rules on the Table of the House would not have perhaps been complied with. The Committee were surprised to note that the Ministry had not known the requirements of the Statute under which they had issued the rules. Even after the lapse had been brought to their notice by the Committee, it had taken the Ministry more than a year to lay the order on the Table of Lok Sabha without any justification. The Committee deprecated such a casual approach on the part of the ministry and exhorted them to be careful in future.

As regards the giving of short title to the Rules, the Committee noted that the Ministry had done so on being pointed out.

(vi) THE SEAMAN'S PROVIDENT FUND (AMENDMENT) SCHEME, 1977 (G.S.R. 1591 of 1977)—(MEMORANDUM No. 206).

11. The Committee considered the above Memorandum and noted from the reply of the Ministry of Shipping and Transport (Transport Wing) that action for recovery of the amount withdrawn from the Provident Fund under sub-para 4 of para 58-E of the Seaman's Provident Fund (Amendment) Scheme, 1977 would be initiated only after the seamen concerned failed to satisfy the Commissioner with regard to the bonafide use of the amount sanctioned/paid to them as non-refundable withdrawal. In a similar case, on a suggestion made by the Committee, the Ministry of Industry (Department of Industrial Development) had agreed to amend sub-rule (2) of rule 14-B of the Central Silk Board Contributory Provident Fund Rules, 1955 so as to provide therein for issue of a show cause notice to a subscriber before ordering recovery of the amount withdrawn or such part thereof as had not been applied for the purpose for which it was withdrawn *vide* Paras 35—38 of Committee's Fifteenth Report (Sixth Lok Sabha). The Committee desired the Ministry of Shipping and Transport (Transport Wing) also to amend paragraph 58 (E) (4) on the same lines.

The Committee then adjourned.

*Omitted portions of the Minutes are not covered by the Report.

MINUTES OF THE THIRTY-FOURTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION (SIXTH LOK SABHA) (1978-79).

The Committee met on Wednesday, the 21st March, 1979 from 15.30 to 16.30 hours.

PRESENT

Shri Somnath Chatterjee—Chairman

MEMBERS

2. Shri Durga Chand
3. Shri Ram Sewak Hazari
4. Shri B. K. Nair
5. Shri T. S. Negi
6. Kumari Maniben Vallabhbhai Patel
7. Shri G. S. Reddi
8. Shri Madan Lal Shukla
9. Shri Sachindralal Singha

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SECRETARIAT

Shri Y. Sahai—Chief Legislative Committee Officer.

The Committee then considered their draft Seventeenth Report and adopted it.

The Committee authorised the Chairman and, in his absence, Shri Ram Sewak Hazari to present the Seventeenth Report to the House on their behalf on the 22nd March, 1979.

*Omitted portions of the Minutes are not covered by the Report.

APPENDIX III

(Vide para 14 of the Report)

Amendment to the second proviso to sub-rule (5) of new S. R. 317-E-3 of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963.

In the Allotment of Government Residences (General Pool in Delhi) Rules, 1963, in Supplementary Rules, 317-B-3:—

- (1) for the second proviso to sub-rule (5), the following proviso shall be substituted, and shall be deemed to have been substituted with effect from the 1st day of January, 1976, namely:—

“Provided further that—

- (a) where the officer concerned has made any such offer on the 1st January, 1976 in pursuance of any instructions issued by that Government on or after the 9th September, 1975 and such offer is refused (whether before or after the 1st January, 1976) he shall be liable to pay damages as provided in sub-rule (4) with effect from the 1st January, 1976; and
- (b) where the officer concerned has made the offer aforesaid on or after the 1st January, 1976 and has been paying damages as provided in sub-rule (4) as from that date, he shall continue to pay such damages until his offer is accepted or, if his offer is refused so long as he occupies the Government residence.”