S. SIVAGURU
v.
STATE OF TAMIL NADU & ORS.
(Civil Appeal No. 4483-4485 of 2013)

MAY 07, 2013

[SURINDER SINGH NIJJAR AND H.L. GOKHALE, JJ.]

Service Law:

Promotion/Seniority – Merger/integration of the posts under different Schemes into 'multipurpose Health Workers' – The posts of Health Workers were subsequently categorized into 'Health Inspector Grade I' and 'Health Inspector Grade II' – Health Inspector Grade II promoted as Health Inspector Grade I by upgradation of the posts as a one time measure – By G.O. No. 320 dated 27.6.1997 on integration of 'Leprosy Eradication Scheme' with 'Multipurpose Health Workers Scheme', the 'Leprosy Inspectors' were re-designated as 'Health Inspector Grade IB' and the existing 'Health Inspectors Grade I' were re-designated as 'Health Inspectors Grade IA – By G.O. No. 382 dated 12.10.2007 the post of Health Inspectors Grade IA and IB were re-designated as 'Health Inspector Grade I' and the Health Inspectors of Grade IB were en-block placed below the Health Inspectors Grade IA in the seniority list – Denial of seniority to the re-designated Health Inspectors Grade IB – Propriety of – Held: Denial of seniority to the re-designated Health Inspectors Grade IB was violative of Articles 14 and 16 of the Constitution – The birth mark of Leprosy Inspector got obliterated with its initial integration – Hence there could not have been further distinction in the cadre of Health Inspector Grade I – The erstwhile Leprosy Inspectors/Health Inspectors Grade IB/Health Inspector Grade I are entitled to their seniority from the date of initial integration i.e. w.e.f. 1st August, 1997.

By order dated 29.9.1982, the Health Workers in the Health Department (Multi Purpose Health Workers and 'Unipurpose Health Workers') were integrated into one a 'Multipurpose Health Workers'. Thereafter in 1988, the employees engaged in the Family Welfare were also integrated therein.

In 1989 statutory Rules were framed which were made applicable to 'Multipurpose Health Workers Scheme'. By the Rules Class I and Class II posts were notified as 'Multipurpose Health Assistant' and 'Multipurpose Health Supervisors'. The Rules prescribed the essential qualifications for 'Multipurpose Health Assistants'.

By G.O. No. 593 dated 11.9.1995 categorized 'Multipurpose Health Supervisors' and 'Multipurpose Health Assistants' as Health Inspectors Grade I and Grade II. Thereby Health Assistants/Health Inspectors Grade II were to be promoted as Health Supervisors/Health Inspectors Grade I by upgradation of post as a one time measure, provided they had served on the post for 20 years and had crossed the age of 50 years.

By G.O. No. 320 dated 27.6.1997 'Leprosy Eradication Scheme' was also integrated with 'Multipurpose Health Workers Scheme'. After the integration, the existing 'Health Inspector Grade I' was re-designated as 'Health Inspector Grade IA' and the Leprosy Inspectors were re-designated as 'Health Inspector Grade IB.

In 2006, there was proposal by the Government to re-designate 'Health Inspectors Grade IB' as 'Health Inspectors Grade I' after imparting one week in-service training to them. The proposal was accepted by G.O. No. 382 dated 12.10.2007, and as per Clauses 4 and 5 of Para 6 of the G.O., they were en-block placed below the

existing Health Inspectors Grade I, in the Seniority List and were to get promotion to the next post only after the last person in the existing seniority List of Health Inspector Grade I. The Paras 4 and 5 of Clause 6 of G.O. No. 382 were challenged by the re-designated Health Inspectors Grade I (employees of erstwhile Leprosy Scheme). The existing Health Inspectors (Grade I) also challenged the G.O. No. 382.

State of Tamil Nadu issued G.O. No. 73 dated 26.2.2008 whereby the department was permitted to implement orders of High Court dated 21.11.2007 whereby it was held that only those Health Inspectors Grade I, who had 'Sanitary Inspector Course Certificate' were entitled to be considered for promotion.

Thereafter the Health Inspectors Grade I, who possessed 'Sanitary Inspector Course Certificate' or 'Multipurpose Health Course Certificate' filed a batch of writ petitions praying for restraining the department from drawing the panel for the post of 'Block Health Supervisors Grade I', who did not possess either of the above-mentioned two certificates. They took the plea that the Unipurpose Health Workers were promoted as Health Inspectors Grade I as a one time measure on completing 20 years of service and hence were not entitled to further promotion to the post of Block Health Supervisor. Single Judge of High Court allowed the petitions. The erstwhile Unipurpose Health Workers, not in possession of the requisite certificates, challenged the G.O. No. 73, and also filed writ appeal against the order of Single Judge of High Court. Division Bench of High Court held that in the Rules, there is no embargo on Health Inspector Grade I, who did not possess requisite certificates, from promotion to the next post and hence quashed the G.O. No. 73. Hence the present appeals.

Dismissing the appeals, the Court

HELD: 1. The qualification of having passed the one year long term Multi Purpose Health Worker (Male) Training Certificate or Sanitary Course Certificate with short term Multi Purpose Health Workers (Male) Training Certificate were the statutory requirements for recruitment and appointment on the post of Health Inspector Grade II. These qualifications would, therefore, be possessed by some of the incumbents on the promotional post of Health Inspector Grade II being Multi Purpose Health Supervisor/ Health Inspector Grade I as well. Even in the cadre of Health Inspector Grade II, there were many incumbents who did not possess these qualifications. Only the category of employees i.e., the direct recruit Health Inspectors Grade II possessed the aforesaid qualifications. The Unipurpose Health Workers consisting of Health Workers, Cholera Workers and Vaccinators, also had entered the cadre of Health Inspector Grade II without such qualifications. The requirement for having the aforesaid qualifications on the post of Health Inspector Grade II was waived by way of order G.O. Ms. No. 1936 dated 29th September, 1982. Thus, it is evident that the possession of the two aforesaid qualifications was no longer considered a requirement for appointment on the post of Health Inspector Grade II. It is also a matter of record that the possession of the aforesaid qualifications was not prescribed for promotion to the post of Multi Purpose Health Supervisor/Health Inspector Grade I. Notification III issued under G.O.Ms. No. 1507 dated 16th August, 1989 provides for the rules applicable to the post of Multi Purpose Health Supervisor. [Para 38] [325-H; 326-A-F]

Sant Ram Sharma Vs. State of Rajasthan & Ors. (1968) 1 SCR 111 – distinguished.

2. By virtue of the aforesaid provisions, many Health Inspectors Grade II had been promoted as Health Inspectors Grade I, without posse[illegible]d

qualifications. The Sanitary Inspector Course was rescinded much prior to the issuance of the G.O. Ms. No. 320 dated 27th June, 1997, thus there was no opportunity for the Leprosy Inspectors to qualify for the aforesaid Certificate. Yet the aforesaid G.O. provided that since the Leprosy Inspectors do not possess the aforesaid qualifications, they shall be designated as Health Inspector Grade IB on integration with the post of Multi Purpose Health Supervisor / Health Inspector Grade I. In view of the aforesaid developments, Leprosy Inspectors were fully eligible to be re-designated as Multi Purpose Health Supervisor / Health Inspector Grade I. [Para 39] [327-C-E]

3. The G.O.Ms. No. 320 dated 27th June, 1997 did not have the effect of amending the rules. The aforesaid G.O. also did not supplant the statutory provisions. It is also further clear that there was no relaxation of the qualifications on the post of Multi Purpose Health Assistant (Health Inspector Grade II) or on the post of Multi Purpose Health Supervisor (Health Inspector Grade I). Therefore, upon integration of Leprosy Inspectors into the cadre of Multi Purpose Health Supervisors, the further categorization into Health Inspector Grade IA and Health Inspector Grade IB was wholly unjustified. It had no rational nexus with any object sought to be achieved, and therefore, violated Articles 14 and 16 of the Constitution of India. [Para 40] [327-F-H; 328-A]

4. Injustice had been caused to the Leprosy Inspectors at the time when G.O. Ms. No. 320 dated 27th June, 1997 was issued, which has been rectified by issuing G.O. Ms. No. 382 dated 12th October, 2007. The qualification of Multi Purpose Health Worker (Male) Training Certificate, the qualification of Sanitary Course Certificate with Short term Multi Purpose Health Worker (Male) Training Certificate were not the required

qualification for appointment as Multi Purpose Health Supervisors. These were also not the qualifications which were required for being appointed as a Leprosy Inspector. However, even though by the 1997 integration through G.O. Ms. No. 320 dated 27th June, 1997, the Leprosy Inspectors were equated with Multi Purpose Health Supervisors, both categories were not given the same designation. The Multi Purpose Health Supervisors were designated as Health Inspector Grade IA, while Leprosy Inspectors were designated as Health Inspector Grade IB. The aforesaid categorization of Leprosy Inspectors as Health Inspector Grade IB was founded on a fallacy. It was wrongly assumed by the State that Leprosy Inspectors could not be designated as Multi Purpose Health Supervisors as they did not possess the necessary qualification for the basic post of Health Assistants, i.e., Health Inspector Grade II. The mere fact that Leprosy Inspectors were not placed in the feeder cadre of Health Inspector Grade II makes it evident that they were not required to possess the qualifications of the basic posts. They were in fact from the very inception being equated with the post of Multi Purpose Health Supervisor (Health Inspector Grade I). It was not a case of upgradation of the post of Leprosy Inspector to the post of Multi Purpose Health Supervisor. The two posts were equated. Leprosy Inspectors were *transferred* and brought under the control of Director of Public Health and Preventive Medicine for programme implementation. On transfer, they were re-designated as Health Inspector Grade IB. Inspite of the fact that the aforesaid two qualifications of one year long term Multi Purpose Health Workers (Male) Training Certificate and Sanitary Course Certificate with short term Multi Purpose Health Worker (Male) Training Certificate were not the essential qualifications for appointment as Health Inspector Grade I, the post of Health Inspector Grade I was unnecessarily split into Health Inspector Grade IA

43] [330-A-H; 331-A]

5. There was complete integration of Leprosy Control Scheme with Multi Purpose Health Workers Scheme with effect from 1st July, 1997 and the process of integration was actually completed by 1st August, 1997. The High Court, therefore, rightly gave the benefit of equation of post of Health Inspector Grade –IB with that that of Health Inspector Grade IA from the date of their integration, in 1997. [Para 44] [331-G; 332-C]

Union of India & Anr. Vs. P.K. Roy & Ors. **(1968) 2 SCR 186 – relied on.**

6. Having accepted the complete merger of the cadre of Health Inspector Grade IB with Health Inspector Grade IA and all being re-designated as Health Inspector Grade I, G.O.(Ms.) No. 382 of 2007 failed to achieve the intended result. It still discriminated against the erstwhile Health Inspector Grade IB, by robbing them of service from 1997 to 2007. They were given the pay scale of Rs.4500-125-7000 but from the date of the G.O.(Ms.) No. 382 of 2007 i.e. 12th October, 2007. Further, they were placed *en bloc* at the bottom of the seniority list of Health Inspector Grade I. The re-designated Health Inspector Grade I were also denied promotion on the post of Block Health Supervisor and Technical Personal Assistant till the last person in the category of Health Inspector Grade I is promoted as Block Health Supervisor. They were given the alternate route of promotion as Non-Medical Supervisor and Health Educator, till their turn comes for promotion, as per their seniority. [Para 45] [332-D-H]

7. Upon merger of the two posts, it was no longer permissible to treat the re-designated Health Inspector Grade IA differently from Health Inspector Grade IB. Since 1997, all incumbents on the posts of Health Inspector Grade IA and Health Inspector Grade IB were performing

the same duties. There was intermixing of the duties performed by the two categories of the Health Inspector Grade IA and IB. Both the posts had lost their original identity since 27th June, 1997, and formed one homogenous cadre. Further, having relaxed the qualifications on the basis of their length of service and experience, they were at par with the Health Inspector Grade IA. Thereafter, the State was not justified in denying to the erstwhile Health Inspector Grade IB, the same treatment as was given to Health Inspector Grade IA. Therefore, the respondents could not have been denied the benefit of service on the post of Health Inspector Grade I from the date of the initial integration. [Para 46] [333-A-D]

Sub-Inspector Rooplal & Anr. Vs. Lt. Governor Through Chief Secretary, Delhi & Ors. **(2000) 1 SCC 644: 1999 (5) Suppl. SCR 310 – relied on.**

8. Thus, the High Court was completely justified in quashing Para 6(iv) and (v) of the G.O.(Ms.) No. 382 of 2007. The High Court has correctly held that the re-designated Health Inspector Grade I ought to have been given the same scale of pay as Health Inspector Grade IA from the date of the merger. In fact, on that date itself, the two posts should have been re-designated as Health Inspector Grade I, enjoying the same scale of pay, as all incumbents were performing the same duties and shouldering the same responsibilities. It was not permissible for the State to treat the re-designated Health Inspector Grade I differently from the Health Inspector Grade IA, on the basis of the initial source of recruitment. [Para 47] [333-H; 334-A-C]

B. Manmad Reddy & Ors. Vs. Chandra Prakash Reddy & Ors. **(2010) 3 SCC 314: 2010 (2) SCR 860;** *Roshan Lal Tandon Vs. Union of India* **(1968) 1 SCR 185 – relied on.**

9. The birth mark was obliterated on the merger of the post of Leprosy Inspector with Health Inspector Grade I. There was no justification of putting Health Inspector Grade IB in the pay scale of Rs.1200-2010, whilst Health Inspector Grade IA was placed in the pay scale of Rs.1350-2200. At the time of integration, both categories had to be given the same pay scale i.e. Rs.1350-2200. A classification based on the birth mark that stood obliterated after integration of officers, coming from different sources into a common cadre/category, would be wholly unjustified and discriminatory. [Para 48] [334-D-E]

10. The matter of integration or the fusion of employees, being one of policy, could not have been challenged by the employees unless the said decision was arbitrary, unreasonable or capricious. None of the Government Orders vide which integration was effectuated, suffers from any of the aforesaid irregularities. [Para 55] [336-D-E]

Indian Airlines Officers' Assn. Vs. Indian Airlines Ltd. & Ors. **(2007) 10 SCC 684: 2007 (8) SCR 655 – relied on.**

11. The provision contained in Clause 6(v) of G.O.Ms. No. 382 dated 12th October, 2007 denying promotion of the re-designated Health Inspector Grade I to the post of Block Health Supervisor and Technical Personal Assistant till the last person in the existing list of Health Inspector Grade I gets promotion as Block Health Supervisor and Technical Personal Assistant, has been rightly held by the High Court to be violative of Articles 14 and 16 of the Constitution of India. [Para 58] [338-F-H]

12. The continuance of the existing promotion channels as Non-Medical Supervisor and Health Educator to the re-designated Health Inspector grade I (erstwhile Leprosy Inspectors) did not amount to bestowing a

double benefit upon this category. Therefore, the High Court cannot be enforced said to have negative equality. [Para 58] [339-A-B]

13. The High Court has correctly observed that upon integration and merger into one cadre, the pre-existing length of service of the Leprosy Inspectors re-designated as Health Inspector Grade IB had to be protected as it can not be obliterated. Therefore, the Leprosy Inspectors have been correctly placed at the bottom of the seniority list of the already existing Health Inspectors Grade I w.e.f. 27th June, 1997. Therefore, it can not be said that benefit has been given to the Leprosy Inspectors /Health Inspector Grade IB /Health Inspector Grade I with retrospective effect. [Para 58] [339-B-D]

Prafulla Kumar Das & Ors. Vs. State of Orissa & Ors. **(2003) 11 SCC 614: 2003 (4) Suppl. SCR 301;** *Pradip Chandra Parija & Ors. Vs. Pramod Chandra Patnaik & Ors.* **(2002) 1 SCC 1: 2001 (5) Suppl. SCR 460** *Uday Pratap Singh & Ors. Vs. State of Bihar & Ors.* **1994 Sup (3) SCC 451: 1994 (4) Suppl. SCR 72;** *Syed Khalid Rizvi & Ors. Vs. Union of India & Ors.* **(1993) Supp. 3 SCC 575: 1992 (3) Suppl. SCR 180;** *Suraj Prakash Gupta & Ors. Vs. State of J & K & Ors.* **(2000) 7 SCC 561: 2000 (3) SCR 807;** *R.S. Garg Vs. State of U.P. & Ors.* **(2006) 6 SCC 430;** *Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors.* **(2006) 4 SCC 1: 2006 (3) SCR 953;** *State of M.P. & Anr. Vs. Dharam Bir* **(1998) 6 SCC 165: 1998 (3) SCR 511** *Haryana State Electricity Board & Anr. Vs. Gulshan Lal & Ors.* **(2009) 12 SCC 231: 2009 (8) SCR 950;** *Nani Sha & Ors. Vs. State of Arunachal Pradesh & Ors.* **(2007) 15 SCC 406: 2007 (6) SCR 1027.**

Gurdeep Singh Vs. State of J & K & Ors. **1995 Supp. (1) SCC 188;** *Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain & Ors.* **(1997) 1 SCC 35: 1996 (6) Suppl. SCR 584;** *Gursharan Singh & Ors. Vs* *al*

Committee & Ors. **(1996) 2 SCC 459: 1996 (1) SCR 1154;** *Shanti Sports Club & Anr. Vs. Union of India & Ors.* **(2009) 15 SCC 705: 2009 (13) SCR 710;** *Sanjay Kumar Manjul Vs. Chairman, UPSC & Ors.* **(2006) 8 SCC 42: 2007 (6) Suppl. SCR 72** *R.K. Sethi & Anr. Vs. Oil & Natural Gas Commission & Ors.* **(1997) 10 SCC 616: 1997 (1) SCR 616** *Laxmi Rattan Cotton Mills Limited. Vs. State of Uttar Pradesh & Ors.* **(2009) 1 SCC 695: 2008 (16) SCR 283;** *T. Venkateswarulu Vs. Executive Officer, Tirumala Tirupathi Devasthanams & Ors.* **(2009) 1 SCC 546: 2008 (15) SCR 865** *Ghulam Rasool Lone Vs. State of Jammu and Kashmir & Anr.* **(2009) 15 SCC 321: 2009 (10) SCR 591;** *K.C. Gupta & Ors. Vs. Lt. Governor of Delhi & Ors.* **1994 Supp. (3) SCC 408: 1994 (2) Suppl. SCR 637;** *SK. Abdul Rashid & Ors. Vs. State of Jammu & Kashmir & Ors.* **(2008) 1 SCC 722: 2007 (12) SCR 940;** *Govind Prasad Vs. R.G. Parsad & Ors.* **(1994) 1 SCC 437: 1993 (3) Suppl. SCR 555;** *Vinay Kumar Verma & Ors. Vs. State of Bihar & Ors.* **(1990) 2 SCC 647: 1990 (2) SCR 374;** *Dhananjay Malik & Ors. Vs. State of Uttaranchal & Ors.* **(2008) 4 SCC 171: 2008 (3) SCR 1035;** *S.L. Sachdev & Anr. Vs. Union of India & Ors.* **(1980) 4 SCC 562: 1981 (1) SCR 971;** *General Manager, South Central Railway, Secunderabad & Anr. Vs. V.R. Siddhantti & Ors.* **(1974) 4 SCC 335: 1974 (3) SCR 207;** *State of Mysore Vs. M.H. Krishna Murthy & Ors.* **(1973) 3 SCC 559: 1973 (2) SCR 575;** *K. Madhavan & Anr. Vs. Union of India & Ors.* **(1987) 4 SCC 566: 1988 (1) SCR 421;** *R.S. Makashi & Ors. Vs. I.M. Menon & Ors.* **(1982) 1 SCC 379: 1982 (2) SCR 69;** *Wing Commander J. Kumar Vs. Union of India & Ors.* **(1982) 2 SCC 116: 1982 (3) SCR 453;** *Hari Bansh Lal Vs. Sahodar Prasad Mahto & Ors.* **(2010) 9 SCC 655: 2010 (10) SCR 561 – referred to.**

Case Law Reference:

(1968) 1 SCR 111	**distinguished**	**Para 38**
2003 (4) Suppl. SCR 301	**referred to**	**Para 21**

2001 (5) Suppl. SCR 460	**referred to**	**Para 21**
1994 (4) Suppl. SCR 72	**referred to**	**Para 21**
1992 (3) Suppl. SCR 180	**referred to**	**Para 22**
2000 (3) SCR 807	**referred to**	**Para 22**
(2006) 6 SCC 430	**referred to**	**Para 22**
2006 (3) SCR 953	**referred to**	**Para 22**
1998 (3) SCR 511	**referred to**	**Para 22**
2009 (8) SCR 950	**referred to**	**Para 22**
2007 (6) SCR 1027	**referred to**	**Para 23**
1995 Supp. (1) SCC 188	**referred to**	**Para 24**
1996 (6) Suppl. SCR 584	**referred to**	**Para 24**
1996 (1) SCR 1154	**referred to**	**Para 24**
2009 (13) SCR 710	**referred to**	**Para 24**
2007 (6) Suppl. SCR	**referred to**	**Para 25**
1997 (1) SCR 616	**referred to**	**Para 25**
2008 (16) SCR 283	**referred to**	**Para 26**
2008 (15) SCR 865	**referred to**	**Para 27**
2009 (10) SCR 591	**referred to**	**Para 27**
1994 (2) Suppl. SCR 637	**referred to**	**Para 28**
2007 (12) SCR 940	**referred to**	**Para 28**
1993 (3) Suppl. SCR 555	**referred to**	**Para 28**
2007 (8) SCR 655	**relied on**	**Para 55**
1990 (2) SCR 374	**referred to**	**Para 29**
2008 (3) SCR 1035	**referred to**	**Para 29**
2010 (2) SCR 860	**referre**	

1981 (1) SCR 971	**referred to**	**Para 30**
1974 (3) SCR 207	**referred to**	**Para 30**
1973 (2) SCR 575	**referred to**	**Para 30**
1988 (1) SCR 421	**referred to**	**Para 31**
1982 (2) SCR 69	**referred to**	**Para 31**
1982 (3) SCR 453	**referred to**	**Para 31**
1999 (5) Suppl. SCR 310	**relied on**	**Para 46**
2010 (10) SCR 561	**referred to**	**Para 35**
(1968) 2 SCR 186	**relied on**	**Para 37**
(1968) 1 SCR 185	**relied on**	**Para 48**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4483-4485 of 2013.

From the Judgment & Order dated 23.07.2010 of the High Court of Judicature at Madras in Writ Petition Nos. 23893 of 2006, 34401 of 2007 and 17578 of 2008.

WITH

C.A. Nos. 4486, 4487, 4488, 4489, 4490, 4491, 4492, 4493, 4494, 4495, 4496, 4497, 4498, 4499, 4500, 4501-4502 and 4503-4504 of 2013 and Contempt Petition (C) No. 133 of 2012 in C.A. No. 4498 of 2013 and Contempt Petition (C) No. 145 of 2012 in C.A. No. 4492 of 2013.

P.P. Rao, V. Giri, A.K. Ganguli, P.S. Patwalia, Nalini Chidambaram, Jaideep Gupta, S. Gomathnayagam, AAG, V. Mohana, Puja Singh, P.R. Kovilan Poongkuntran, Geetha Kovilan, Naresh Kumar, V. Ramasubramanian, T. Harish Kumar, Vikas Mehta, V. Raghavachari, G. Balaji, Mahalakshmi Pavani, Mukesh Kumar Singh (For Mahalakshmi Balaji & Co.,) Vivek Jain, Chinmayee Chandra (for Vikas Mehta), Satya Mitra

Garg, Plato Aristotil, Manju Aggarwal, S. Ravi Shankar, B. Balaji, N. Ramaiah, R. Rakesh Sharma for the Appearing Parties.

The Judgment of the Court was delivered by

SURINDER SINGH NIJJAR,J. 1. Leave granted in all the Special Leave Petitions.

2. These appeals are directed against the common judgment and final order dated 23rd July, 2010 passed by the High Court of Judicature at Madras in Writ Petition Nos. 23893 of 2006, 34401 of 2007, 8339, 12654, 14592, 17578, 25844 and 27982 of 2008 and Writ Appeal No.312 of 2008 and connected misc. petitions. By this order, the High Court dismissed the Writ Petition Nos. 23893 of 2006 and 34401 of 2007 and allowed the Writ Petition No.17578 of 2008 filed by respondents 3 to 5 and also Writ Appeal No.312 of 2008.

3. Since the facts involved in the controversy in all the appeals are common, we shall make a reference to the facts as narrated by the High Court. This shall be supplemented by any additions made by the appellants in this Court.

4. The facts noticed by the High Court are that initially the Health Department consisted of Multipurpose Health Workers and Unipurpose Health Workers who were engaged in various schemes for eradication of different diseases which were widespread throughout India. By an order dated 29th September, 1982, Unipurpose Workers were integrated as Multipurpose Health Workers. On 4th November, 1988, there was a subsequent integration of employees engaged in the family welfare. Soon thereafter, statutory rules were notified under the proviso to Article 309 by the G.O.Ms. No.1507 dated 16th August, 1989 which were made applicable to the Multipurpose Health Workers Scheme. Under the rules, different Class I and Class II posts were notified and their essential qualifications were presc[illegible]al

qualification for appointment to the post of Multipurpose Health Assistant was SSLC and long term Multipurpose Health Worker's Training Course Certificate or possession of Sanitary Inspector's Course Certificate and short term training course certificate from multipurpose health workers training. It was further provided that the candidates will have to acquire the long time training course within five years from the date of appointment. The essential qualifications were also prescribed for all other posts. By an amendment dated 19th November, 1990 (G.O.No.1984), the pay scales of Multipurpose Health Assistant were re-fixed. On 13th August, 1991, the Health and Family Welfare Department by G.O. No.1123 prescribed the qualifications for promotions of Multipurpose Health Supervisors as Block Health Supervisors. Vide G.O.Ms. No.4 dated 4th January, 1993 some of the categories were added in the feeder posts of Multipurpose Health Supervisor and Multipurpose Health Workers. These rules were, however, applicable only to those who joined the service under the Tamil Nadu Public Health Services.

5. Again the Health and Family Welfare Department, through G.O. No. 593 dated 11th September, 1995, categorized Multipurpose Health Supervisors and Multipurpose Health Assistants as Health Inspectors Grade I and Grade II. The G.O. further provided that all Multipurpose Health Assistants were to be promoted as Multipurpose Health Supervisors provided they had served on the post for 20 years and had crossed the age of 50 years. This relaxation was given as a one time measure by upgradation of the post. It is pertinent to mention here that the Multipurpose Health Assistants promoted under this G.O. included the Unipurpose Health Workers who had been absorbed pursuant to the integration in 1982. The aforesaid G.O. No.593 was challenged by certain aggrieved persons in Writ Petition Nos. 17550 of 2006 and 25608 of 2006. Prior to this, the rules were amended on 20th December, 1995 w.e.f. 6th September, 1989 by G.O. No.782. It was, however, made clear that the amendment shall not adversely

affect those who were holding the post prior to 16th August, 1989.

6. The inter se dispute between the parties in the present appeals originated when the fact of successful eradication of leprosy by the National Leprosy Eradication Programme (NLEP) led to the integration of the employees working in the said Scheme into the Multipurpose Health Workers Scheme. The integration of the Multipurpose Health Workers Scheme with the Leprosy Eradication Scheme took place vide G.O. Ms. No.320, Health and Family Welfare (G-1) Department dated 27th June, 1997. The G.O. sets out the rationale for the integration as follows :-

> "The National Leprosy Eradication Programme is in operation in Tamil Nadu from 1955. With the introduction of the Multi Drug Therapy (MDT) comprising these drugs. DAPSONE, RIFAMPCIN and CLOFAZIMINE, incidence of leprosy has been brought down considerably. Tamil Nadu has done a commendable work in the leprosy control Programme over the years. The prevalence of leprosy in Tamil Nadu was 118 per 10,000 in 1983 which has been reduced to 7 per 10,000. The reduction in prevalence rate for the last two years is not very significant. Recently, India hosted an International Meet on Eradication of leprosy and the Prime Minister has set a goal that the leprosy should be eradicated from India by 2000 A.D. The IWHO has also taken similar efforts globally. The eradication of leprosy means bringing down the prevalence rate to 1 per 10,000."

7. Thus, the Government of India in 1990-91 had suggested integration of leprosy services. It was felt that in order to sustain leprosy services at the operational level, its integration with the public health services will be desirable. Integration would not result in abolition of special services. On the contrary, specialized component will continue to be available within the general health services at the State and District level for planning and evaluation, provision [illegible]al

supervision, advice, referral services and research. The purpose of this integration would be to involve the Leprosy Field Staff in Public Health Work and Health Inspectors in the leprosy work, so that the leprosy inspector will cover a population of 5,000 to 10,000 as against 25,000 which was being covered at that time by the leprosy inspectors. The Government of Tamil Nadu had also upon considering, for quite some time, the question of integrating the leprosy services with Multipurpose Health Workers Scheme, under the Primary Health Care Services, constituted a committee by the G.O.Ms. No. 1705 dated 18th December, 1996 to go into the various aspects of integration and submit a report. The recommendations submitted by the aforesaid Committee were examined by the Government and accepted with some modifications.

Thus, the G.O. (Ms.) No. 320 dated 27th June, 1997 was issued integrating Leprosy Control Scheme with Multipurpose Health Workers Scheme. The G.O. made elaborate provisions with regard to: (i) the administrative control of the National Leprosy Eradication Programme, which was to be vested with the Director of Public Health and Preventive Medicine, who was to be responsible for the implementation of the National Leprosy Eradication Programme activities in the State. At the District level, the Deputy Director of Medical Services (Leprosy) would be the in-charge of the hospital based units and would be the Programme Officer, assisted by Deputy Director (Health Services), and (ii) the Salary and other components of the programme staff. It was further provided that Salary and other components of the programme staff under the control of Deputy Director of Medical Services (Leprosy) will be met from the existing allotment under Demand-18. Paragraph 4(vii) of the aforesaid G.O. was as under:-

> "The posts of Health Educator, Non Medical Supervisor and Leprosy Inspectors re-designated as Health Inspector Grade IB are brought under the control of Director of Public Health and Preventive Medicine for programme implementation. However, separate seniority shall be

> maintained for these staff and the promotions of the respective categories will continue in the existing channals (***sic***)."

8. The other relevant clause would be 5(iv), which is as under:-

> "Leprosy Inspectors: The Leprosy Inspectors will be redesignated as Health Inspector Grade IB and will be transferred to the Directorate of Public Health and Preventive Medicine. They will be posted to the Health Sub-Centres covering a population of about 10,000 one for 2 Health Sub-centres or at one for 5,000 population in problem areas. The scale of pay of this category of staff will continue to be in the existing scale of pay of Rs.1200-30-1560-40-2040. However, in order to protect their present emoluments they will be allowed special allowances of Rs. 50/- per month and the existing Health Inspector Grade I under the control of Director of Public Health and Preventive Medicine will be re-designated as Health Inspector Grade IA in the Scale of pay Rs.1350-30-1440-1800-50-2200. The Health Inspector Grade IB will attend to and undertake various Public Health activities as per the Job chart for Health Inspector Grade IA in Health Inspectors Grade IA and Grade II will also attend to Leprosy Control Work apart from their existing duties after necessary training. The Director of Public Health and Preventive Medicine will issue necessary further orders prescribing revised job chart for the Health Inspector Grade IA, Health Inspector Grade IB and Health Inspector Grade II."

9. Similarly provision was made for absorption of Ministerial staff in Clause 6 of the G.O. in the following terms:-

> "Ministerial Staff: One of the two sections at the State Head quarters will be transferred to the Office of the Director of Public Health and Preventive Me

service matters of the Leprosy staff other than those coming under Director of Medical and Rural Health Services. Further one Assistant will be transferred from the Office of the Deputy Director (Lep.) to the Deputy Director of Health Services in the Districts. The administrative control of the above staff will vest with the Director of Public Health and Preventive Medicine. The remaining ministerial staff sanctioned for Leprosy Control Programme will be transferred and posted to the institutions under the control of Director of Medical and Rural Health Services. The establishment matters of all the ministerial staff including the staff attached to the Director of Public Health and Preventive Medicine will, however, continue to be with the Director of Medical and Rural Health Services for the purpose of future promotions in the respective categories. The salary and allowances of the ministerial staff attached to the Director of Public Health and Preventive Medicine will be met from the existing budget allotment under Demand-10 Medical by Director of Public Health and Preventive Medicine. In respect of other ministerial staff salary and other allowances will be met by Director of Medical and Rural Health Services from the budget allotment under Demand-18 Medical."

10. By Clause 8, even the transportation vehicles were transferred as under:-

"The Government direct that the 102 vehicles along with drivers working in the Leprosy Control units shall be transferred to the Director of Public Health and Preventive Medicine."

11. By Clause 10, all the Government buildings occupied by the Government Leprosy Control Units were placed under the control of the Director of Medical and Rural Health Services along with the equipment and furniture for expansion of Taluka hospitals, except in places where the buildings were required for the office of the Deputy Director of Health Services. Under

Clause 11, the Director of Public Health and Preventive Medicine was also directed to take immediate action to impart necessary training to the leprosy staff in various public health activities. Similarly, the Public Health staff was directed to be trained in leprosy control activities. By Clause 13, it was directed that the integration of the Leprosy Control Programme with the Director of Public Health and Preventive Medicine will take effect from 1st July, 1997. It appears that upon issuance of the G.O., the merger was completed by 1st August, 1997. It would be apparent from Clause 5(iv) of the 1997 G.O. that the Leprosy Inspectors were designated as Health Inspector Grade IB and transferred to the Directorate of Public Health and Preventive Medicine. They were to be paid according to their existing scale of pay of Rs.1200-30-1560-40-2040. In order to protect their present emoluments, they were given special allowance of Rs.50/- per month. The existing Health Inspectors Grade I under the control of Director of Public Health and Preventive Medicine were designated as Health Inspectors Grade IA. They were in the pay-scale of Rs.1350-30-1440-1800-50-2200. It is also apparent that the Health Inspectors Grade IB were to undertake various public health activities as per the job chart for Health Inspector Grade IA. Furthermore, Health Inspectors Grade IA and Grade II were to attend to leprosy control work apart from their existing duties after necessary training. Thereafter, the issue with regard to the merger of the two categories of Health Inspectors Grade IA and Grade IB into a single category was to be examined at the time of the next Pay Commission. But it appears that the issue was not examined in the official Committee of 1998. From the above narration, it becomes clear that there was complete integration of the Leprosy Control Scheme with the Multipurpose Health Scheme through the G.O.Ms. 320 dated 27th June, 1997. Also, the fact that non-possession of Sanitary Inspector Course by the Leprosy Inspectors was not viewed with any serious concern is evident from the fact that the 1997 scheme was never challenged by the appellants.

12. Thereafter, the Director of Public Health and Preventive Medicine in his letters dated 17th February, 2006 and 15th July, 2006 set proposals for redesignation of post of Health Inspectors Grade IB as Health Inspector Grade I considering their length of service in the department, without imparting any training to them. He had suggested the aforesaid proposal for administrative convenience. At the same time, the Public Health Department Officials Association (Leprosy) had been requesting the Government repeatedly for re-designating them as Health Inspector Grade I. By letter dated 24th January, 2006, the Government requested the Director of Public Health and Preventive Medicine to send the necessary detailed proposal for imparting in-service training for a period of one week for all the Health Inspectors Grade IB so as to re-designate them as Health Inspectors Grade I. The proposal was also to include detail of expenditure involved in the proposed training and where the expenditure to be made out from the leprosy funds.

13. At this stage, some employees filed a number of writ petitions challenging the instructions issued in the Government letter dated 24th January, 2006 in the High Court of Madras. In its order dated 20th January, 2007, in M.P. Nos. 2 and 3 of 2006 in Writ Petition No. 23893 of 2006, the High Court directed that in redesignation made by the respondents shall be subject to the writ petition. At the same time, the High Court dismissed Writ Petition No. 7892 and 7893 of 2006 on 22nd March, 2006 with the observation that before any order is passed on the proposal, the State shall consider the objections of the petitioners therein. It appears that Writ Petition Nos. 6250 and 6251 of 2006 had also been filed at the Madurai Bench of the Madras High Court in which a stay order had been granted on 1st August, 2006. The stay order was, however, vacated on 27th April, 2007. At the same time, the Tamil Nadu Health Inspectors Association had also given a representation raising their objection for redesignation of the Health Inspector Grade IB as Health Inspector Grade I.

14. Upon examination of the entire issue and taking into account the necessity for the merger of the Leprosy Control Scheme with Multipurpose Health Workers Scheme, the Government issued a further G.O. on 12th October, 2007 accepting the proposals of the Director of Public Health and Preventive Medicine to re-designate the Health Inspector Grade IB as Health Inspector Grade I for the purpose of administrative convenience and to allow the scale of pay of Rs.4500-125-7000. The aforesaid proposal was accepted through G.O.Ms. No. 382 dated 12th October, 2007. In this G.O., the rule relating to the possession of the Sanitary Inspectors Course (or) Multipurpose Health Worker (Male) Training Course was relaxed in favour of these Health Inspectors Grade IB to designate them as Health Inspector Grade I, without affecting the rights of the existing Health Inspector Grade I working in the Public Health Department. The conditions of absorptions were contained in Clause 6 of the aforesaid G.O. which is as under:-

> "The Government has therefore decided to accept the proposals of the Director of Public Health and Preventive Medicine to re-designate the Health Inspectors Grade-I(B) as Health Inspector Grade-I for the purpose of administrative convenience and to allow the scale of pay of Rs.4500-125-7000. The rule relating to possession of Sanitary Inspector Course (or) Multi Purpose Health Worker (Male) Training Course is relaxed in favour of these Health Inspectors Grade-I(B) to designate them as Health Inspector Grade I, without affecting the rights of the existing Health Inspector Grade-I working in Public Health Department. The Government accordingly issue the following orders:
>
> (i) The post of Health Inspector Grade-I (B) shall hereafter be designated as Health Inspector Grade-I and the scale of pay of Rs.4500-125-7000 be allowed to them from the date of issue of the order.
>
> (ii) Fixation of pay in the revised [illegible]e

allowed only from the date of issue of orders under FR 23 at the same stage if there is a stage or next stage if there is no such stage. They are eligible for monetary benefits only from the date of issue of the Government order.

(iii) The above re-designation is subject to the result of Writ Petition No.23893/06 pending in the High Court of Madras and Writ Petition Nos. 6250 & 6251/06 pending before the Madurai Bench of Madras High Court.

(iv) These re-designated Health Inspector Grade-I will be placed in the seniority list of Health Inspector Grade-I below the last person of the Health Inspector Grade-I already working in the Department. As the re-designation as Health Inspector Grade-I is given only from the date of issue of the order in relaxation of rule relating to possession of sanitary inspectors course, these re-designated Health Inspector Grade-I cannot claim seniority now or in future in the post of Health Inspector Grade-I from the date of their absorption in the Public Health Department as per G.O.Ms. No. 320 Health dated:27.6.1997.

(v) The re-designated Health Inspector Grade I cannot claim promotion to the post of Block Health Supervisor, and Technical Personal Assistant till the last person in the existing list of Health Inspector Grade I gets promotion as Block Health Supervisor, and Technical Personal Assistant. However, the existing promotion channel as Non-Medical Supervisor and Health Educator shall be allowed to them till their turn for promotion to the post of Block Health Supervisor, Technical Personal Assistant, comes as per their seniority."

15. At this stage, the respondents, i.e., the employees of the erstwhile Leprosy Control Scheme challenged the Clauses No. 4 and 5 of Para 6 of the aforesaid G.O. in Writ Petition Nos. 17578, 12654, 25844 and 27982 of 2008. Apart from the aforesaid challenge, the G.O.Ms. No. 382 was also challenged

by the present appellant in Writ Petition No. 34401 of 2007.

16. It would be appropriate to notice here that the Government of Tamil Nadu issued G.O.(Ms.) No. 73 dated 28th February, 2008, whereby the Director of Public Health and Preventive Medicine was permitted to implement the orders of the High Court dated 21st November, 2007, wherein it was decided that only those Health Inspectors Grade I who had the Sanitary Inspector Course Certificate were entitled to be considered for promotion to the next post of Block Health Supervisor.

17. At the same time, the laboratory assistants, who were promoted as Health Inspectors Grade I; and the directly recruited Multipurpose Health Assistants, who were promoted as Health Inspectors Grade I filed a batch of writ petitions viz. Writ Petition Nos. 2249, 10807, 17550 and 25608 of 2006 and 8987, 8988 and 9185 of 2007 with a prayer to restrain the department from drawing the panel for the post of Block Health Supervisor by including the names of Health Inspectors Grade I, who did not possess either Sanitary Inspector Course Certificate or Multipurpose Health Course Certificate. It is pertinent to note here that the Unipurpose Health Workers who got absorbed into Multipurpose Health Scheme in 1988 and were made Health Inspectors Grade I in 1999 did not possess the aforesaid certificates and this very fact was the grievance made against the said Unipurpose Health Workers. The petitioners in the aforesaid bunch of writ petitions were in possession of the said certificates. It was their case that since Unipurpose Health Workers were promoted as Health Inspectors Grade I as a one time measure after completing 20 years of services, they were not entitled to further promotion on the post of Block Health Supervisor. Their promotion was, therefore, sought to be challenged on the twin grounds that : (i) they did not possess the necessary certificate and (ii) they were already recipients of the benevolence of the Government in that they had been given promotion[illegible]s

Grade I as a one time measure. A Single Judge of the High Court allowed the aforesaid Writ Petition on 21st November, 2007 accepting both the grounds raised in the writ petition. As noticed above, the Government accepted and implemented the aforesaid order of the learned Single Judge, through G.O.Ms. No. 73 dated 28th February, 2008. The aforesaid G.O. now prompted the Health Inspector Grade I (Erstwhile Unipurpose Health Workers), who were not in possession of the required certificate to challenge the same. They filed Writ Petition No. 8339 and 1459 of 2008 with a prayer for quashing the aforesaid G.O.Ms. No. 73. The same category also filed Writ Appeal No. 312 of 2008 challenging the order dated 21st November, 2007, passed by the Learned Single Judge, which had been implemented by the Government by issuing G.O.Ms. No. 73 of 28th February, 2008. All these matters were taken up for consideration by the Division Bench of the Madras High Court and decided vide judgment dated 23rd July, 2010. The aforesaid judgment has been challenged in the following Civil Appeals:-

Civil Appeal No.4491of 2013 arising out of SLP (C) No. 566 of 2011, Civil Appeal No. 4492 of 2013 arising out of SLP (C) No. 4572 of 2011, Civil Appeal No.4493 of 2013 arising out of SLP (C) No. 2179 of 2011, Civil Appeal No.4495 of 2013 arising out of SLP (C) No. 2183 of 2011, Civil Appeal No.4494 of 2013 arising out of SLP (C) No. 2188 of 2011, Civil Appeal No.4496 of 2013 arising out of SLP (C) No. 2191 of 2011, Civil Appeal No.4498 of 2013 arising out of SLP (C) No. 2194 of 2011, Civil Appeal No.4497 of 2013 arising out of SLP (C) No. 2196 of 2011, Civil Appeal No.4499 of 2013 arising out of SLP (C) No. 3485 of 2011, Civil Appeal No.4483 of 2013 arising out of SLP (C) No. 24492 of 2010, Civil Appeal No.4484 of 2013 arising out of SLP (C) No. 24493 of 2010, Civil Appeal No.4485 of 2013 arising out of SLP (C) No. 24494 of 2010, Civil Appeal No.4487 of 2013 arising out of SLP (C) No. 25388 of 2010 and the

connected appeals being Civil Appeal No.4486 of 2013 arising out of SLP (C) No. 25226 of 2010, Civil Appeal No.4488 of 2013 arising out of SLP (C) No. 25417 of 2010, Civil Appeal No.4489 of 2013 arising out of SLP (C) No. 26159 of 2010, Civil Appeal No.4490 of 2013 arising out of SLP (C) No. 25442 of 2010, Civil Appeal No.4500 of 2013 arising out of SLP (C) No. 15221 of 2011, Civil Appeal No.4501-4502 of 2013 arising out of SLP (C) No. 4710-4711 of 2012 and Civil Appeal No.4503-4504 of 2013 arising out of SLP (C) No. 10939-10940 of 2012.

18. By the impugned judgment, the Division Bench of the High Court has held that even though Unipurpose Health Workers had been given a concession of one time promotion, it would not act as an embargo on their subsequent promotion. Furthermore, the requirement of possession of certificate was waived only for absorption of Unipurpose Health Workers as Multipurpose Health Assistants. Thereafter, G.O.Ms. No. 4 dated 4th January, 1993 provided that the requirement of 5 years service as Basic Health Workers, Vaccinators, Cholera Workers in the Tamil Nadu Public Health Subordinate Service was sufficient for promotion to the post of Health Inspector Grade I. Similarly, 5 year's service in the post of Health Inspector Grade I was sufficient for promotion as Block Health Supervisor. The High Court emphasised that Rule nowhere contemplates that Health Inspector Grade I, who did not possess the required certificate could not be promoted as Block Health Supervisor. The only requirement of the Rule was that for promotion as Block Health Supervisor, the candidate shall have 5 year's service as Health Inspector Grade I. Consequently, the judgment of the learned Single Judge was set aside and G.O.Ms. No. 73 dated 28th February, 2008 was quashed. It was made clear that those Health Inspector Grade I who were not in possession of the Sanitary Inspector Course Certificate or Multipurpose Health Workers training Course Certificate are eligible for promotion to th

Supervisor from the date on which their juniors were promoted with all benefits.

19. The Division Bench thereafter turned its attention to the main controversy between Health Inspector Grade I, who had been re-designated as Health Inspector Grade IA and Leprosy Inspectors, who had been re-designated as Health Inspectors Grade IB. The High Court has accepted the claim of the respondents that their absorption as Health Inspector Grade I had to be given effect to w.e.f. 1st August, 1997. The aforesaid conclusion of the High Court is based upon the rationale that upon integration, the nature of duties and responsibilities performed by Health Inspector Grade IA and Grade IB were one and the same. The fact that Grade IA was enjoying a higher scale of pay than the pay-scale of Inspector Grade IB was of no relevance, for the purpose of equivalence of Posts. Whilst allowing the claim of the respondents and accepting that they have been absorbed as Health Inspector Grade I w.e.f. 1st August, 1997, the High Court, however, directed that they would be placed at the bottom of the seniority of serving Health Inspectors Grade I as on 1st August, 1997. Consequently, the Writ Petitions Nos. 8339, 12654, 14592, 17578, 25844 and 27982 of 2008 and the writ appeal in W.A.No.312 of 2008 were allowed. However, Writ Petition Nos. 23893 of 2006 and 34401 of 2007 were dismissed.

20. We have heard the counsel for the parties at great length.

21. The first submission of Mr. P.P. Rao, the learned senior counsel on behalf of the petitioner, is that the executive instructions cannot supplant statutory rules and for the redesignation of Health Inspectors Grade IB as Health Inspectors Grade I an amendment in the relevant statutory rules was necessary. He relies upon *Sant Ram Sharma Vs. State of Rajasthan & Ors.*[1] in support of this submission. This

1. (1968) 1 SCR 111.

submission has been reiterated by all the counsel for the appellants. Mr. S. Gomathinayagam, relies upon the case of *Prafulla Kumar Das & Ors. Vs. State of Orissa & Ors.,*[2] *Pradip Chandra Parija & Ors. Vs. Pramod Chandra Patnaik & Ors.,*[3] *Uday Pratap Singh & Ors. Vs. State of Bihar & Ors.*[4] and *D.N. Sinha & Ors. Vs. State of Bihar & Ors.* [Civil Appeal No. 3671 of 1988].

22. The second contention of Mr. P.P. Rao is that the academic qualifications prescribed for a post cannot be relaxed and the length of experience cannot be a substitute for educational qualifications prescribed (Relies on: *Syed Khalid Rizvi & Ors. Vs. Union of India & Ors.;*[5] *Suraj Prakash Gupta & Ors. Vs. State of J & K & Ors.;*[6] *R.S. Garg Vs. State of U.P. & Ors.;*[7] Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors.[8] and *State of M.P. & Anr. Vs. Dharam Bir*[9]). Thus, it has been pointed out that relaxation given firstly vide G.O.Ms. No. 593 dated 11th September, 1995; and then vide G.O. (Ms.) No. 382 dated 12th October, 2007 with regard to the qualification of Sanitary Inspector Course or Multipurpose Health Worker (Male) is in violation of Articles 14 and 16 of the Constitution of India. It is also pointed out that the relaxation amounts to treating un-equals as equals. This submission was reiterated by Mr. S. Gomathinayagam. The learned Addl. Advocate General placed reliance upon *Haryana State Electricity Board & Anr. Vs. Gulshan Lal & Ors.*[10]

23. The learned counsel further pointed out that any such

2. (2003) 11 SCC 614.
3. (2002) 1 SCC 1.
4. 1994 Sup (3) SCC 451.
5. (1993) Supp. 3 SCC 575
6. (2000) 7 SCC 561.
7. (2006) 6 SCC 430.
8. (2006) 4 SCC 1.
9. (1998) 6 SCC 165.
10. (2009) 12 SCC 231.

relaxation, even if valid, can only be prospective in application from the said order. However, the Division Bench of the High Court has given retrospective effect to G.O. No. 382 dated 12th October, 2007. Thus, the impugned judgment/order has in fact added to the illegal benefit given to the respondents by the aforesaid G.O. No.382. They have placed reliance upon the case of *Nani Sha & Ors. Vs. State of Arunachal Pradesh & Ors.*[11] In addition, it is submitted that the Sanitary Inspector Course is still available and that it is required for promotion to the post of Block Heath Supervisor.

24. All the learned counsel have reiterated the submissions of Mr. P.P. Rao that Court would not enforce negative equality. In support of this submission they relied upon *Gurdeep Singh Vs. State of J & K & Ors.;*[12] *Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain & Ors.;*[13] *Gursharan Singh & Ors. Vs. New Delhi Municipal Committee & Ors.;*[14] and *Shanti Sports Club & Anr. Vs. Union of India & Ors.*[15]

25. Mr. Rao, Mr. Giri, Mr. Ganguly, learned senior counsel; Mr. Poongkuntran, Ms. Mohanna and Mr. S. Gomathinayagam, learned counsel, have submitted that no merger between the Health Inspector Grade IB and Health Inspectors Grade I can be considered to have had taken place. The fact that a clear distinction was maintained with regard to the said posts even after 1997 would show the lack of any merger. Further, it cannot be overlooked that Leprosy Service was not abolished. Also, the very fact that separate seniority channel of promotion for the Leprosy Inspectors re-designated as Health Inspectors Grade IB was maintained, would show that there was no

11. (2007) 12 SCC 231.
12. 1995 Supp. (1) SCC 188.
13. (1996) 1 SCC 35.
14. (1996) 2 SCC 459.
15. (2009) 15 SCC 705.

merger. Mr. S. Gomathinayagam further points out that the High Court's order has resulted in giving double promotion to the said Leprosy Inspectors on the basis of G.O.Ms. No. 382 dated 12.10.2007. Mr. Ganguly, learned senior counsel, has relied upon *Sanjay Kumar Manjul Vs. Chairman, UPSC & Ors.*[16] Besides, Mr. Giri, learned senior counsel, has relied upon the case of *R.K. Sethi & Anr. Vs. Oil & Natural Gas Commission & Ors.*[17] in support of the submission that there is no valid merger in the present case.

26. Premising her contentions on the aforesaid submissions, Ms. Mohanna, learned counsel, pointed out that the G.O.(Ms.) No. 320 dated 27th June, 1997 which culminated in effectuating the second integration was never challenged by the Health Inspectors Grade IB, though they claimed that the duties being performed by them are similar to Health Inspectors Grade I. This, according to her, cannot be the ground for equating the post of Health Inspectors Grade IB with that of Health Inspectors Grade I. Thus, the judgment of the High Court is not correct insofar it has equated the aforesaid two posts. It has also been argued by the learned Addl. Advocate General that the latter G.O.Ms. No. 382 was a consequential order based on earlier G.O. No. 320 and, therefore, writ petitioner(s) did not have any *locus standi* to challenge the consequential order. Reliance has been placed upon the case of *Laxmi Rattan Cotton Mills Limited. Vs. State of Uttar Pradesh & Ors.*[18]

27. Another submission is that the High Court wrongly confused and intermingled the controversy relating to promotions of employees involved in the first integration with that of second integration. In this context, it was pointed out that the resolution of the issue relating to promotion under the

16. (2006) 8 SCC 42.
17. (1997) 10 SCC 616.
18. (2009) 1 SCC 695.

G.O.Ms. No. 593 dated 11th September, 1995 of employees who initially joined after 1989 as the Multipurpose Health Assistants from various Unipurpose Schemes have no relevance to the controversy relating to the Leprosy Inspectors re-designated as Health Inspector Grade IB, since both of the said posts are borne on separate and distinct cadres. It was also submitted that while allowing the Writ Appeal No. 312 of 2008 which was filed by the employees who were initially working as Unipurpose Inspectors, the High Court did not go into the merits thereof. Furthermore, the benefit given to the employees under the said writ appeal was wrongly extended to the Leprosy Inspectors re-designated as Health Inspectors Grade IB. Reliance has been placed by Mr. S. Gomathinayagam, in this context, upon the cases of *T. Venkateswarulu Vs. Executive Officer, Tirumala Tirupathi Devasthanams & Ors.*[19] and *Ghulam Rasool Lone Vs. State of Jammu and Kashmir & Anr.*[20]

28. Mr. Rao also submitted that the absorbed employees are not entitled to count previous service in the earlier grade for the purpose of seniority in the new cadre. Reliance has been placed upon; *K.C. Gupta & Ors. Vs. Lt. Governor of Delhi & Ors.;*[21] *SK. Abdul Rashid & Ors. Vs. State of Jammu & Kashmir & Ors.;*[22] and *Govind Prasad Vs. R.G. Parsad & Ors.*[23]

29. In reply, Mr. P.S. Patwalia, learned senior counsel for the respondents, submits that the integration of Leprosy Inspectors into the Department of Heath and Preventive Medicine which took place vide G.O.(Ms.)No. 320 dated 27th June, 1997, was complete in all respects. According to him, this becomes clear from the detailed instructions contained in the

19. (2009) 1 SCC 546.
20. (2009) 15 SCC 321.
21. 1994 Supp. (3) SCC 408.
22. (2008) 1 SCC 722.
23. (1994) 1 SCC 437.

said G.O. The same submissions have been reiterated by Mrs. Nalini Chidambram, learned senior counsel. Both learned senior counsel submitted that a policy decision to merge two or more posts, cadres or services can be made implemented/ enforced through an executive order/instructions as long as the executive order/or instructions do not run counter to the Rules. [Reliance for this submission was placed upon *Indian Airlines Officers' Assn. Vs. Indian Airlines Ltd. & Ors.*[24] and *Vinay Kumar Verma & Ors. Vs. State of Bihar & Ors.*[25] Mr. Jaideep Gupta, learned senior counsel, has pointed out that the G.O. through which the integration and merger has been ordered are in the nature of executive instructions. These instructions have not supplanted the statutory rules and are within the ratio of *Sant Ram Sharma* (supra) and *Dhananjay Malik & Ors. Vs. State of Uttaranchal & Ors.*[26]

30. The next submission of Mr. Patwalia, which is reiterated by the other learned senior counsel for the respondents, is that since the second integration was complete in all respects, the Leprosy Inspectors cannot be discriminated against in consideration of their eligibility for further promotion to the post of Block Health Supervisor, on the ground of initial recruitment. In other words, it has been argued that the "birthmark disappears after integration into a single class or cadre." In this behalf, reliance has been placed upon: *B. Manmad Reddy & Ors. Vs. Chandra Prakash Reddy & Ors.;*[27] *S.L. Sachdev & Anr. Vs. Union of India & Ors.;*[28] *General Manager, South Central Railway, Secunderabad & Anr. Vs. V.R. Siddhantti & Ors.;*[29] and *State of Mysore Vs. M.H. Krishna Murthy & Ors.*[30]

24. (2007) 10 SCC 684.
25. (1990) 2 SCC 647.
26. (2008) 4 SCC 171.
27. (2010) 3 SCC 314.
28. (1980) 4 SCC 562..
29. (1974) 4 SCC 335.
30. (1973) 3 SCCC 559.

31. It has been also argued by Mr. Patwalia that it needs to be appreciated that G.O. No. 382 dated 12th October, 2007 is in the nature of a clarification as it clarifies what ought to have been done in G.O. No. 320 dated 27th June, 1997. He has emphasised that since the G.O. No. 320 did not re-designate the Leprosy Inspectors as Health Inspectors Grade I in 1997, the 2007 order 'sets the mistake right' of the State Government. He points out that the 2007 G.O. itself speaks of the reasons for rectifying the mistakes committed in the 1997 order. Thus, the G.O. of 2007 merely reinforces the integration of 1997. In this respect, Mr. Jaideep Gupta, learned senior counsel, has gone even further and submitted that even if it has to be assumed that the merger of the cadres took place effectively only on the passing of G.O.Ms. No. 382 dated 12th October, 2007, the High Court was correct in concluding that Leprosy Inspectors re-designated as Health Inspectors Grade IB would be entitled to the benefit of their service in the post of Health Inspector Grade IB since 1997. Relying upon the law laid in *K. Madhavan & Anr. Vs. Union of India & Ors.;*[31] *R.S. Makashi & Ors. Vs. I.M. Menon & Ors.;*[32] *Wing Commander J. Kumar Vs. Union of India & Ors.*[33] and *Sub-Inspector Rooplal & Anr. Vs. Lt. Governor Through Chief Secretary, Delhi & Ors.;*[34] it has been contended that where persons from different sources are merged into one service, their pre-existing total length of service in the parent department has to be protected. Their previous service cannot be obliterated upon integration/merger.

32. Thus, it has been contented that the High Court has rightly given the benefit to the Leprosy Inspectors retrospectively from the date of second integration and correctly placed them at the bottom of the seniority list of the already existing Health Inspectors Grade I, with effect from 27th June, 1997.

31. (1987) 4 SCC 566.

32. (1982) 1 SCC 379.

33. (1982) 2 SCC 116.

34. (2000) 1 SCC 644.

33. Mr. Patwalia has further submitted that the insistence for qualification (Sanitary Inspector Course) for entry level/ feeder post-Health Inspector Grade II for re-designation of Leprosy Inspectors as Health Inspector Grade I in 2007 is misplaced since the State Government has passed a reasoned order to this effect, after considering the report of the Special Committee constituted for integration. He further submitted that the argument of the appellants that since education qualifications are different, nature of duties are different, there cannot be any integration, has been specifically rejected in the *Indian Airlines Officers' Assn.* case (supra). Similarly, the argument that the absorption must be from the entry level in the new cadre was also rejected in the aforesaid case. Further, since the Sanitary Inspector Course has long been discontinued, it would be an impossible condition to fulfill.

34. We may also notice here that the submission of Mrs. Nalini Chidambram, learned senior counsel, that since Rule 5 of Notification III under G.O.Ms. No. 1507 dated 16th August, 1989 does not mention the Sanitary Inspector Course as a *sine quo non* for the post of Block Health Supervisor, the argument of the appellants that possession of such a course is necessary is unfounded. She has further submitted that the State Government is estopped from raising such an objection in this Court since before the High Court, it was admitted by the State that Sanitary Inspector Course is not required to get designated as Health Inspectors Grade I.

35. All the learned counsel for the respondents emphasised that equity is in the favour of the respondents. It needs to be appreciated, according to them, that Leprosy Inspectors have lost the entire service from 1979-1989 till 1997. Also, that the State Government's stand before this Court is contradictory to that before the High Court, which is not permissible in view of the law laid down in *Hari Bansh Lal Vs. Sahodar Prasad Mahto & Ors.*[35]

35. (2010) 9 SCC 655.

36. Besides, Mrs. Nalini Chidambram, learned senior counsel, has submitted that the Health Inspectors Grade I who were working as Health Inspectors Grade II before the second integration never challenged the said integration and therefore, they are estopped from contending that they should be ranked senior to Health Inspectors Grade IB.

37. Mr. Jaideep Gupta further submitted that the question of equation of posts does not depend merely on the fact that both posts were in same or similar pay scales. There are a number of other factors, namely, nature of duties, responsibilities, minimum qualification, etc, which have to be considered as a whole. In support of this submission, he relied on *Union of India & Anr. Vs. P.K. Roy & Ors.*[36]

38. We have given considerable thought to the very elaborate submissions made by the learned senior counsel and the other counsel for all the parties. The qualifications prescribed under the aforesaid rules for the basic post of Health Inspector Grade II, were: (a) SSLC Pass Certificate; (b) One year long term Multi Purpose Health Worker (Male) Training Certificate; or (c) Sanitary Course Certificate with Short Term Multi Purpose Health Worker (Male) Training Certificate. The aforesaid provision contained in the Rules framed under Article 309 of the Constitution of India could not be amended by executive instructions. We have no hesitation in accepting the first submission of Mr. Rao that the executive instructions can not supplant the statutory rules, in view of the ratio of law laid down in the case of *Sant Ram Sharma* (supra). The aforesaid ratio has been reiterated by this Court on numerous occasions. It is not necessary to make a reference to any of the subsequent decisions as it would be a mere repetition of the accepted ratio, noticed above. We are, however, of the opinion that the ratio of law laid down in *Sant Ram Sharma's* case (supra) would not be applicable in the facts and circumstances of this case. The qualification of having passed the one year

36. (1968) 2 SCR 186.

long term Multi Purpose Health Worker (Male) Training Certificate or Sanitary Course Certificate with short term Multi Purpose Health Workers (Male) Training Certificate are the statutory requirements for recruitment and appointment on the post of Health Inspector Grade II. These qualifications would, therefore, be possessed by some of the incumbents on the promotional post of Health Inspector Grade II being Multi Purpose Health Supervisor/ Health Inspector Grade I as well. It is a matter of record that even in the cadre of Health Inspector Grade II, there were many incumbents who did not possess these qualifications. There was a category of employees i.e., the direct recruit Health Inspectors Grade II who possessed the aforesaid qualifications. There was the other category i.e. Unipurpose Health Workers consisting of Health Workers, Cholera Workers and Vaccinators, who had entered the cadre of Health Inspector Grade II without such qualifications. The requirement for having the aforesaid qualifications on the post of Health Inspector Grade II was waived by way of order G.O. Ms. No. 1936 dated 29th September, 1982. Thus, it is evident that the possession of the two aforesaid qualifications was no longer considered a requirement for appointment on the post of Health Inspector Grade II. It is also a matter of record that the possession of the aforesaid qualifications was not prescribed for promotion to the post of Multi Purpose Health Supervisor/Health Inspector Grade I. Notification III issued under G.O.Ms. No. 1507 dated 16th August, 1989 provides for the following rules applicable to the post of Multi Purpose Health Supervisor that :-

"

2. Constitution	The post shall constitute a distinct category in Class –I of the said service.
3. Appointment:-	Appointment to the post shall be made by promotion from the post of Multi Purpose Health Assistant under the Multi Purpose He[illegible]e.

4.	Appointment Authority:-	The appointment authority for the post shall be the Deputy Director of Public Health and Preventive medicine
5.	Qualification:	Experience for a period of not less then five years in the category of Multi Purpose Health Assistant under the Multi Purpose Health Workers Scheme.

39. By virtue of the aforesaid provisions, many Health Inspectors Grade II had been promoted as Health Inspectors Grade I, without possessing the aforesaid qualifications. It is also noteworthy, as admitted by the State Government, that the Sanitary Inspector Course was rescinded much prior to the issuance of the G.O. Ms. No. 320 dated 27th June, 1997, thus there was no opportunity for the Leprosy Inspectors to qualify for the aforesaid Certificate. Yet the aforesaid G.O. provided that since the Leprosy Inspectors do not possess the aforesaid qualifications, they shall be designated as Health Inspector Grade IB on integration with the post of Multi Purpose Health Supervisor / Health Inspector Grade I. In view of the aforesaid developments, Leprosy Inspectors were fully eligible to be re-designated as Multi Purpose Health Supervisor / Health Inspector Grade I. It was wholly unnecessary, unjustified and unfair to re-designate the Multi Purpose Health Supervisors as Health Inspectors Grade IA and Health Inspectors Grade IB.

40. From the above, it becomes apparent that the G.O.Ms. No. 320 dated 27th June, 1997 did not have the effect of amending the rules. It is also clear that the aforesaid G.O. did not supplant the statutory provisions. It is also further clear that there was no relaxation of the qualifications on the post of Multi Purpose Health Assistant (Health Inspector Grade II) or on the post of Multi Purpose Health Supervisor (Health Inspector Grade I). Therefore, in our opinion, upon integration of Leprosy Inspectors into the cadre of Multi Purpose Health Supervisors, the further categorization into Health Inspector Grade IA and Health Inspector Grade IB was wholly unjustified. It had no

rational nexus with any object sought to be achieved, and therefore, violated Articles 14 and 16 of the Constitution of India.

41. We may notice here that under the G.O.Ms. No. 320 dated 27th June, 1997, Clause 7 had provided that the post of Health Educator, Non-Medical Supervisor and Leprosy Inspectors (re-designated as Health Inspector Grade IB) were brought under the control of Director of Public Health and Preventive Medicine. However, separate seniority was to be maintained for the aforesaid staff and the promotions of the respective categories will continue in the existing channel. Therefore, till the issuance of G.O.Ms. No. 382 dated 12th October, 2007, Leprosy Inspectors continued to be promoted on the next higher post of Non-Medical Supervisor and Health Educator. It is noteworthy that the aforesaid G.O. Ms. No. 320 was not challenged and Leprosy Inspectors were being promoted under separate channels of promotion. Thus, it is evident that till the issuance of the G.O. Ms. No. 382 of 2007, Health Inspector Grade IA, who had been promoted from the post /category of Health Inspector Grade I, had no grievance with the integration through G.O.Ms. No. 320 dated 27th June, 1997.

42. In view of our above conclusions, we are unable to accept the third submission of Mr. P.P. Rao and the other learned counsel that there has been any relaxation with regard to qualification of Sanitary Inspector Course or Multi Purpose Health Workers (Male) Training Certificate in violation of Articles 14 and 16 of the Constitution of India. As noticed earlier by G.O. Ms. No. 593 dated 11th September, 1995 did not, in any manner, concern the Leprosy Inspectors. The aforesaid G.O. was only issued for implementation of the G.O. Ms. No. 1936, Health and Family Welfare dated 29th September, 1982, with effect from 4th November, 1988 which was implemented through G.O. Ms. No. 1507 dated 16th August, 1989. The aforesaid relaxation was given to remove stagnation to Multi Purpose Health Assistants, who were

promotion even after crossing the age of 50 years or having rendered 20 years of service. It was specifically noticed in G.O. Ms. No. 593 dated 11th September, 1995 that possession of the Multi Purpose Health Workers (Male) Training Certificate and Sanitary Course Certificate with short term Multi Purpose Health Workers (Male) Training Certificate was not a precondition for absorption of Basic Health Workers, Vaccinators, Cholera Workers as Multi Purpose Health Assistants. Therefore, at the time when G.O. Ms. No. 320 was issued, the aforesaid qualifications were not acquired. Even if required, the same had been duly relaxed. Therefore, it would also not be possible to accept the submission of Mr. Rao that the relaxation given to the Leprosy Inspectors was either arbitrary or discriminatory. The State was within its powers to relax the aforesaid qualification in exercise of its powers of the Tamil Nadu State and Subordinate Services Rules, 1955. Rule 48 of the aforesaid rules provides as under:-

> "48. Notwithstanding anything contained in these rules or in the special rules, the Governor shall have power to deal with the case of any person or class of persons serving in a civil capacity under the Government of Tamil Nadu or of any person who has or of any class of persons who have served as aforesaid or any candidate or class of candidates for appointment to a service in such manner as may appear to him to be just and equitable:
>
> Provided that, where any such rule is applicable to the case of any person or class of persons, the case shall not be dealt with in any manner less favourable to him or them than that provided by that rule."

43. Therefore, the provision contained with regard to any relaxation given to any of the categories under G.O. Ms. No. 320 dated 27th June, 1997 and under G.O. Ms. No. 382 dated 12th October, 2007 being traceable to the power under Rule 48 of the 1955 Rules can not be said to be without any legal authority or jurisdiction. We, therefore, reject the aforesaid

submission of the counsel for the petitioners also. We are of the opinion that in fact injustice had been caused to the Leprosy Inspectors at the time when G.O. Ms. No. 320 dated 27th June, 1997 was issued, which has been rectified by issuing G.O. Ms. No. 382 dated 12th October, 2007. As noticed above, the qualification of Multi Purpose Health Worker (Male) Training Certificate, the qualification of Sanitary Course Certificate with Short term Multi Purpose Health Worker (Male) Training Certificate were not the required qualification for appointment as Multi Purpose Health Supervisors. These were also not the qualifications which were required for being appointed as a Leprosy Inspector. However, even though by the 1997 integration through G.O. Ms. No. 320 dated 27th June, 1997, the Leprosy Inspectors were equated with Multi Purpose Health Supervisors, both categories were not given the same designation. The Multi Purpose Health Supervisors were designated as Health Inspector Grade IA, while Leprosy Inspectors were designated as Health Inspector Grade IB. The aforesaid categorization of Leprosy Inspectors as Health Inspector Grade IB was founded on a fallacy. It was wrongly assumed by the State that Leprosy Inspectors could not be designated as Multi Purpose Health Supervisors as they did not possess the necessary qualification for the basic post of Health Assistants, i.e., Health Inspector Grade II. The mere fact that Leprosy Inspectors were not placed in the feeder cadre of Health Inspector Grade II makes it evident that they were not required to possess the qualifications of the basic posts. They were in fact from the very inception being equated with the post of Multi Purpose Health Supervisor (Health Inspector Grade I). It was not a case of upgradation of the post of Leprosy Inspector to the post of Multi Purpose Health Supervisor. The two posts were equated. Leprosy Inspectors were *transferred* and brought under the control of Director of Public Health and Preventive Medicine for programme implementation. On transfer, they were re-designated as Health Inspector Grade IB. Inspite of the fact that the aforesaid two qualifications of one year long term Multi Purpose Health W[illegible]g

Certificate and Sanitary Course Certificate with short term Multi Purpose Health Worker (Male) Training Certificate were not the essential qualifications for appointment as Health Inspector Grade I, the post of Health Inspector Grade I was unnecessarily split into Health Inspector Grade IA and Grade IB.

44. Learned counsel for the petitioner had also submitted that relaxation even if valid can only be prospective in its application. The aforesaid proposition of law also would not be applicable in the facts and circumstances of this case. We are of the opinion that injustice had been done to the Leprosy Inspectors at the time of the 1997 merger/integration. In spite of a complete merger, G.O.Ms. No.320 dated 27th June, 1997 still provided in Paragraph 4 of Clause 7 of the G.O. that the incumbents of the post of Health Inspector Grade IB, although brought under the control of Director of Public Health and Preventive Medicine for programme implementation shall be placed in a separate seniority list, and the promotions of the respective categories will continue in the existing channels. Although Inspectors Grade IB were placed in a lower pay scale, they were to attend various Public Health activities as per the job chart for Health Inspector Grade IA, in addition to Leprosy Control Programme. Similarly, Health Inspector Grade IA and Grade II were to attend the Leprosy Control Work apart from their existing duties after necessary training. It was made clear that the Director of Public Health and Preventive Medicine will issue necessary further orders prescribing revised job chart for the Health Inspector Grade IA, Health Inspector Grade IB and Health Inspector Grade II. Therefore, it seems apparent that there was complete integration of Leprosy Control Scheme with Multi Purpose Health Workers Scheme with effect from 1st July, 1997 and the process of integration was actually completed by 1st August, 1997. As held in the case of *P. K. Roy* (supra), an issue concerning the posts has to be considered from a broader prospective, and it does not depend merely on the salary of the employees. Broadly speaking, the relevant factors could be: (i) the nature and duties of a post, (ii) the

responsibilities and powers exercised by the officer holding a post; the extent of territorial or other charge held or responsibilities discharged; (iii) the minimum qualifications, if any, prescribed for recruitment to the post; and (iv) the salary of the post. Further, it was also held in the aforesaid case that "*if the earlier three criteria mentioned above are fulfilled then the fact that the salaries of the two posts are different, would not in any way make the post 'not equivalent*'." Since the post of Health Inspector Grade IB was for all practical purposes equal to Health Inspector Grade IA, there was no legal justification to continue the disparity in the pay scales of Health Inspector Grade IA and Health Inspector Grade IB. The High Court, therefore, rightly gave the benefit of equation of post of Health Inspector Grade –IB with that that of Health Inspector Grade IA from the date of their integration, in 1997.

45. Having accepted the complete merger of the cadre of Health Inspector Grade IB with Health Inspector Grade IA and all being re-designated as Health Inspector Grade I, G.O.(Ms.) No. 382 of 2007 failed to achieve the intended result. It still discriminated against the erstwhile Health Inspector Grade IB, by robbing them of service from 1997 to 2007. They were given the pay scale of Rs.4500-125-7000 but from the date of the G.O.(Ms.) No. 382 of 2007 i.e. 12th October, 2007. Further, they were placed *en bloc* at the bottom of the seniority list of Health Inspector Grade I. This denial of seniority was justified on the ground that "as the redesignation of Health Inspector Grade I is given only from the date of the issue of the order in relaxation of rule relating to possession of Sanitary Inspector Course, they can not claim0 the benefit of service since integration on 27th June, 1997." The re-designated Health Inspector Grade I were also denied promotion on the post of Block Health Supervisor and Technical Personal Assistant till the last person in the category of Health Inspector Grade I is promoted as Block Health Supervisor. They were given the alternate route of promotion as Non-Medical Supervisor and Health Educator, till their turn comes for promotion, as per

46. Upon merger of the two posts, it was no longer permissible to treat the re-designated Health Inspector Grade IA differently from Health Inspector Grade IB. Since 1997, all incumbents on the posts of Health Inspector Grade IA and Health Inspector Grade IB were performing the same duties. There was intermixing of the duties performed by the two categories of the Health Inspector Grade IA and IB. Both the posts had lost their original identity since 27th June, 1997, and formed one homogenous cadre. Further, having relaxed the qualifications on the basis of their length of service and experience, they were at par with the Health Inspector Grade IA. Thereafter, the State was not justified in denying to the erstwhile Health Inspector Grade IB, the same treatment as was given to Health Inspector Grade IA. Therefore,0 the respondents could not have been denied the benefit of service on the post of Health Inspector Grade I from the date of the initial integration. It would be appropriate to notice the ratio of law laid down in the case of *Sub-Inspector Rooplal* (supra), wherein it was inter-alia held that the previous service of the transferred officials who are absorbed in an equivalent cadre in the transferred post is permitted to be counted for the purpose of determination of seniority. It would be appropriate to notice here that Leprosy Inspectors re-designated as Health Inspector Grade IB have not been granted the benefit of seniority in their cadre from the date of their initial appointment. They have been deprived of their service on the post of Leprosy Inspector upto 27th June, 1997 when they were integrated and re-designated as Health Inspector Grade IB. However, upon merger w.e.f. 27th June, 1997, there was no distinction in the services rendered by Health Inspector Grade IA and Health Inspector Grade IB. Therefore, in our opinion, the provision in G.O. (MS) No. 382 of 2007 not to grant the Health Inspectors Grade IB/erstwhile Leprosy Inspectors the benefit of the service from 1997 for determination of their seniority for promotion to the post of Block Health Supervisor was completely unjustified.

47. Thus, the High Court, in our opinion, was completely

justified in quashing Para 6(iv) and (v) of the G.O.(Ms.) No. 382 of 2007. The High Court has correctly held that the re-designated Health Inspector Grade I ought to have been given the same scale of pay as Health Inspector Grade IA from the date of the merger. In fact, on that date itself, the two posts should have been re-designated as Health Inspector Grade I, enjoying the same scale of pay, as all incumbents were performing the same duties and shouldering the same responsibilities. It was not permissible for the State to treat the re-designated Health Inspector Grade I differently from the Health Inspector Grade IA, on the basis of the initial source of recruitment.

48. The birth mark was obliterated on the merger of the post of Leprosy Inspector with Health Inspector Grade I. There was no justification of putting Health Inspector Grade IB in the pay scale of Rs.1200-2010, whilst Health Inspector Grade IA was placed in the pay scale of Rs.1350-2200. At the time of integration, both categories had to be given the same pay scale i.e. Rs.1350-2200. In this respect, the principle of law laid down by this Court, time and again, is that a classification based on the birth mark that stood obliterated after integration of officers, coming from different sources into a common cadre/category, would be wholly unjustified and discriminatory. This principle was relied upon by this Court in the case of *B. Manmad Reddy* (supra), wherein this court reiterated the observations of this Court in Paragraph 5 of *Roshan Lal Tandon Vs. Union of India:*[37]

> "*In our opinion, the constitutional objection taken by the petitioner to this part of the notification is well founded and must be accepted as correct. At the time when the petitioner and direct recruits were appointed to Grade D, there was one class in Grade D formed of direct recruits and the promotees from the grade of artisans. The recruits from both the sources to Grade D were integrated*

37. (1968) 1 SCR 185.

into one class and no discrimination could thereafter be made in favour of recruits from one source as against the recruits from the other source in the matter of promotion to Grade C. To put it differently, once the direct recruits and promotees are absorbed into one cadre, they form one class and they cannot be discriminated for the purpose of further promotion to the higher Grade C."

49. Since G.O. Ms. No. 382 dated 12th October, 2007 was issued to remove the injustice done to Leprosy Inspectors at the time when G.O. Ms. No. 320 dated 27th June, 1997 was issued. We are unable to accept the submission of Mr. Rao that any unjustified retrospective effect has been given to the G.O. Ms. No. 382 dated 12th October, 2007. Consequently, we also do not find any merit in the submission of Mr. Rao that granting the benefit of service to Health Inspectors Grade IB on the post of health Inspector Grade I resulted in enforcement of a negative equity. Therefore, the judgments relied upon by the learned counsel would not be applicable in the facts and circumstances of this case.

50. In view of the detailed reasons given above, we also do not find any merit in the submission of the learned counsel for the petitioners that there was not a complete merger between the post of Leprosy Inspectors and Multi Purpose Health Supervisor, by G.O. Ms. No. 320 dated 27th June, 1997.

51. We also do not find any substance in the submission of the Additional Advocate General, that the erstwhile Leprosy Inspectors have been given double benefit of promotion as they still continue to enjoy original channel of promotion on the post of Non-Medical Supervisor and Health Educator.

52. The promotion on the aforesaid posts were being given to the Health Inspectors Grade IB only in view of the wholly illegal prohibition contained in G.O. Ms. No. 320 of 1997.

53. These observations are fully applicable in the facts and

circumstances of this case.

54. We, therefore, find the submissions of the appellant to be devoid of any merit. The High Court was justified in quashing the Paras 6(iv) and (v) of the G.O.Ms. No.382. The seniority of the respondent has to be fixed in the cadre of Health Inspector Grade I by giving the benefit of service from 27th June, 1997. Further, they are eligible to be promoted on completion of 5 years service on the post of Health Inspector Grade I, though, they can be placed at the bottom of the seniority of serving Health Inspector Grade I as on 1st August, 1997.

55. We may also mention here about the extent of interference of this court in matters relating to integration or fusion of employees. This court held in the *Indian Airlines Officers Association's* case (supra) that the matter of integration or the fusion of employees, being one of policy, could not have been challenged by the employees unless the said decision was arbitrary, unreasonable or capricious. And as noticed earlier, that none of the Government Orders vide which integration was effectuated, suffers from any of the aforesaid irregularities. The High Court has merely undone the injustice done to the respondents. We are, therefore, not inclined to interfere in the well reasoned order of the Division Bench of the High Court.

56. We have given considerable thought to the law laid in the judgments cited and relied upon by Mr. Rao, learned senior counsel appearing on behalf of the petitioner.

57. However, none of the principles enunciated by this Court in the judgments cited by the learned counsel for the appellants have been infringed by any of the actions taken on the basis of G.O.Ms. No. 320 dated 27th June, 1997 and G.O. Ms. No. 382 dated 12th October, 2007. In our opinion, the High Court, in fact rightly quashed and set aside the offending clauses of 6(iv) and 6(v) of G.O. Ms

October, 2007.

58. At this stage, we may summarise the conclusions recorded by us in the following manner:-

i. The integration of Leprosy Inspectors into the Department of Health and Preventive Medicine by G.O.Ms. No. 320 dated 27th June, 1997 was complete in all respects.

ii. The aforesaid G.O. Ms. No. 320 dated 27th June, 1997 did not bring about an amendment in the Statutory Services Rules contained in G.O. Ms. No. 1507 dated 16th August, 1989. The G.O.Ms. was supplementary to the aforesaid Rules and did not supplant the same.

iii. There was no relaxation in the educational qualification for the integration/re-designation of Leprosy Inspectors as Multi Purpose Health Supervisors as the post of Leprosy Inspector was equated with the post of Multi Purpose Health Supervisor. The qualifications prescribed for appointment on the post of Multi Purpose Health Assistants re-designated as Health Inspector Grade II were not applicable for the post of Multi Purpose Health Supervisor.

iv. Since, there was a complete integration of the posts of Leprosy Inspector and Multi Purpose Health Supervisor by virtue of G.O.Ms. No. 320 dated 27th June, 1997; both categories were entitled to the same treatment. Therefore, Leprosy Inspectors re-designated as Health Inspector Grade IB were entitled to the pay-scale of Rs.1350-2000 w.e.f. 1st August, 1997 and the pay-scale of Rs.4500-7000 w.e.f. the same were given to Health Inspector Grade IA, with all consequential benefits.

v. Upon integration vide G.O.Ms. No. 320 dated 27th June, 1997, Multi Purpose Health Supervisors and Leprosy Inspectors were to be re-designated as Health Inspector Grade I. The birth mark of the Leprosy Inspector got obliterated with the integration. There could be no further distinction in the cadre of Health Inspector Grade I. There could be no such division as Health Inspector Grade IA and Health Inspector Grade IB.

vi. Since Paragraph 6(iv) and 6(v) of G.O.Ms. No. 382 dated 12th October, 2007 was in violation of Articles 14 and 16 of the Constitution of India, they have been correctly struck down by the High Court.

vii. The denial of seniority to the re-designated Health Inspectors Grade IB, i.e., erstwhile Leprosy Inspectors on the post of Health Inspector Grade I w.e.f. 1st August, 1997 to 12th October, 2007 violated Articles 14 and 16 of the Constitution of India. The Division Bench of the High Court has correctly concluded that the integrated Leprosy Inspectors, re-designated as Health Inspector Grade IB are to be re-designated as Health Inspector Grade I and to be given seniority as well as consequential reliefs such as seniority and further promotions.

viii. The provision contained in Clause 6(v) of G.O.Ms. No. 382 dated 12th October, 2007 denying promotion of the re-designated Health Inspector Grade I to the post of Block Health Supervisor and Technical Personal Assistant till the last person in the existing list of Health Inspector Grade I gets promotion as Block Health Supervisor and Technical Personal Assistant, has been rightly held by the High Court to be violative of Articles 14 and 16 of the Constitution of Ind

ix. The continuance of the existing promotion channels as Non-Medical Supervisor and Health Educator to the re-designated Health Inspector grade I (erstwhile Leprosy Inspectors) did not amount to bestowing a double benefit upon this category. Therefore, the High Court did not enforce negative equality. The High Court has correctly observed that upon integration and merger into one cadre, the pre-existing length of service of the Leprosy Inspectors re-designated as Health Inspector Grade IB had to be protected as it can not be obliterated. Therefore, the Leprosy Inspectors have been correctly placed at the bottom of the seniority list of the already existing Health Inspectors Grade I w.e.f. 27th June, 1997. Therefore, it can not be said that benefit has been given to the Leprosy Inspectors /Health Inspector Grade IB /Health Inspector Grade I with retrospective effect.

59. In view of the aforesaid conclusions, we find no merit in any of the following Civil Appeals, i.e., Civil Appeal No.4491 of 2013 arising out of SLP (C) No. 566 of 2011, Civil Appeal No 4492 of 2013 arising out of SLP (C) No. 4572 of 2011, Civil Appeal No.4493 of 2013 arising out of SLP (C) No. 2179 of 2011, Civil Appeal No 4495 of 2013 arising out of SLP (C) No. 2183 of 2011, Civil Appeal No.4494 of 2013 arising out of SLP (C) No. 2188 of 2011, Civil Appeal No.4496 of 2013 arising out of SLP (C) No. 2191 of 2011, Civil Appeal No.4498 of 2013 arising out of SLP (C) No. 2194 of 2011, Civil Appeal No. 4497 of 2013 arising out of SLP (C) No. 2196 of 2011, Civil Appeal No. 4499 of 2013 arising out of SLP (C) No. 3485 of 2011, Civil Appeal No.4483 of 2013 arising out of SLP (C) No. 24492 of 2010, Civil Appeal No.4484 of 2013 arising out of SLP (C) No. 24493 of 2010, Civil Appeal No.4485 of 2013 arising out of SLP (C) No. 24494 of 2010, Civil Appeal No.4487 of 2013 arising out of SLP (C) No. 25388 of 2010 and the connected appeals being Civil Appeal No.4486 of 2013 arising out of

SLP (C) No. 25226 of 2010, Civil Appeal No.4488 of 2013 arising out of SLP (C) No. 25417 of 2010, Civil Appeal No.4489 of 2013 arising out of SLP (C) No. 26159 of 2010, Civil Appeal No.4490 of 2013 arising out of SLP (C) No. 25442 of 2010, Civil Appeal No.4500 of 2013 arising out of SLP (C) No. 15221 of 2011, Civil Appeal No.4501-4502 of 2013 arising out of SLP (C) No. 4710-4711 of 2012 and Civil Appeal No.4503-4504 of 2013 arising out of SLP (C) No. 10939-10940 of 2012. All of them are hereby dismissed.

60. Further, no need arises for passing a separate order in the Contempt Petition No. 133 of 2012 in Civil Appeal No.4498 of 2013 arising out of SLP (C) No. 2194 of 2011 and Contempt Petition No. 145 of 2012 in Civil Appeal No.4492 of 2013 arising out of SLP (C) No. 4572 of 2011, as the said Contempt Petitions would be rendered infructuous by this judgment.

Kalpana K. Tripathy Appeals dismissed.

N. SENGODAN

v.

SECRETARY TO GOVERNMENT, HOME (PROHIBITION & EXCISE) DEPARTMENT, CHENNAI AND OTHERS

(Civil Appeal No. 4815 of 2013)

JULY 1, 2013

[G.S. SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1982 – s.3(2) – Detention of appellant under the 1982 Act – Advisory Board constituted u/s.10 of the 1982 Act held that there was no sufficient cause for detention of appellant – State Government subsequently revoked the order of detention – Appellant, if entitled to damages for being in detention for more than two months – Held: Respondents failed to bring on record evidence to show that appellant was engaged, or was making preparations for engaging, in any of his activities as a 'Goonda' which may affect or are likely to affect adversely the maintenance of public order – Nothing on record to suggest that appellant, either by himself or as a member of or leader of a gang habitually committed, or attempted to commit or abetted the commission of offence punishable under Chapter XVI or Chapter XVII or Chapter XXII of IPC – Appellant had to remain in custody for more than two months on the basis of opinion given by the respondents based on facts which were not in existence – Respondent-State and its officers grossly abused legal power to punish appellant to destroy his reputation in a manner non-oriented by law by detaining him under the 1982 Act in lodging a criminal case u/s.3 of the 1992 Act and u/s.505(1)(b) IPC based on wrong statements which were fully unwarranted – Consequently, cost

of Rs.2 lacs imposed on the State of Tamil Nadu for payment in favour of appellant – Police (Incitement to Disaffection) Act, 1922 – s. 3 – Penal Code, 1860 – s. 505 – Preventive Detention.

Constitution of India, 1950 – Arts. 21 and 22 – Personal liberty – Deprivation of – Held: To be only as per procedure prescribed in CrPC and the Evidence Act conformable to the mandate of the Constitution – The investigator is not empowered to trample upon the personal liberty of a person when he has acted by malafides.

Through a press statement published in a Tamil Newspaper "Malai Murasu", the appellant, a retired police officer, had made requisition on behalf of the officials working in the Tamil Nadu Police Department to the Hon'ble Chief Minister of Tamil Nadu.

It was alleged that the appellant was inciting the police personnel in Tamil Nadu to form an association to fight for their rights against the Government and that he toured several districts in the State and incited the serving police personnel over forming of an association, and acted in a manner prejudicial to the maintenance of public order. Charges under Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) IPC were levelled against the appellant.

The appellant was declared as "Goonda" and detained under Section 3(2) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1982. However, the Advisory Board constituted under Section 10 of the 1982 Act held that there was no sufficient cause for detention of the appellant and thereafter the State Government revoked the order of detention.

The question which arose for consideration in the instant appeal was whether

circumstances of the case the appellant was entitled for any damage for having detained for around two months under Section 3(2) of the 1982 Act.

Allowing the appeal, the Court

HELD:1. The Police-Forces (Restriction of Rights) Act, 1966 provides for the restriction of certain rights conferred by Part III of the Constitution in their application to the members of the Forces charged with the maintenance of public order as to ensure the proper discharge of their duties and the maintenance of discipline among them. Section 3 of the 1966 Act restricts right to form association, freedom of speech, etc. but there is no specific ban to form association. [Paras 27 and 29] [375-H; 376-A-B; 377-D]

2. From the press statement dated 8th December, 1997 it is apparent that no incitement has been made by the appellant against the State Government nor the Police force has been instigated. The appellant cited past incident of 30th November, 1997 in which one Selvaraj a Police constable was attacked and killed which could not be brought to the notice of the Government by Police constables for taking proper action and their wives were forced to fight for their rights by coming to the street in bringing this to the notice of the Government. A reminder was given to the Chief Minister to allow to form Association or Union for the purpose of seeking proper protection to the Police constables and to overcome their difficulties and to explain their true state of affairs as apparent from the press note dated 8th December, 1997. [Para 30] [377-G-H; 378-A-B]

3. Section 505 IPC relates to the statements conducing public mischief. In the present case nothing has been brought to the notice of this Court to prove that the appellant with intent to cause, fear or alarm to the

public, or to any section of the public or to induce to commit an offence against the State Government or against the public tranquility, issued the press statement. Therefore, it is not clear on what basis the charge under Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) IPC was levelled against the appellant. From the final report filed in the Fairlands Police Station Crime No.11/98, it is also found that in absence of ingredients to hook-up the appellant under the aforesaid sections of law it was advised to drop the criminal case and the same was accordingly dropped. [Paras 31, 32 and 33] [378-G; 379-C-F]

4. The appellant was declared as 'Goonda' under detention order dated 9th January, 1998 and was detained under the Tamil Nadu Act 14 of 1982. 'Goonda' is defined under Section 2(f) of the Tamil Nadu Act 14 of 1982. Section 2(a) of the Tamil Nadu Act 14 of 1982 defines "acting in any manner prejudicial to the maintenance of public order". In the present case the respondents have failed to bring on record the evidence to show that the appellant was engaged, or was making preparations for engaging, in any of his activities as a 'Goonda' which may affect or are likely to affect adversely the maintenance of public order. There is nothing on record to suggest that the appellant, who either by himself or as a member of or leader of a gang habitually committed, or attempted to commit or abetted the commission of offence punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code. In fact, in absence of any such ingredients, the Advisory Board constituted under Section 10 of the Tamil Nadu Act 14 of 1982 rightly held that there was no sufficient cause for detention of the appellant. For the same very reason the State Government revoked the order of detention dated 9th January, 1998 made by the Commissioner of Police, Salem City by G.O. Rt.No.66 dated 3rd March, 1998 issu n

and Excise (XIV) Department. [Paras 34, 35 and 36] [379-G; 380-B, D-G]

5. There is nothing on the record to suggest that the appellant while in service took part in pro-police association activities or formed any association such as South Arcot District Police Association. There is nothing on the record to suggest that he formed another association after retirement, namely, Tamil Nadu Police Officials Union. The respondents have failed to bring on record any evidence to suggest that the appellant incited the police personnel of Tamil Nadu to form an association to fight their rights against the Government. The respondents have also failed to bring on record that the appellant toured to the Districts of Coimbatore, Tiruchirapalli, Pudukottai and Chennai City and incited serving police personnel over forming an association in a manner prejudicial to the maintenance of the public order. The respondents have filed certain statements of some police officers but they cannot be relied upon. They are not the statements made by any person under Section 161 of the Cr.P.C. or before any Court of law. Neither any date is shown therein nor it is stated that they are true copies of the original documents. [Paras 39, 40] [382-F-H; 383-A-B]

6. In the present case, though there is no sufficient cause for the detention of the appellant. The statements made in the counter-affidavit filed by the Ist respondent, 2nd respondent, the then Inspector General and Commissioner of Police, Salem City and the 3rd respondent, the then Inspector of Police, Fairlands Police Station, Salem City, are not based on the record and the justification given for detention clearly shows that the said respondents, with an intention detained the appellant on 6th January, 1998 based on facts which were not in existence. The appellant had to remain in custody for more than two months on the basis of

opinion given by the respondents based on facts which were not in existence. [Para 41] [383-C, F-G]

7. Noticeably, the respondents have not even repented in taking wrong action, they have nowhere mentioned that the appellant was wrongly apprehended and taken in custody. From the plain reading of the press note published in the Tamil Newspaper "Malai Murasu" it merely shows that the appellant had made a requisition on behalf of the officials working in the Tamil Nadu Police Department to the Hon'ble Chief Minister of Tamil Nadu, Dr. Kalaignar stating that the police is forced to seek protection for themselves as they have no solution as to how to stress their demands to the government. The press statement does not make out a case either under Section 3 of the Police (Incitement to Disaffection) Act, 1992 or under Section 505(1)(b) of the IPC. On the other hand, the press release shows that the appellant acted in accordance with the 1966 Act under which permission is required to form an Association. [Paras 42, 43 and 44] [383-H; 384-A-C, E-F]

8. In this case the appellant has not only made assertion but demonstrated by placing either by admitted or proved facts and circumstances obtainable that even though the case was not made out but he was harassed. Personal liberty is of the widest amplitude covering variety of rights. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme Law, the Constitution. The investigator must be alive to the mandate of Constitution and is not empowered to trample upon the personal liberty of a person when he has acted by malafides. [Paras 46, 47] [385-G-H; 386-A]

State of Bihar and another vs. P.P. Sharma, IAS and another **1992 Supp.(1) SCC 222: 1991 (2) SCR 1 – relied on.**

9. The respondents before the Advisory Board or before the trial court failed to bring on record any evidence to frame the charges against the appellant under Section 3 of the Police (Incitement to Disaffection) Act, 1992 and under Section 505(1)(b) of the IPC or under the Tamil Nadu Act 14 of 1982. The action on the part of the lst, 2nd, 3rd and 4th respondent in support of their act of detaining the appellant illegally by placing some material beyond the record justifies the appellant's allegation that the respondents abused their power and position to support their unfair order. The respondent-State and its officers have grossly abused legal power to punish the appellant to destroy his reputation in a manner non-oriented by law by detaining him under the Tamil Nadu Act 14 of 1982 in lodging a Criminal Case under Section 3 of the Police (Incitement to Disaffection) Act, 1992 and under Section 505(1)(b) of the IPC based on the wrong statements which were fully unwarranted. The action taken by the respondents based on reasons of fact which do not exist, therefore, the same is held to be infected with an abuse of power. In view of the finding aforesaid, cost of Rs.2 lacs is imposed on the State of Tamil Nadu for payment in favour of the appellant. [Paras 48, 49, 50 and 51] [386-B-C, F-H; 387-A, C-D]

*Bhut Nath Mete vs. State of W.B. (***1974) 1 SCC 645: 1974 (3) SCR 315 – relied on.**

Case Law Reference:

1991 (2) SCR 1	**relied on**	**Paras 45, 47**
1974 (3) SCR 315	**relied on**	**Para 50**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4815 of 2013.

From the Judgment & Order dated 16.08.2010 of the High Court of Judicature at Madras in Writ Appeal No. 1426 of 2010.

V.J. Francis, A. Radhakrishnan for the Appellant.

S. Guru Krishna Kumar, AAG, B. Balaji, A. Prasanna Venkat, K.V. Vijayakumar, Subramonium Prasad for the Respondents.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Leave granted.

2. In this appeal the judgment dated 16th August, 2010 passed by the Division Bench of the Madras High Court in W.A. No.1426 of 2010 is under challenge. By the impugned judgment the Division Bench u-pheld the judgment dated 27th April, 2010 passed by the learned Single Judge in W.P. No.1243 of 2003 and dismissed the appeal, affirming the finding recorded by the learned Single Judge. The learned Single Judge by his judgment dismissed the writ petition preferred by the appellant claiming the damages and praying for issuance of a writ of mandamus directing the respondents to pay him jointly and severally a sum of Rs.10,00,000/- for his alleged illegal detention and confinement.

3. The relevant facts of the case are as follows:

The appellant is an Ex-service man who served in the Indian Army for a period of seven years; later he joined in the Tamil Nadu Subordinate Police Services and retired from the service on 21st October, 1997 as Inspector of Police at Attur Police Station, Salem District. The 2nd respondent by name V. Jegannathan, is a former Inspector General and Commissioner of Police, Salem City and the 3rd respondent, Ramasamy, is former Inspector of Police, Fairlands Police Station, Salem City. The 4th respondent, E.Gopi, is former Inspector of Police, Sooramangalam Police Station, Salem City on whose complaint a case in Crime No.11/98 was registered against the appellant under Section 3 of

to Disaffection) Act, 1922 and Section 505(1)(b) of the Indian Penal Code.

4. According to the appellant, he had served both the Indian Army and State Police Service with devotion and had the privilege to win the appreciation of his superior officers in both the capacities. He is a family man and his wife is working as Senior Lecturer in the Government Arts College, Salem. His sons having completed their seven year course in Medicine in Russia are doing their internship in the Government Kilpauk Medical College, Chennai. They are all living together as a happy close knit family sharing their joys and sorrows with one another. Besides, the appellant has wide relations as well as friends who are all having high esteem on him and his family. The version of the appellant is that after his retirement, he had the opportunity to realize the difficulties encountered by each and every member of the police force in Tamil Nadu and had voiced the merits of forming an Association through which demands of members of the police force could be legally made to set right the wrongs committed to them. Further, according to the appellant, he neither indulge in any act/acts leading to any resentment in the mind of any personnel in the police service nor was propagating anything seditious.

While so, Tamil Daily Malai Murasu dated 18th December, 1997, published a news item allegedly authored by the appellant. Based on the said news item, on 6th January, 1998, the 3rd respondent, Ramasamy, the then Inspector of Police, Fairlands Police Station, Salem City had registered a case in Crime No.11/98 for offence under Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) of the Indian Penal Code. Further, on 7th January, 1998 the appellant was arrested by the 3rd respondent and remanded to judicial custody. He was remanded in judicial custody by the Judicial Magistrate No.V, Salem in connection with the above said case and lodged in Central Prison, Salem for a period of two month. It is also alleged that while the appellant was confined

in Central Prison, Salem the Superintendent, Central Prison, Salem served on him a detention order in C.M.P.No.04/Goonda/Salem City/98, dated 9th January, 1998 passed by 2nd respondent the then Inspector General and Commissioner of Police, Salem City. By the said order, the Commissioner of Police, Salem City detained the appellant under "The Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act, 1982(hereinafter referred to as the 'Tamil Nadu Act 14 of 1982')". The said order appears to be passed by the 2nd respondent based on the proposal submitted by 3rd respondent.

5. On 9th February, 1998, the appellant made a written representation to the Secretary to Government of Tamil Nadu and sent it through the Superintendent, Central Prison, Salem. He raised several pleas in the representation. The Advisory Board established under the provisions of the Tamil Nadu Act 14 of 1982, exercising its powers under the provisions of sub-section (2) of Section 12 of the said Act and addressing itself to all the facts and the connected records, having found nothing recommended for the revocation of detention order of the appellant. The Governor of Tamil Nadu, in view of the recommendation, revoked the order of detention and directed that the appellant be released forthwith by the Government Order Rt.No.636, Prohibition and Excise(XIV) Department, dated 3rd March, 1998.

6. According to the appellant, the above detention order was clamped by the respondents against him with a malafide intention of detaining the appellant under the Tamil Nadu Act 14 of 1982 with a view to punish him. The 3rd respondent, Ramasamy, the then Inspector of Police, Fairlands Police Station had registered the said complaint given by 4th respondent Gopi in his Police Station Crime No.11/98 and the appellant was arrested in connection with the said crime and subsequently detained under the Tamil [illegible] for a period of two months till he was re[illegible]

the Advisory Board revoking the order of detention dated 3rd March, 1998. It is alleged that after the release from prison, there was no action from the part of the 3rd respondent for a long time and no charge sheet was filed against the appellant in the Police Station Crime No.11/98. Ultimately, a final report was filed which was received by the Judicial Magistrate No.V, Salem Court in the month of June, 2001 and the same has been accepted by the learned Magistrate and numbered as R.C.S.NO.19/2001 and the same was recorded. The appellant received the copy of the same on 29th June, 2001.

7. Further, the case of the appellant is that since he was subjected to harassment particularly by the 2nd respondent, V. Jegannathan, the then Inspector General and Commissioner of Police, Salem City; the 3rd respondent, the then Inspector of Police, Fairlands Police Station by undergoing imprisonment as a remand prisoner and as a detenu in Central Prison, Salem on the basis of a false case registered against him with the object of destroying his reputation and image. The appellant was very much affected both in body and mind. The appellant was also subjected to mental cruelty and was also physically affected as a result of the confinement in Central Prison, Salem. The family members of the appellant have also suffered physically and mentally due to malafide acts of the 2nd and 4th respondents. The Ist respondent has been arrayed as one of the respondents in view of the prayer for damages sought for in the writ petition.

8. The appellant served lawyer's notice dated 27th June, 2002 to all the respondents claiming damages in terms of money for a sum of Rs.10,00,000/-. The 2nd respondent, V. Jegannathan, the then Inspector General of Police forwarded a reply dated Ist July, 2002 to the lawyer's notice claiming immunity to his actions. The 4th respondent, Gopi also forwarded a reply by letter dated 24th July, 2002 claiming innocent and denying the allegation that he had any malafide intention to foist a case against him. No reply has been filed by both the 1st and 3rd respondents.

9. The 2nd respondent, V. Jegannathan filed a counter-affidavit in the writ petition and took a plea that the appellant falsely claimed to be the convener of Tamil Nadu Police Employees Association and that in that capacity he had been visiting several Districts and insisting the members of the disciplined police force to join the said Association so as to raise their voice against the Government. It was also stated that the appellant submitted a representation dated 9th February, 1998 in which he tendered apology for his conduct and gave assurance that he will not indulge in any activity in future and on that basis prayed for revocation of detention order. The 2nd respondent forwarded the same to the Chief Office, Chennai with his report. The 3rd respondent was present before the Advisory Board when the matter came up for review and he presented a copy of the representation of the appellant. Only on the basis of the undertaking of the appellant that he will not indulge in any such activity in future, the Advisory Board ordered the release of the appellant. It was alleged that the appellant had willfully suppressed the material fact that he tendered an apology and gave in writing an undertaking that he will not indulge in any such activity in future.

10. Further, according to the 2nd respondent, the order of detention issued by him was confirmed by the Government of Tamil Nadu in G.O.Rt.No.195, Prohibition and Excise Department dated 20th January, 1998. Before issuing the detention order on the basis of the report of the 3rd respondent, the concerned legal advisor was consulted by the 2nd respondent and only after he gave his opinion that the activities of the appellant would attract the provisions of the Tamil Nadu Act 14 of 1982 the detention order was issued. Therefore, according to the 2nd respondent, he issued the detention order in a bonafide manner and in exercise of power vested with him in his official capacity. The 2nd respondent further pleaded that he had no malafide intention and only on the basis of materials placed before him and being satisfied that it is just and

essential to detain the appellant under the Tamil Nadu Act 14 of 1982 he issued the detention order in a bonafide manner.

11. The Ist respondent, the Secretary to the Government, Home (Prohibition & Excise) Department, Government of Tamil Nadu filed a separate affidavit in the writ petition. He has also taken pleas that the appellant falsely claimed to be the convener of the Tamil Nadu Police Employees Association and that in that capacity he had been visiting several Districts and insisting the members of the disciplined police force to join the said Association so as to raise their voice against the Government. It is stated that before issuing the detention order on the basis of the report of the 3rd respondent, the legal advisor was consulted by the 2nd respondent and only after getting his opinion; the detention order was issued by G.O.Rt.No.195, Prohibition & Excise Department, dated 20th January, 1998. The Ist respondent has taken a similar plea that the appellant has wilfully suppressed the material fact that he gave an undertaking in writing that he will not indulge in any such activity in future and that the respondents never had any malafide intention and only on the basis of the materials placed and being satisfied that it is just and essential to detain the appellant under the Tamil Nadu Act 14 of 1982, the respondents issued the detention order in a bonafide manner in their official capacity. The Ist respondent has also taken similar plea that the 2nd respondent issued the detention order in a bonafide manner in his official capacity, the claim for damages made is unsustainable.

12. Learned Single Judge by the judgment dated 27th April, 2010 dismissed the writ petition on the ground that the appellant has failed to establish malafide intention on the part of the respondents in registering a criminal case and detaining him under Tamil Nadu Act 14 of 1982. The said judgment was upheld by the Division Bench by the impugned judgment dated 16th August, 2010.

13. The appellant has highlighted the relevant facts as

noticed above and the learned counsel placed reliance on the First Information Report, the communication made by the parties, order of detention, etc. It was submitted by the learned counsel for the appellant that the burden was wrongly placed on the detenu particularly when no explanation was given by the respondents as to why action was taken for detention of the appellant. It was further contented that the High Court erred in holding that the appellant was involved in habitual activities prejudicial to the interest of the public order by touring various Districts and soliciting the police officials to join the association, though there was no material available on record to support the same. According to the learned counsel for the appellant, in absence of any evidence against the appellant it was not open for the High Court to hold that the appellant toured various Districts to mobilize public opinion.

14. Learned counsel for the Ist respondent strenuously took pain to define malafide intention to suggest that nothing malafide either on facts or in law has been proved by the appellant.

15. The only question requires for our consideration is whether in the facts and circumstances of the case the appellant is entitled for any damage for having detained for around two months under Section 3(2) of the Tamil Nadu Act 14 of 1982 in the Crime No.11/98.

16. From the record we find that much after his retirement a press statement was released by the appellant on 8th December, 1997 in a Tamil Newspaper “Malai Murasu”, which reads as follows:

“PRESS STATEMENT

———————-

This is the Requisition sent by Inspector S. Sengodan, State Orgnizer on behalf of the officials working in the Tamil Nadu Police Department to the Hon’ble Chief Minister of Tamil Nadu Dr. Kalaig

The Police Department is forced to seek protection for themselves as we have no solution as to how to stress our demands to the Government.

For example on 30.11.97 in the incident that took place in Kovai one Constable Thiru Selvaraj was attacked and died and even this incident could not be brought to the notice of the Government by police constables for taking proper action in this regard and on their behalves, their respective wives are forced to fight for their rights by coming to the street in bringing this to the notice of the Government.

Thus in order to avoid this situation, already a request was made to the Government by the officials in the Police Department to form an Association/Union and to act accordingly. As a reminder, again such request is made for forming of an association for the purpose of seeking proper protection to the constables and to over come their difficulties and to explain their true state of affairs.

Therefore, the Hon'ble Doctor Kalaignar who is treating the people belonging to various community, as equal, is requested to accord sanction to form an association for the above said purposes.

Sd/.

S. Sengodan
State Organizer
Tamil
Nadu Police
Department employees"

Dated: 08/12/1997

17. Based on the aforesaid press statement the First Information Report was lodged by the 4th respondent, E.Gopi, the then Inspector of Police, Sooramangalam Police Station, Salem City on 6th January, 1998 impleading the appellant as

an accused. A case (Crime No.11/98) was registered in the Fairlands Police Station, Salem for the offence under Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) of the IPC, relevant portion of which reads as under:

"IN THE COURT OF JUDICIAL MAGISTRATE NO.5, SALEM
CRIME NO: 11/98, FAIRLANDS POLICE STATION, FIRST INFOMRATION REPORT.
xxxx xxxx xxxx
xxxx xxxx xxxx

Humbly Submitted:

Today i.e. on 6.1.98 at about 8.00 p.m. night while I being the Inspector of Police was at the station, the Inspector of Police, Sooramangalam Police Station, Salem City Thiru Gopi was present at the station and gave a report along with a paper News cutting dated 8.12.97 published in the news paper called 'Malai Murasu at page 2 which reads as follows:-

From:

E.Gopi, Inspector of Police,
Sooramangalam P.S.
Salem City.

To

The Inspector of Police,
Fairlands Police Station, Salem City.

Sir,

I am working as Inspector of Police, Sooramangalam Police Station, Salem City. Today 6.1.98, I read Malai Murasu dated 8.12.97 and I came toknow that one Thiru N. Sengodan, formerly Inspector of Police, Attur Police Station, Sal[illegible]

and settled at 3/90 P & T Colony, New Fairlands, Salem.16, Salem City has given a statement to Malai Murasu, Salem Edition as "In the Report given by Sengodan, Organizer of the Tamil Nadu State Police Department Association 'it has been stated as follows:

The Police Department which is giving protection to the General public is forced to seek protection for themselves as we have no solution as to how to stress our demands to the Government.

In the incident that took place in Kovai one Constable Selvaraj was attacked and died and even this incident could not be brought to the notice of the Government by police constables for taking proper action in this regard and on their behalves, their respective wives are forced to fight for justice by coming to the street in bringing this to the notice of the Government.

Thus in order to avoid this situation, already a request was made to the Government by the Police Department to form an Association/Union and to act accordingly. I request you once again as a reminder to form an Association for the purpose of seeking proper protection to the constables and to over come their difficulties and to explain their true state of affairs.

From the above statement, it is clear that the above said Thiru N. Sengodan, Inspector of Police (Retired) intentionally caused disaffectin towards the Police Department, Established by Law, in Tamil Nadu and also with the intention of committing a breach of discipline among the police force and also induces them to withheld their services. I am also enclosing a copy of the paper cutting of Malai Murasu, Salem Edition dated 8.12.97 in page No.2, for your perusal and action.

Hence I request you to take suitable action against

Tr.N. Sengodan, Inspector of Police (Retd.) in this regards.

Yours faithfully,
Sd.
E.Gopi Inspector, Dt.6.1.98.

On the basis of the above said report, received by me, I registered a case in Crime No.11/98 on the file of Fairlands Police Station for the offence under Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505 (1)(b) IPC and sent the copies of the First Information Report to the concerned officials and taken the case on file for investigation.

Sd.
Inspector of Police
Fairlands 6.1.98"

In view of the aforesaid criminal case the appellant was arrested on the same day, 6th January, 1998 and was taken in custody.

18. The very same press note was used for issuance of detention order dated 9th January, 1998 by the 2nd respondent, V. Jegannathan, the then Inspector General and Commissioner of Police, Salem City for detaining the appellant under Tamil Nadu Act 14 of 1982, which reads as follows:

"PROCEEDINGS OF THE INSEPCTOR GENERAL AND COMMISSIONER OF POLICE, SALEM CITY
PRESENT: THIRU V. JEGANNATHAN, I.P.S.,
Office of the Inspector General and Commissioner of Police,
Salem City.
C.M.P .No.04/GOONDA/SALEM CITY/98
Dated:09-01-1998
DETENTION ORDER

*Whereas, I, V. Jegannathan, I.P.S., Inspector General and Commissioner of Poli*e

materials placed before me, am satisfied that Thiru. N. Sengodan, Male, aged 59 years, son of late Nanjappa Gounder, No.3/9, P&T Colony, (East) New Fairlands, Salem-16, Fairlands Police Station Limits, Salem City is a "Goonda" as contemplated under Tamil Nadu Act 14 of 1982, and

Whereas the aforesaid individual is found indulging in an activity prejudicial to the maintenance of Public Order and details of which are set out in detail in the grounds of detention.

Now, therefore, in exercise of the powers conferred by Sub –section (2) of Section 3 of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slumgrabbers Act, 1982 (Tamil Nadu Act 14/1982) read with the orders issued by the Government in G.O.Ms.No.221, Prohibition and Excise (XIV) Department dated:18.10.1997 under sub-section (2) of Section 3 of the said Act, I hereby direct that the said, Thiru N. Sengodan, Male, aged 59 years, son of late Nanjappa Gounder, No.3/90, P&T Colony (East), New Fairlands, Salem-16, Fairlands P.S. Limits, Salem City who is a 'GOONDA' be detained at the Central Prison, Salem.

Given under my hand and seal of this office, this the 9th day of January 1998.

Sd/-
INSPECTOR GENERAL AND
COMMISSIONER OF POLICE,
SALEM CITY.

To
Thiru N. Sengoan,
Male, aged 59 years,
Son of late Nanjappa Gounder,

No.3/90, P&T Colony (East)
New Fairlands, Salem-16.
Fairlands P.S. Limits, Salem City.
(Now in Central Prison, Salem)

Through the Superintendent, Central Prison, Salem."

19. The appellant having taken in Central Prison made a representation before the 2nd respondent, Inspector General and Commissioner of Police, Salem City by stating that he has no criminal antecedents. It was further stated that he was in the 'Police TASK FORCE' under the State which was formed to nab the notorious sandal wood smuggler Veerappan and his associates. As a Police officer his service record remained extremely good and he had been rewarded a number of times and that meritorious service entry has been made in his service record. He took plea that even if the act alleged to have indulged is taken to be true, it neither constitute an offence nor will it result in the disruption of public order. He requested the Commissioner of Police, Salem City to revoke the order of detention and gave an undertaking that he will not indulge in any activity which is per se illegal and unlawful. The relevant portion of the representation dated 9th February, 1998 reads as follows:

"I most respectfully submit as hereunder:

On 7-1-1998 the Inspector of Police, Fairlands, Salen City arrested me in my residence and took me to the Police Station. The grounds of arrest he informed is that a case has been registered at his station in Crime No.11 of 1998 for offences under Section 3 of the Police (Incitement to Disaffection) Act, 1922 and under Section 505(1)(b) IPC and that the same was under investigation. I was further informed that the said case has been registered on 6.1.1998 upon a complaint said to have been given by Thiru.Gopi, Inspector of Police, Sooramangalam, Salem City to s

attempting to form an Association to fight for and secure certain rights to the serving Police personnel in the State of Tamil Nadu and thereby incidentally inciting the police personnel. Which is in a manner prejudicial to the maintenance of the public order on being produced before the Judicial Magistrate, I was remanded to judicial custody and lodged in the Central Prison, Salem.

On 9.1.1998 at about 3.45 p.m. the Superintendent, Central Prison, Salem served the order in reference on me. The Inspector General and Commissioner of Police, Salem City has passed the said order exercising the powers vested in him as the detaining authority under Act 14 of 1982, The detaining authority has passed this detention order on the basis and acting upon an Affidavit filed by Thiru.M.Ramasamy, Inspector of Police, Fairland Police Station as the sponsoring authority.

I submit that I had never been cited much less convicted for any offence previously, I have retired as a honest Police Officer I have never come to adverse notice even during my service, I have been an ex-serviceman while in service while many officers were not willing to join the 'TASK FORCE' that was formed to nab the notorious sandal wood smuggler Veerappan I offered to join and indeed served in the "TASK FORCE".

I humbly submit that my record of service as a Police Official was extremely good. I have won several rewards and meritorious service entries.

I submit that even if the acts alleged to have indulged in are assumed to be true cannot be said they will result in the disruption of the Public Order it is nowhere said that as a result of my acts at any point of time or at any place a public order was disrupted.

I submit that I undertake not to indulge in any activities

which is per se illegal and unlawful. I submit that I have not taken any part in the strike or in the connected activities. So I request that I am a innocent and I may be released at an early date. I assure you that I will not take any part in future in this connection.

I therefore request the Commissioner of Police to be pleased to consider this Memorial and revoke the order of detention.

Yours sincerely,
Sd/-
DATED: 9-2-1998 (N. SENGODAN)"

20. The detention order was placed before the Advisory Board under Section 10 of the Tamil Nadu Act 14 of 1982. After taking into consideration the representation and the connected records the Advisory Board expressed its unanimous opinion that there was no sufficient cause for detention of the appellant, N. Sengodan. In view of the non-approval of the detention order by the Advisory Board and its finding, the Government of Tamil Nadu revoked the detention order dated 9th January, 1998 by G.O.Rt.No.636 dated 3rd March, 1998 issued from Prohibition & Excise (XIV) Department, Chennai. The revocation order dated 3rd March, 1998 reads as follows:

"GOVERNMENT OF TAMIL NADU
ABSTRACT

PREVENTIVE DETENTION – Salem City – Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act 1982 – Detention of Thiru.N. Sengodan, Goonda – Order of detention – Revoked.

———————————————————————————————

PROHIBITION 7 EXCISE (XIV) DEPARTMENT

G.O.Rt.No.66
Dated:3-3-98.

Read:-

1. From the Commissioner of Police, Salem City, Lr.CMP No.4/Goonda/SLM/C/98, Dt:12.1.1998.

2. G.O. Rt.No.195/P&E Department, dated:20-1-98.

3. From the Chairman, Advisory Board, report dt: 19-2-98.

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ORDER:

The grounds of detention etc., of the detenu Thiru.N. Sengodan, s/o Thiru.Nanjappa Gounder, No.3/90, P&T Colony (East) New Fairlands, Salem-16, Fairlands Police Station Limits, Salem City, were placed before the Advisory Board under Section 10 of the Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum-grabbers Act 1982 (Tamil Nadu Act 14/1982). The Advisory Board after perusing the grounds of detention the report of the detaining authority to the Government, the written representation of the detenu dated:9-2-98 and the connected records and also the oral representation of the detenu before the Advisory Board has expressed its unanimous opinion that there is no sufficient cause for the detention of Thiru.N. Sengodan. Therefore, in accordance with the Provisions of sub-section (2) of Section 12 of the aforesaid Act, the Governor of Tamil Nadu hereby revokes the order of detention dated:9-1-98 made by the Commissioner of Police, Salem City against the said Thiru. N. Sengodan

and direct that Thiru.N. Sengodanbe released forthwith from detention under the Tamil Nadu Act 14/1982 unless he has been detained under any law or is serving any sentence having been convicted by any court.

R. POORNALINGAM,

SECRETARY TO GOVERNMENT."

21. In criminal case Crime No.11/98 after investigation, the respondents failed to get any ingredients to submit chargesheet against the appellant, N. Sengodan. The 3rd respondent, M. Ramasamy, the then Inspector of Police, Fairlands Police Station, who was dealing with the said criminal case after consulting the Assistant Prosecutor, Murugesan and going through the CD file opined that there was no necessary ingredients available to curb and hook-up the appellant, N.Sengodan under Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) of the IPC and therefore, advised to drop further action. In view of the aforesaid opinion and materials on record Ramasamy, Inspector of Police, Fairlands Police Station submitted his final report dropping the case which reads as follows:

"In the Court of the Judicial Magistrate No.V Salem RCs.No.19/2001, FINAL REPORT IN FAIRLANDS P.S. Cr.No.11/98 U/s. 3 of the Police (Incitement to Disaffection)Act, 1922 and Section 505(1)(b) IPC.

One Thiru.E.Gopi,the then Inspector of Police, Sooramangalam P.S. preferred a complaint at Fairlands Police Station on 6.1.98 to the effect that the statement given by Tr.Sengodan, a retired Inspector of Police and published in page No.2 of second edition of Malai Murasu dated: 8.12.97 was inciting the police personnel of Tamil Nadu to form an Association to fight for their likely rights and produced the paper cutting. The statement was likely to incite the o

read it to form an Association to fight for their rights and made out the offences, punishable under Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) IPC. So a case in Fairlands P.S. Cr.No.11/98 under the abovesaid section, of law was registered and investigation was taken up.

The said retired Inspector of Police was arrested on 6-01-98at his residence and produced before the court of JM.5 on 7.1.98. He was remanded in Judicial custody. Finally, he was detained under Section 14 of Goondas Act by the Commissioner of Police, Salem vide CMP No.04/Goondas/Salem City/98, dated:2.1.98. But the Advisory Board revoked the said detention order vide G.O.Rt.No.636 dated:3.3.98 by virtue of which he was released.

Then I consulted the Assistant Prosecutor Tr.Murugesan, He went through the CD file and offered his opinion that the necessary ingredients to hook-up the said Tr.Sengodan under the said sections of law were lacking and in one and advised to drop further action.

Accordingly, further action in this case is hereby dropped.

Sd/-
Ramasamy, Inspector of Police,
FairlandsP.S."

In the meantime, because of criminal case and the detention order the appellant had to remain under detention for a period from 6th January, 1998 to 3rd March, 1998.

22. From the counter-affidavit we find that M. Subbannan, Assistant Commissioner of Police, Western Range, Salem City, Salem by letter dated 7th January, 1998 informed the Inspector General and Commissioner of Police, Salem City, Salem that

the Additional Director of Prosecution, I/C Salem on perusal of the records of the Crime No.11/98 opined that the accused (appellant herein) is a fit person to be detained as 'Goonda' under the Tamil Nadu Act 14 of 1982. He thereby requested that the action may be taken against the appellant to detain him as 'Goonda' under the Tamil Nadu Act 14 of 1982. The said letter dated 7th January, 1998 reads as follows:

"D.THIRU.NAVUKKARASU, Dated: 7-01-1998.

ASST. DIRECTOR OF PROSECUTION,

DHARAMPURI i/c SALEM.

————————————————————————————-

I have perused the case diary file of Thiru.N. Sengodan, male aged 59 years, s/o late Nanjappa Gounder, 3/90 P&T Colony (East), New Fairlands, Salem-16, concerned in Fairlands P.S. Cr.No.11/98 u/s 3 of the Police (Incitement to Disaffection) Act, 1992 and Section 505(1)(b)IPC. registered on 06.01.98.

2. The records reveal that the activities of the accused Thiru. Sengodan, in having instigated the police personnel by issue of press statement, to form an Association of their own, are prejudicial to the maintenance of public order. (copy of press statement enclosed).

3. While he was in service, Tr.Sengodan, claimed to be the President of South Arcot Distt. Police Association and after retirement from service as Inspector of Police on 31.10.1997, he has reportedly floated a self styled Union, viz., Tamil Nadu Government Police Officials Union and he claims to have applied for recognition of his Union by the Government.

4. Considering his past history a s

inciting the police personnel to form an Association of their own to fight for their rights, I am of the opinion that the prevailing penal law is of no avail to curb his activities and with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order of detention and the accused is a fit person to be detained as GOONDA under Tamil Nadu Act 14/1982.

Asst.Director of Prosecution,
Dharampuri i/c Salem."

23. On the same date, i.e., 7th January, 1998, 3rd respondent, Mr. M. Ramasamy, Inspector of Police, Fairlands Police Station, Salem City by an affidavit before the Inspector General and Commissioner of Police, Salem City requested to issue an order of detention under Section 3(2) of the Tamil Nadu Act 14 of 1982. In the said letter 3rd respondent, M. Ramasamy shown himself as petitioner and the appellant-accused as the respondent. In the said affidavit he informed that he had come across the activities of the appellant, who retired from service on 31st October, 1997 and is known for his pro-Police Association activities even while he was in Government service and claimed himself to be the President of South Arcot District Police Association and, therefore, requested to detain him as he would indulge in such activities continuously unless he was detained under the Tamil Nadu Act 14 of 1982. The affidavit dated 7th January, 1998 filed by the 3rd respondent, Mr. M. Ramasamy, the then Inspector of Police, Fairlands Police Station, Salem City reads as follows:

"BEFORE THE INSPECTOR GENERAL AND COMMISSIONER OF POLICE, SALEM CITY.

M. Ramasamy,)

Inspector of Police,) PETITIONER

Fairlands P.S.,)

Salem City.)

– Versus –

Thiru N. Sengodan,)

male, aged 59 years,)

son of late Nanjappa Gounder,) RESPONDENT

3/90, P&T Colony (East))

New Fairlands, Salem-16,)

Fairlands P.S. Limits,

Salem City.

AFFIDAVIT FILED BY THIRU M. RAMASAMY, INSPECTOR OF POLICE, FAIRLANDS P.S., BEFORE THE COMMISSIONER OF POLICE, SALEM CITY, PRAYING FOR AN ORDER OF DETENTION UNDER SECTION 3(2) OF THE TAMIL NADU ACT 14/1982.

I, M. Ramasamy, aged 43 years, son of Thiru Maruthaiah, Inspector of Police, Fairlands Police Station, Salem City, do hereby solemnly affirm and sincerely state as follows:-

(1) I submit that I am the Inspector of Police, Fairlands P.S., having jurisdiction over Fairlands P.S. Limits. I have been entrusted with the work of enforcement of law and order, detention of crime, prohibition and other related offences, prosecution of criminals who commit offences in violation of the provisions which adversely affect the public order.

(2) During the course of my above-mentioned duties, I

came across the activities of Thiru N. Sengodan, male, a retired Inspector of Police, aged 59 years, son of late Nanjappa Gounder, residing at No.3/90 P&T Colony (East), New Fairlands, Salem-16, Fairlands P.S. Limits, Salem City. Thiru Sengodan who retired from service on 31.10.97 is known for his pro-Police Association activities even while he was in Government service and claimed to be the President of South Arcot District Police Association. He is the self styled leader of Tamil Nadu Government Police Officials Union now.

(3) Further, on 08.12.97, he has come to adverse notice by issuing a press statement that appeared in Malai Murasu, inciting the police personnel of Tamil Nadu to form an association to fight for their rights and later he has toured the districts of Coimbatore, Tiruchirapalli, Pudukottai and Chennai City and incited the serving police personnel over forming of an association, and acted in a manner prejudicial to the maintenance of public order. In this connection, a case in Fairlands P.S. Cr.No.11/98, under Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) IPC has been registered against him and the case is under investigation.

(4) I also submit that Thiru N.Sengodan was produced before the Judicial Magistrate No.V, Salem on 07.01.1998 and he was remanded to judicial custody at Central Prison, Salem as ordered. Now, Thiru N. Sengodan, is in remand at Central Prison, Salem, as a remand prisoner.

(5) The marks of identification of the accused are properly entered in the P.S.R. as below:

(1) Two old wound scars on the forehead above the left eye.

(2) Two old would scars on the forehead above the left eye.

(3) A block mole below the left eye.

The extract of the P.S.R.is enclosed.

(6) Hence, there is every likelihood that Thiru N. Sengodan would indulge in such activity continuously unless he is detained under Tamil Nadu Act 14 of 1982.

I, therefore, request that necessary action may kindly be taken against him, under Tamil Nadu Act 14/ 1982, if deemed fit, by the Detaining Authority.

INSPECTOR OF POLICE,

FAIRLANDS POLICE STATION,

SALEM CITY.

Solemnly affirmed at Salem, this 7th day of January 1998 and signed his name in my presence."

24. The same ground was shown in the order of detention vide proceedings dated 9th January, 1998 of the Inspector General and Commissioner of Police, Salem City, which reads as follows:

"PROCEEDINGS OF THE INSPECTOR GENERAL AND COMMISSIONER OF POLICE.

SALEM CITY.

PRESENT: THIRU V. JEGANNATHAN, I.P.S.

C.M.P.NO.04/GOONDA/SLM(C)/98
DATED:09.01.1998.

Sub: Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offende[illegible]s,

Goondas, Immoral Traffic Offenders, Slum Grabbers Act, 1982 (Tamil Nadu Act 14/1982) – Detention of Thiru N. Sengodan, male, aged 59 years, son of late Nanjappa gounder, residing at No.3/90, P&T colony (East), New Fairlands, Salem-16, Fairlands P.S. Limits, Salem city under section 8(2) of the Act – Grounds of detention.

- - -

ORDER:

Thiru N. Sengodan, male, aged 59 years, son of late Nanjappa gounder and a retired Inspector of Police, residing at No.3/90, P&T Colony (East), New Fairlands, Salem-16, Fairlands P.S. Limits; Salem City; has come to adverse notice as detailed below:

(i) Thiru N. Sengodan, who retired as Inspector of Police on 31-10-1997 from Attur Town Police Station in Salem District, is known for his pro-Police Association activities.

(ii) Even while he was in Government service, he had indulged in such Police Association activities and claimed himself as the President of South Arcot District Police Association.

(iii) After his retirement on 31-10-1997 from Govt. service, Thiru N. Sengodan, has floated an Association called, "Tamilnadu Government Police Officials Union" for the police personnel: (The Press statement of Tr. N. Sengodan appeared in "Malai Murasu"on 8.12.97 will speak to this effect)

(2) A detention order under section 3(2) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982 (Tamil Nadu Act 14/1982) has

been made against Thiru N. Sengodan, male, aged 59 years, son of late Nanjappa gounder, residing at No.3/90, P&T Colony (East), New Fairlands, Salem-16, Fairlands Police Station limits, Salem City in C.M.P.No.04/Goonda/Salem City/98, dated 09-01-1998.

(3) The grounds on which detention has been made are as follows:-

On 08-12-1997, Thiru N.Sengodan, male, aged 59 years, son of late Nanjappa gounder, residing at No.3/90, P&T Colony (East), New Fairlands, Salem-16, Fairlands P.S. limits, Salem City, has issued a press statement that appeared in "Malai Murasu", Salem edition, in which, he has, in the capacity of Organiser, Tamil Nadu Government Police Officials Union, reiterated his earlier demand placed before the Government on formation of an Association for police personnel. Further, he has urged formation of such an Association to protect the interests of police personnel and to ventilate their grievances.

Further, after issuing the above press statement, Thiru N. Sengodan has toured the districts of Coimbatore, Tiruchenirappalli, Pudukottai and Chennai City and incited the service police personnel over formation of an Association, and acted in a manner prejudicial to the maintenance of public order. This is evident from the statements got recorded from the witnesses: (1) Thiru Ramachandran, PC 1804, Dheevattipatii P.S., (2) Thiru Duraisamy, H.C. 439, Hasthampatty P.S. (Crime).

Following appearance of press statement in "Malai Murasu"Thiru E.Gopi, Inspector of Police, Sooramangalam Police Station a

Police Station at 2000 hours on 06.01.98 and preferred a complaint to the effect that the statement issued by Thiru N. Sengodan, is inciting the Police personnel of Tamil Nadu to form an Association to fight for their rights. He requested to take appropriate action against Thiru N. Sengodan.

The Inspector of Police, Fairlands Police Station recorded the said complaint in the G.D. at 2000 hours on 06.01.98 and registered a case in Cr.No. 11/98, u/s 3 of the Police (Incitement to disaffection) Act, 1922 and Section 505(1) (b) IPC, against Thiru N. Sengodan, for commission of offences in inciting the police personnel to form an Association.

The Inspector of Police, Fairlands P.S. took up investigation of the case, and he, alongwith his party proceeded to the residence of Thiru N. Sengodan, No.3/90, P&T Colony (East), New Fairlands, Salem-16, and arrested him at 2200 hours, on 06.01.98. On being interrogated, Thiru N. Sengodan, admitted of having given the press statement to "Malai Murasu" on 08.12.97 on the need for the formation of an Association for Police personnel. He was then brought to Fairlands Police Station at 2230 hours on 06.01.98 and was handed over to the station sentry Gr. 1 PC. 2340 Selvakumar for custody. Later, Thiru N. Sengodan was produced before the Judicial Magistrate No.5, Salem at 0100 hours on 07.01.98 and was remanded to judicial custody for 15 days upto 20.01.98, at Central Prison, Salem. The case is under investigation.

(4) Hence, I am satisfied that Thiru N. Sengodan habitually committing violent crimes and is also acting in a manner prejudicial to the maintenance of public order and as such he is a Goonda as contemplated under sections 2(a) (f) of the Tamilnadu Act 14/1982.

(5) xxxxxxx

(6) xxxxxxx

(7) xxxxxxx

Inspector General and Commissioner of Police, Salem City."

On the same date, i.e., 9th January, 1998 the detention order was issued by the Inspector General and Commissioner of Police, Salem City.

25. From the different communications, report, FIR and orders as quoted above, we find that the following allegations were levelled against the appellant:

(i) the appellant, retired Inspector of Police by press statement published in the second edition of " Malai Murasu"dated 8th December, 1997 incited the police personnel of Tamil Nadu to form an Association to fight for their likely rights;

(ii) the statement aforesaid was likely to incite the police personnel who read it to form an Association to fight for their rights;

(iii) the aforesaid incitement and press note made out the offences, punishable under Section 3 of the Police (Incitement to Disafffection) Act, 1922 and Section 505(1)(b) of the IPC;

(iv) the records reveal that the activities of the accused-appellant, in having instigated the police personnel by issue of press statement, to form an association of their own, are prejudicial to the maintenance of the public order;

(v) while he was in service, the a[illegible]e

the President of South Arcot District Police Association and after retirement from service as Inspector of Police on 31st October, 1997, he had reportedly floated a self-styled Union, viz., Tamil Nadu Government Police Officials Union and he claimed to have applied for recognition of his Union by the Government; and

(vi) his past history and present activities in inciting the police personnel to form an Association of their own to fight for their rights and such activities are prejudicial to the maintenance of the police order which cannot be curtailed by prevailing penal law and, therefore, it was necessary to declare him "Goonda" for detention under the Tamil Nadu Act 14 of 1982."

26. Section 3 of the Police (Incitement to Disaffection) Act, 1922 stipulates penalty for causing disaffection towards the State, etc. reads as follows:

*"**Section 3. Penalty for causing disaffection, etc.** Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause disaffection towards the Government established by law in India amongst the members of a Police Force, or induces or attempts to induce, or does any act which he knows is likely to induce any member of a police force to withhold his service or to commit a breach of discipline shall be punished with imprisonment which may extend to six months or with fine which may extend to two hundred rupees, or with both."*

27. Thus the question that arises is whether the intention of the appellant (a retried police officer) to form Association of Police force amounts to causing disaffection towards the Government established by law to attract Section 3 of Police (Incitement to Disaffection) Act, 1922. To decide such issue one may refer one of the Central Acts enacted by the Parliament known as "The Police-Forces (Restriction of Rights) Act, 1966

(Act 33 of 1966) (hereinafter referred to as the "1966 Act") to provide for the restriction of certain rights conferred by Part III of the Constitution in their application to the members of the Forces charged with the maintenance of public order as to ensure the proper discharge of their duties and the maintenance of discipline among them. Section 3 of the 1966 Act restricts right to form association, freedom of speech, etc., which reads as follows:

*"**Section 3. Restrictions respecting right to form association, freedom of speech, etc.—***

(1) No member of a police force shall, without the express sanction of the Central Government or of the prescribed authority,-

(a) be a member of, or be associated in any way with, any trade union, labor union, political association or with any class of trade unions, labor unions or political associations; or

(b) be a member of, or be associated in any way with, any other society, institution, association or organization that is not recognized as part of the force of which he is a member or is not of a purely social, recreational or religious nature; or

(c) communicate with the press or publish or cause to be published any book, letter or other document except where such communication or publication is in the bona fide discharge of his duties or is of a purely literary, artistic scientific character or is of a prescribed nature.

***Explanation.-** If any question arises as to whether any society, institution, association or organization is of a purely social, recreational or religious nature under clause (b) of this sub-section, the decision of the Central Government, thereon, shall be fin*

(2) No member of a police-force shall participate in, or address, any meeting or take part in any demonstration organized by any body of persons for any political purposes or for such other purposes as may be prescribed."

28. Under Section 4 of the 1966 Act penalty is prescribed as: if any police officer violates the said provisions, shall, without prejudice to any other action that may be taken against him, be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

29. It is apparent from Section 3 of the Act 1966 that there is no specific ban to form association but there is a restriction to form association. A Police personnel can be a member of, or can be associated in any way with, any trade union, labour union, political association or with any class of trade unions, labour unions or political associations only with the express sanction of the Central Government or of the prescribed authority. For attracting the penalty under Section 3 for causing disaffection, it is to be proved that the person concerned intentionally caused or attempted to cause or done any act which is likely to be disaffection towards the Government established by law in this country among the members of the Police force or induces or attempts to induce or does any act which he knows likely to induce any member of the Police force to withhold his service or committed breach of discipline.

30. From the press statement dated 8th December, 1997 it is apparent that no incitement has been made by the appellant against the State Government nor the Police force has been instigated. The appellant cited past incident of 30th November, 1997 in which one Selvaraj a Police constable was attacked and killed which could not be brought to the notice of the Government by Police constables for taking proper action and their wives were forced to fight for their rights by coming to the street in bringing this to the notice of the Government. A

reminder was given to the Chief Minister to allow to form Association or Union for the purpose of seeking proper protection to the Police constables and to overcome their difficulties and to explain their true state of affairs as apparent from the following part of the press note dated 8th December, 1997:

"For example on 30.11.97 in the incident that took place in Kovai one Constable Thiru Selvaraj was attacked and died and even this incident could not be brought to the notice of the Government by police constables for taking proper action in this regard and on their behalves, their respective wives are forced to fight for their rights by coming to the street in bringing this to the notice of the Government.

Thus in order to avoid this situation, already a request was made to the Government by the officials in the Police Department to form an Association/Union and to act accordingly. As a reminder, again such request is made for forming of an association for the purpose of seeking proper protection to the constables and to overcome their difficulties and to explain their true state of affairs.

Therefore, the Hon'ble Doctor Kalaignar who is treating the people belonging to various community, as equal, is requested to accord sanction to form an association for the above said purposes."

31. Section 505 of the Indian Penal Code relates to the statements conducing public mischief. Sub-section (1)(b) of Section 505 IPC reads as follows:

*"**Section 505. Statements conducing to public mischief.-***

***(1)**Whoever makes, publishes or circulates any statement, rumour or report,—*

(a) xxx xxx xxx

(b)*with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or*

(c) xxx xxx xxx,

shall be punished with imprisonment which may extend to three years, or with fine, or with both."

32. In the present case nothing has been brought to the notice of this Court to prove that the appellant with intent to cause, fear or alarm to the public, or to any section of the public or to induce to commit an offence against the State Government or against the public tranquility, issued the above said press statement.

Therefore, it is not clear on what basis the charge under Section 3 of the Police (Incitement to Disaffection) Act, 1922 and Section 505(1)(b) of the IPC was levelled against the appellant.

33. From the final report filed in the Fairlands Police Station Crime No.11/98 by Mr. M. Ramasamy, Inspector of Police, Fairlands Police Station, as quoted above, we also find that in absence of ingredients to hook-up the appellant under the aforesaid sections of law it was advised to drop the criminal case and the same was accordingly dropped.

34. The appellant was declared as 'Goonda' under detention order dated 9th January, 1998 and was detained under the Tamil Nadu Act 14 of 1982. 'Goonda' is defined under Section 2(f) of the Tamil Nadu Act 14 of 1982 which reads as follows:

"**Section 2(f) "Goonda"** means a person, who either by himself or as a member of or leader of a gang habitually

commits, or attempts to commit or abets the commission of offence, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Central Act XLV of 1860)."

35. Section 2(a) of the Tamil Nadu Act 14 of 1982 defines "acting in any manner prejudicial to the maintenance of public order", which in the case of 'Goonda' means

"**Section 2(a):** "acting in any manner prejudicial to the maintenance of public order" means –

(iii) in the case of a goonda, when he is engaged, or is making preparations for engaging, in any of his activites as a goonda which affect adversely, or are likely to affect adversely the maintenance of public order."

36. In the present case the respondents have failed to bring on record the evidence to show that the appellant was engaged, or was making preparations for engaging, in any of his activities as a 'Goonda' which may affect or are likely to affect adversely the maintenance of public order. There is nothing on record to suggest that the appellant, who either by himself or as a member of or leader of a gang habitually committed, or attempted to commit or abetted the commission of offence punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code. In fact, in absence of any such ingredients, the Advisory Board constituted under Section 10 of the Tamil Nadu Act 14 of 1982 rightly held that there was no sufficient cause for detention of the appellant. For the same very reason the State Government revoked the order of detention dated 9th January, 1998 made by the Commissioner of Police, Salem City by G.O. Rt.No.66 dated 3rd March, 1998 issued from Prohibition and Excise (XIV) Department.

37. The 4th Respondent, E.Gopi, the then Inspector of Police, Sooramangalam Police Station

the complaint on 6th January, 1998 (FIR) referring to the press statement observed that the appellant intentionally caused disaffection towards the Police Department, established by law, in Tamil Nadu and the same was made with the intention of committing a breach of discipline amongst the Police Force and to induce them to withheld their services.

The same view was taken by the 2nd respondent, the then Inspector General and Commissioner of Police, Salem City who declared the appellant as "Goonda" on the basis of the aforesaid material on record and issued order of detention on 9th January, 1998.

Mr. D. Navukkarasu, Assistant Director of Prosecution by letter dated 7th January, 1998 referring to the aforesaid incident, reported as follows:

"2. The records reveal that the activities of the accused Thiru. Sengodan, in having instigated the police personnel by issue of press statement, to form an Association of their own, are prejudicial to the maintenance of public order. (copy of press statement enclosed).

3. While he was in service, Tr.Sengodan, claimed to be the President of South Arcot Distt. Police Association and after retirement from service as Inspector of Police on 31.10.1997, he has reportedly floated a self styled Union, viz., Tamil Nadu Government Police Officials Union and he claims to have applied for recognition of his Union by the Government.

4. Considering his past history and present activities inciting the police personnel to form an Association of their own to fight for their rights, I am of the opinion that the prevailing penal law is of no avail to curb his activities and with a view to prevent him from acting in any manner prejudicial to the maintenance of public order, it is necessary to make an order of detention and the accused is a fit person to be detained as GOONDA under Tamil Nadu Act 14/1982."

38. The 3rd respondent, M. Ramasamy, the then Inspector of Police, Fairlands Police Station, Salem City in his affidavit stated that the appellant who retired from service on 31st October, 1997 is known for his pro-police association activities even while he was in service. It was further stated that the appellant claimed to be the President of the South Arcot District Police Association while in service and is a self styled leader of Tamil Nadu Government Police Officials Union now. He further submitted by his affidavit dated 7th January, 1998 before the Inspector General and Commissioner of Police, Salem City and stated that the appellant was inciting the police personnel of Tamil Nadu to form an Association to fight for their rights and later he toured districts of Coimbatore, Tiruchirapalli, Pudukottai and Chennai City and incited the serving police personnel for forming an association and acted in a manner prejudicial to the maintenance of the public order. It is also stated that the Inspector General and Commissioner of Police accepted the aforesaid stand taken by the other respondents.

39. We have already noticed that there is nothing on the record to suggest that the appellant while in service took part in pro-police association activities or formed any association such as South Arcot District Police Association. There is nothing on the record to suggest that he formed another association after retirement, namely, Tamil Nadu Police Officials Union. The respondents have failed to bring on record any evidence to suggest that the appellant incited the police personnel of Tamil Nadu to form an association to fight their rights against the Government. The respondents have also failed to bring on record that the appellant toured to the Districts of Coimbatore, Tiruchirapalli, Pudukottai and Chennai City and incited serving police personnel over forming an association in a manner prejudicial to the maintenance of the public order.

40. The respondents have filed certain statements of some police officers but they cannot be relied upon. They are not the statements made by any person under Section 161 of the Cr.P.C. or before any Court of law. Neither any date is shown therein nor it is stated that they are true copies of the original documents.

41. In the present case, though there is no sufficient cause for the detention of the appellant, in the counter-affidavit filed by the Ist respondent, 2nd respondent, V.Jegannathan, the then Inspector General and Commissioner of Police, Salem City and the 3rd respondent, M. Ramasamy, the then Inspector of Police, Fairlands Police Station, Salem City, they have taken similar plea that the activities of the appellant in having instigating the police personnel by issuing a press statement to form an association of their own which was prejudicial to the maintenance of the public order. Again similar plea has been taken that the appellant was the President of South Arcot District Police Association and after retirement on 31st October, 1997 he floated a self styled Union, viz., Tamil Nadu Government Police Officials Union and there is a past history and present activities to show that he incited the police personnel to form an association of their own to fight for their rights against the Government. These statements made in the counter-affidavit are not based on the record and the justification given for detention clearly shows that the Ist respondent, 2nd respondent, V.Jegannathan, the then Inspector General and Commissioner of Police, Salem City and the 3rd respondent, M. Ramasamy, the then Inspector of Police, Fairlands Police Station, Salem City with an intention detained the appellant on 6th January, 1998 based on facts which were not in existence. The appellant had to remain in custody for more than two months on the basis of opinion given by the respondents based on facts which were not in existence.

42. We have noticed that the respondents have not even repented in taking wrong action, they have nowhere mentioned

that the appellant was wrongly apprehended and taken in custody.

43. From the plain reading of the press note published in the Tamil Newspaper "Malai Murasu" it merely shows that the appellant had made a requisition on behalf of the officials working in the Tamil Nadu Police Department to the Hon'ble Chief Minister of Tamil Nadu, Dr. Kalaignar stating that the police is forced to seek protection for themselves as they have no solution as to how to stress their demands to the government. Example of the incident of 30th November, 1997 has been shown in the said press statement when one of the constables was attacked and killed and wives of the police personnel were forced to fight for their rights by coming to the street to bring certain facts to the notice of the State Government. It was mentioned that in order to avoid this situation a request has already been made to the Government by the officials in the Police Department to form an Association/ Union to act accordingly. Thereby, Hon'ble Dr. Kalaignar, the then Chief Minister was requested to accord sanction to form an Association for the above said purpose.

44. The aforesaid press statement does not make out a case either under Section 3 of the Police (Incitement to Disaffection) Act, 1992 or under Section 505(1)(b) of the IPC. On the other hand, the press release shows that the appellant acted in accordance with the 1966 Act under which permission is required to form an Association.

45. In the case of *State of Bihar and another vs. P.P. Sharma, IAS and* another reported in 1992 Supp.(1) SCC 222,this Court defined mala fides and held:

> ***"50.*** *Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An*

deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

***51.** The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand."*

This Court in the same case of *P.P. Sharma* (supra) further held that the person against whom mala fides or bias was imputed should be impleaded as a party respondent to the proceedings and given an opportunity to meet those allegations.

46. In this case the appellant has not only made assertion but demonstrated by placing either by admitted or proved facts and circumstances obtainable that even though the case is not made out but he was harassed.

47. Personal liberty is of the widest amplitude covering variety of rights. Its deprivation shall be only as per procedure prescribed in the Code and the Evidence Act conformable to the mandate of the Supreme Law, the Constitution. The

investigator must be alive to the mandate of Constitution and is not empowered to trample upon the personal liberty of a person when he has acted by malafides, as held by this Court in the case of *P.P. Sharma* (supra).

48. It has already been noticed that the respondents before the Advisory Board or before the trial court failed to bring on record any evidence to frame the charges against the appellant under Section 3 of the Police (Incitement to Disaffection) Act, 1992 and under Section 505(1)(b) of the IPC or under the Tamil Nadu Act 14 of 1982. In spite of the same, Ist respondent, 2nd respondent, V.Jegannathan, the then Inspector General and Commissioner of Police, Salem City and the 3rd respondent, M. Ramasamy, the then Inspector of Police, Fairlands Police Station, Salem City before this Court have taken similar plea that the appellant was inciting the police personnel in Tamil Nadu to form an association to fight for their rights and toured the districts of Coimbatore, Tiruchirapalli, Pudukottai and Chennai City and incited the serving police personnel over forming of an association, and acted in a manner prejudicial to the maintenance of public order. By way of additional affidavit certain so called statements of persons have been enclosed which have been filed without any affidavit and were neither the part of the trial court record or material placed before the Advisory Board. The aforesaid action on the part of the Ist, 2nd, 3rd and 4th respondent in support of their act of detaining the appellant illegally by placing some material which has beyond the record justifies the appellant's allegation that the respondents abused their power and position to support their unfair order.

49. In view of the observation made above, though we do not give specific finding on mala fide action on the part of the Ist, 2nd, 3rd and 4th respondent but we hold that the respondent-State and its officers have grossly abused legal power to punish the appellant to destroy his reputation in a manner non-oriented by law by detainin[illegible]il

Nadu Act 14 of 1982 in lodging a Criminal Case No.11/98 under Section 3 of the Police (Incitement to Disaffection) Act, 1992 and under Section 505(1)(b) of the IPC based on the wrong statements which were fully unwarranted.

50. This Court in the case of *Bhut Nath Mete vs. State of W.B.,* (1974) 1 SCC 645, held that an "Administrative order which is based on reasons of fact which do not exist must, therefore, be held to be infected with an abuse of power". The present case is also covered by the observation as we find that the action taken by the respondents based on reasons of fact which do not exist, therefore, the same is held to be infected with an abuse of power.

51. In view of the finding aforesaid, we allow the appeal and impose a cost of Rs.2 lacs on the State of Tamil Nadu for payment in favour of the appellant. The respondents are directed to ensure the payment within two months. However, there shall be no separate order as to costs.

Bibhuti Bhushan Bose Appeal allowed.

U.P. POWER CORPORATION LTD. AND ORS.
v.
ANIS AHMED
(Civil Appeal No.5466 of 2012)

JULY 1, 2013

[G.S. SINGHVI AND SUDHANSU JYOTI MUKHOPADHAYA, JJ.]

Electricity Act, 2003 – ss. 126 and 135 to 140 – Complaint before Consumer Forum against final order of assessment made u/s.126 of the Electricity Act or action taken u/ss.135 to 140 of the Electricity Act – Maintainability of – Held: A "complaint" against assessment made by assessing officer u/s.126 or against offences committed u/ss.135 to 140 of the Electricity Act is not maintainable before a Consumer Forum – The Electricity Act and the Consumer Protection Act run parallel for giving redressal to any person, who falls within meaning of "consumer" u/s.2(1)(d) of the Consumer Protection Act or the Central Government or the State Government or association of consumers but it is limited to dispute relating to "unfair trade practice" or a "restrictive trade practice adopted by the service provider"; or "if the consumer suffers from deficiency in service"; or "hazardous service"; or "the service provider has charged a price in excess of the price fixed by or under any law" – In case of inconsistency between the Electricity Act and the Consumer Protection Act, the provisions of Consumer Protection Act will prevail, but ipso facto it will not vest the Consumer Forum with the power to redress any dispute with regard to the matters which do not come within the meaning of "service" as defined u/s.2(1)(o) or "complaint" as defined u/s.2(1)(c) of the Consumer Protection Act – Consumer Protection Act, 1986 – s.2(1)(c), 2(1)(d) and 2(1)(o).

Dispute arose as to whether a complaint under the

Consumer Protection Act, 1986 against the final assessment order passed under Section 126 of the Electricity Act, 2003 is maintainable before the Consumer Forum.

The appellants contended: (a) that proceedings under Sections 126, 127, 135 etc. of the Electricity Act, 2003 are not related to deficiency of service in the supply of electricity by the service providers under the Electricity Act, 2003 and therefore, complaints against proceedings under Section 126, 127, 135 etc. of the Electricity Act, 2003 are not maintainable before the Forum constituted under the Consumer Protection Act, 1986; and (b) that in absence of any inconsistency between Sections 126, 127, 135 etc. of the Electricity Act, 2003 and the provisions of Consumer Protection Act, 1986, Sections 173 and 174 of the Electricity Act, 2003 are not attracted.

The questions therefore involved in the instant appeals were: a) whether complaints filed by the respondents before the Consumer Forum constituted under the Consumer Protection Act, 1986 were maintainable; and b) whether the Consumer Forum has jurisdiction to entertain a complaint filed by a consumer or any person against the assessment made under Section 126 of the Electricity Act, 2003 or action taken under Sections 135 to 140 of the Electricity Act, 2003 and.

Allowing the appeals, the Court

HELD:1. "Consumer" is defined under Section 2(1)(d) of the Consumer Protection Act, 1986. From a bare reading of the section aforesaid it is clear that person(s) availing services for 'commercial purpose' do not fall within the meaning of "consumer" and cannot be a "complainant" for the purpose of filing a "complaint" before the Consumer Forum. "Service" as defined under Section 2(1)(o) of the Consumer Protection Act, 1986

includes supply of electrical or other energy. A consumer within the meaning under Section 2(1) (d) may file a valid complaint in respect of supply of electrical or other energy, if the complaint contains allegation of unfair trade practice or restrictive trade practice; or there is a defective goods; deficiency in services; hazardous services or a price in excess of the price fixed by or under any law etc. [Paras 22, 23] [410-C; 411-B-C, F]

2. In the instant case, it is clear that the respondents had electrical connections for industrial/commercial purpose and, therefore, they do not come within the meaning of "consumer" as defined under Section 2(1)(d) of the Consumer Protection Act, 1986; they cannot be treated as "complainant" nor they are entitled to file any "complaint" before the Consumer Forum. Admittedly, the complainants made their grievance against final order of assessment passed under Section 126 of the Electricity Act, 2003. None of the respondents alleged that the appellant(s) used unfair trade practice or a restrictive trade practice or there is deficiency in service(s) or hazardous service(s) or price fixed by the appellant(s) is excess to the price fixed under any law etc. In absence of any allegation as stipulated under Section 2(1)(c) of the Consumer Protection Act,1986, their complaints are not maintainable. Therefore, the complaint filed by the respondents were not maintainable before the Consumer Forum. [Paras 24, 25 and 26] [411-G-H; 412-A-D]

3. From a bare reading of Section 126 and Sections 135 to 140 of the Electricity Act, 2003, it is clear that while acts of "unauthorized use of electricity" attracts civil consequence of penal charge of electricity, twice the rate of electricity, for which assessment is made by assessing officer under Section 126; the very same acts of "unauthorized use of electricity", constitute "offences" under Section 135 to 140 for which s

been prescribed. As per Section 153 of the Electricity Act, 2003, Special Courts are to be constituted for speedy trial for the offences referred to in Sections 135 to 140. The Civil Court's jurisdiction to consider a suit with respect to the decision of assessing officer under Section 126, or decision of appellate authority under Section 127 is barred under Section 145 of the Electricity Act,2003. [Paras 35, 36, 37] [422-E-G; 423-F-G]

4. Vide the impugned majority judgment, the National Consumers Disputes Redressal Commission placed much reliance on sub sections (5) and (6) of Section 42 of the Electricity Act, 2003 to derive power to adjudicate dispute arising out of Section 126, but it failed to notice that Section 42 of the Electricity Act, 2003 is not applicable in the case of licensee who is a trader or supplier of electricity but it relates to "distribution licensees". [Para 38] [424-B-C]

5.1. Section 14 of the Electricity Act, 2003 empowers the Appropriate Commission to grant a licence to any person to "transmit electricity" or "to distribute electricity" or "to undertake trading in electricity". Amongst the three categories of licensee(s) viz." transmission licensee"; "distribution licensee" and the "licensee to undertake trading in electricity", the provisions with respect to "distribution licensees" have been provided under Part VI of the Electricity Act, 2003 but not the two other licensees. Bare perusal of Part VI and Section 42 of the Electricity Act, 2003 makes it further clear. [Paras 39, 40] [424-D; G-H; 425-A]

5.2. Section 50 of the Electricity Act, 2003 empowers the State Commission to specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, measures for preventing damage to electrical plant or electrical line or

meter, entry of distribution licensee etc. From reading Section 50, it is clear that under the Electricity Supply Code provisions are to be made for recovery of electricity charges, billing of electricity charges, disconnection etc. and measures for preventing tampering, distress or damage to the electrical plant or line or meter etc. But the said code do not relate to assessment of charges for "unauthorized use of electricity" under Section 126 or action to be taken against those committing 'offences' under Sections 135 to 140 of the Electricity Act, 2003. [Para 41] [427-E-F; 428-A-C]

5.3. Limitation under Section 173,174 and 175 of the Electricity Act, 2003 is only qua the scope of Consumer Protection Act. [Para 42] [428-C-D]

6. Inconsistency would arise only if the provisions of the Electricity Act, 2003 run counter to the provisions of the Consumer Protection Act, 1986 or if while enforcing provision on one statute, provisions of other statute is violated. The entire object and reasons of Consumer Protection Act is not crossed over by the Electricity Act, 2003 and whenever such situation arise the Electricity Act, 2003 has left the option open for the consumer to take recourse under other Laws. [Para 43] [428-H; 429-A-B]

7. The National Commission though held that the intention of the Parliament is not to bar the jurisdiction of the Consumer Forum under the Consumer Protection Act and have saved the provisions of the Consumer Protection Act, failed to notice that by virtue of Section 3 of the Consumer Protection Act, 1986 or Sections 173,174 and 175 of the Electricity Act, 2003, the Consumer Forum cannot derive power to adjudicate a dispute in relation to assessment made under Section 126 or offences under Sections 135 to 140 of the Electricity Act, as the acts of

indulging in "unauthorized use of electricity" as defined under Section 126 or committing offence under Sections 135 to 140 do not fall within the meaning of "complaint" as defined under Section 2(1)(c) of the Consumer Protection Act, 1986. [Para 45] [429-G-H; 430-A-B]

8. The acts of indulgence in "unauthorized use of electricity" by a person, as defined in clause (b) of the Explanation below Section 126 of the Electricity Act,2003 neither has any relationship with "unfair trade practice" or "restrictive trade practice" or "deficiency in service" nor does it amounts to hazardous services by the licensee. Such acts of "unauthorized use of electricity" has nothing to do with charging price in excess of the price. Therefore, acts of person in indulging in 'unauthorized use of electricity', do not fall within the meaning of "complaint", and, therefore, the "complaint" against assessment under Section 126 is not maintainable before the Consumer Forum. The offences referred to in Sections 135 to 140 can be tried only by a Special Court constituted under Section 153 of the Electricity Act, 2003. In that view of the matter also the complaint against any action taken under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before the Consumer Forum. [Para 46] [430-C-F]

8. It is therefore held that:

(i) In case of inconsistency between the Electricity Act, 2003 and the Consumer Protection Act, 1986, the provisions of Consumer Protection Act will prevail, but ipso facto it will not vest the Consumer Forum with the power to redress any dispute with regard to the matters which do not come within the meaning of "service" as defined under Section 2(1)(o) or "complaint" as defined under Section 2(1)(c) of the Consumer Protection Act, 1986.

(ii) A "complaint" against the assessment made by assessing officer under Section 126 or against the offences committed under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before a Consumer Forum.

(iii) The Electricity Act, 2003 and the Consumer Protection Act, 1986 runs parallel for giving redressal to any person, who falls within the meaning of "consumer" under Section 2(1)(d) of the Consumer Protection Act, 1986 or the Central Government or the State Government or association of consumers but it is limited to the dispute relating to "unfair trade practice" or a "restrictive trade practice adopted by the service provider"; or "if the consumer suffers from deficiency in service"; or "hazardous service"; or "the service provider has charged a price in excess of the price fixed by or under any law". [Para 47] [430-G-H; 431-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5466 of 2012.

From the Judgment & Order dated 07.07.2011 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2417 of 2007.

WITH

C.A. Nos. 5467-5468, 5469, 5470, 5471, 5472, 5473, 5474 & 5475 of 2012.

K.V. Viswanathan, L.N. Rao, Altaf Ahmad, Pradeep Misra, Suraj Singh, Jyoti Sharma, Dipak Bhattacharya, Rajat Jariwal, Anupinder Jassal, Abhishek Kaushik, Manish Kumar Saran, Vijay Kumar, B,V, Desai, Avijit Bhushan, Shreyas Mehrotra, Pooja for the Appearing parties.

The Judgment of the Court was de

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. The questions involved in these appeals are; a) whether complaints filed by the respondents before the Consumer Forum constituted under the Consumer Protection Act, 1986 were maintainable and; b) whether the Consumer Forum has jurisdiction to entertain a complaint filed by a consumer or any person against the assessment made under Section 126 of the Electricity Act, 2003 or action taken under Sections 135 to 140 of the Electricity Act, 2003.

2. The National Consumers Disputes Redressal Commission, New Delhi (hereinafter referred to as the 'National Commission') by impugned majority judgment (of President and one Member) dated 10th April, 2008 observed and held as follows:

> *"x x x x x x x x*
>
> *For the reasons stated below, in our view, the aforesaid questions can be answered as under:*
>
> *(i) In case of final assessment order passed under Section 126 of the Electricity Act, if a consumer is aggrieved, he can file complaint under the Consumer Protection Act. However, it is his option to file complaint under the Consumer Protection Act or to file Appeal under Section 127 of the Electricity Act.*
>
> *(ii) Further, against the final order passed by the Appellant Authority under Section 127 of the Electricity Act, no complaint can be entertained by the Consumer Fora*
>
> *x x x x x x x x x x x x x x x x x x x x x x x x x x x x x*
>
> *In view of the aforesaid settled law, the Consumer fora would have jurisdiction to entertain complaint against the final order passed by the assessing officer under Section 126 of the Electricity Act. Further, the jurisdiction of the consumer fora is not barred by any provisions of the Electricity Act but the same is expressly saved under Section 173 read with Sections 174 and 175 of the Electricity Act.*
>
> *V. In the result, we hold as under:*
>
> *(i) Section 3 of the Consumer Protection Act and Section 175 of the Electricity Act, provide that they are in addition and not in derogation of rights under any other law for the time being in force. Therefore, the rights of the consumers under the Consumer Protection Act are not affected by the Electricity Act.*
>
> *(ii) A bare reading of Sections 173, 174 and 175, makes it clear that the intent of the Legislature is not to bar the jurisdiction of the Consumer Fora constituted under the Consumer Protection Act. The provisions of the Electricity Act have overriding effect qua provisions of any other law except that of the Consumer Protection Act, 1986, the Atomic Energy Act, 1962 and the Railways Act, 1989.*
>
> *(iii) Section 42(8)of the Electricity Act specifically provides that the remedies conferred on consumer under sub-sections (5), (6) and (7) of Section 42 are without prejudice to the right which the consumer may have apart from the rights conferred upon him by those sub-sections.*
>
> *(iv) Section 145 of the Electricity Act specifically bars the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of any matter which an assessing officer referre[...] or*

an Appellate Authority referred to in Section 127 of the Electricity Act or the Adjudicating Officer appointed under the Electricity Act, is empowered to determine.

Second part of Section 145 provides that no jurisdiction shall be granted by any Court or Authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. For this purpose, if we refer to Sections 173 and 174 and apply the principle laid down there-under, it would mean that qua the consumer fora there is inconsistency and, therefore, 'other authority' would not include consumer fora.

(v) Consumer of electrical energy provided by the Electricity Board or other Private Company, is a consumer as defined under Section 2(1)(o)of the Consumer Protection Act and a complaint alleging any deficiency on the part of the Board or other private company including any fault, imperfection, shortcoming or inadequacy in quality, nature and manner of performance which is required to be maintained by or under any law or in pursuance of any contract in relation to service, is maintainable under the Consumer Protection Act.

Against the Assessment Order passed under Section 126 of the Electricity Act, a consumer has option either to file Appeal under Section 127 of the Electricity Act or to approach the Consumer Fora by filing complaint. He has to select either of the remedy. However, before entertaining the complaint, the Consumer Fora would direct the Consumer to deposit an amount equal to one-third of the assessed amount with the licensee [similar to Section 127(2) of the Electricity Act].

(vi) Consumer Fora have no jurisdiction to interfere with the initiation of criminal proceedings or the final order passed by any Special Court constituted under Section 153 or the civil liability determined under Section 154 of the Electricity Act."

3. The judicial Member having not agreed with the majority finding, by his minority judgment dated 16th April, 2008 held as follows:

"14. In the result I hold as under:

(i) The provisions contained in Section 126 and 127 of Part XII of the Electricity Act, 2003 are not inconsistent with the provisions of Consumer Protection Act, 1986 and consequently there is no need to have resort to the provisions of Section 173 and 174 of the Electricity Act. The provisions of the Consumer Protection Act and Electricity Act can be given their full meaning and effect on the ground (ii) Consumer fora constituted under the Consumer Protection Act would have jurisdiction to entertain only the complaints filed by a consumer of electricity alleging any defect or deficiency in the supply of electricity or alleging adoption of any unfair trade practice by the supplier of electricity. (iii) The consumer fora established under the Consumer Protection Act have no jurisdiction over the matter relating to the assessment of charges for unauthorized use of electricity, tampering of meters etc. as also over the matters which fall under the domain of special Courts constituted under the Electricity Act, 2003."

Following the aforesaid majority decision dated 10th April, 2008, other cases were disposed of by the National Commission in similar terms by impug h

March, 2009, 29th March, 2011 and 7th July, 2011. By impugned order dated 13th March, 2009, giving reference to the aforesaid judgment dated 10th April, 2008, the matter was remitted to the State Consumers Disputes Redressal Commission (hereinafter referred to as the "State Commission') for fresh decision.

4. For determination of the issue involved in these appeals, it is necessary to discuss the relevant facts as were pleaded by the parties before the Consumer Fora. The same is mentioned hereunder:

5. **Case of Anis Ahmad,**

Anis Ahmed filed a complaint before the District Consumer Protection Forum, Moradabad and claimed that he is a consumer of electricity having connection No.104427 with sanctioned load of 6.5 horse power. He alleged that the authorities of the U.P. Power Corporation Ltd. prepared a fictitious checking report dated 17th July, 2003 and falsely implicated the complainant that he had used more than sanctioned load of 10 H.P. in his factory and on the basis of fictitious report a proceeding was initiated on 15th April, 2004 followed by a bill No.5004369 dated 15th June, 2004 demanding a sum of Rs.2,11,451/-. He prayed to direct the appellant to correct the bill, withdraw the demand notice and to pay the costs.

The appellant, U.P. State Corporation Ltd. filed the objections regarding maintainability of the above said petition. It was alleged that the complainant had industrial connection which was disconnected earlier due to the arrears of electricity dues. On a checking held on 17th March, 2004 by Sub-Divisional Officer-II and Junior Engineer, it was found that the L.T. line of three phases passing from the other side of the premises of the complainant was tapped with the cables attached with the meter though they were disconnected earlier

and the complainant was using full 10 horse power load by committing theft of electricity by bye-passing the meter.

6. **Case of Rakhi Ghosh**

Rakhi Ghosh claimed before the District Consumer Disputes Redressal Forum, at Suri, Birbhum, West Bengal, that he is a consumer of electricity having Connection No.1/7884 with connected load of 20 H.P. He is running his husking mill through connected load. He challenged the bill for Rs.3,73,935/- raised by the West Bengal State Electricity Board which was raised on the ground of unauthorized extension of load of 8 H.P.

The appellant, West Bengal Electricity Board filed the objections and raised the question of maintainability of the application. It was stated that consumer was enjoying Industrial connection and, therefore, does not fall within the definition of "consumer" under the Consumer Protection Act, 1986. It was further alleged that a police case being No.19/2005 dated 26th February, 2005 has already been lodged against Rakhi Ghosh for theft of electricity, therefore, the consumer forum has no jurisdiction to entertain the application.

7. **Case of Prithvi Pal Singh**

Prithvi Pal Singh filed a complaint before the District Consumer Protection Forum-II, Moradabad that he is a consumer having connection No.0102/102474 with a sanctioned load of 6 KW. It was alleged that the U.P. Power Corporation Ltd. got his premises inspected by its team and subsequently sent a notice to him on 1st December, 2005. In the said notice it was alleged that the Enforcement team on inspection made on 25th November, 2004 found that the complainant was committing theft of electricity by making a cut at the cable prior to meter and was using excess load. He challenged the bill raised by the Corporation for Rs.1,45,546/- and prayed for compensation of 10,000/- for harassment.

The appellant, U.P. Power Corporation Ltd. filed objections and raised the question of maintainability of the petition. It was alleged that on checking, a cut mark on three phase cable before the meter was detected by which the complainant was committing theft of electricity of 13 KW by bye-passing the meter. A bill for Rs. 1,99,805/- was raised for theft of the electricity.

8. **Case of Zulfikar**

Zulfikar filed a complaint before the District Consumer Protect Forum-II, Moradabad, challenging a notice of assessment. He stated that he is a consumer of commercial electricity connection bearing No.3293/115275, the sanctioned load of which is 3 KW. According to him on receipt of notice he enquired about the same to the appellant and came to know that on the basis of checking report they have issued the bill. It was alleged that the said checking report dated 22nd July, 2004 is false and fabricated and no checking was done on the premises of the complainant.

The appellant, U.P. Power Corporation Ltd. filed objections raising the question of maintainability of the complaint on the ground that the complainant Zulfikar had commercial connection and hence does not fall within the definition of 'Consumer'. It was alleged that Enforcement Squad and Assistant Engineer (Raids) on 22nd July, 2004 raided the premises of the complainant and during the inspection found that 4 leads of the PVC cable of electricity line leading to the meter had been cut and bye-passing the same, 5.76 KW load was being used by the complainant illegally. They alleged theft of electricity against the complainant for which an assessment notice was issued. It was contended that theft of electricity does not amount to deficiency in service, therefore, the Consumer Forum does not have the jurisdiction to entertain the petition regarding the theft of the electricity under the Consumer Protection Act.

9. **Case of Shahzadey Alam**

Shahzadey Alam filed a complaint case before the District Consumer Protection Forum-II, Moradabad challenging the revenue assessment notice dated 9th February, 2005 and requested to pay the compensation for mental and physical agony. In his petition Shahzadey Alam stated that he was consumer of electricity connection No.0832782700, having a sanctioned load of 2 KW. On 20th October, 1986, the officials of the U.P. Power Corporation Ltd. disconnected the aforesaid electricity connection for non-payment of Suvidh Shulka. As the said electricity connection was not required for the complainant, he did not get the same restored. It is alleged that in spite of the same, the complainant received a notice of assessment on 16th February, 2005.

The appellant, U.P. Power Corporation Ltd. on appearance challenged the maintainability of the petition before the Consumer Forum. It was stated that the complainant had himself admitted that his electricity connection was disconnected on 20th October, 1986, therefore, the petition was not maintainable. It was further alleged that the complainant has a factory which was raided and checked by the enforcement squad on 24th January, 2005 at 4.10 hours and that it was found that the complainant was committing theft of electricity by cutting three phase cable going near his premises to the connection No.2783/116398 of L.M.V.-II category of Shri Javed and by connecting it with 15 meters cable and using 4.70 K.W. load and that no valid connection was found in the premises of the complainant. Therefore, the complainant was asked to deposit compounding fee of Rs.1,02,400/-, but he has not deposited it. On the basis of the report a notice was issued to the complainant.

10. **Case of Atul Kumar Gupta**

Atul Kumar Gupta filed a complaint before the District Consumer Protection Forum-II, Morada[illegible]s

a consumer of electricity connection No.1034/117269, having sanctioned load of 7.5 KW. It is alleged that the electricity connection of the complainant has been disconnected on 29th February, 2003 on the ground of outstanding electricity charges. Later on, the appellant informed that a case in connection with checking is under consideration and, therefore, the connection of the complainant cannot be restored. The complainant alleged that on 13th March, 2004 he received Revenue assessment notice alongwith a checking report No.164 dated 1st March, 2004, though no checking was conducted at the premises of the complainant on 1st March, 2004. He prayed for cancellation of the assessment notice dated 10th March, 2004 and claimed compensation of Rs.5,000/- towards mental agony and financial loss.

The appellant, U.P. Power Corporation Ltd., in their reply raised the question of maintainability of the petition in view of the fact that the complainant's connection was disconnected on 28th February, 2003 and that on inspection it was found that he was committing theft of electricity by pilferage of electricity.

11. **Case of Tauseef Ahmed**

Tauseef Ahmed moved before the District Consumer Protection Forum-II, Moradabad and stated that he is a consumer of electricity having connection No.115694 with sanctioned load of 2 KW. He alleged that three employees of the U.P. Power Corporation Ltd. visited his premises. Out of them one represented himself to be the Junior Engineer and demanded bribe of Rs.6,000/- illegally. As he refused to pay the amount, a notice was served on him on 8th September, 2004 along with a report dated 11th August, 2004 and a bill for Rs.1,94,382/- was raised. He challenged the bill before the District Forum.

The U.P. Power Corporation Ltd. on appearance raised the question of maintainability of the petition, one of the grounds taken was that the complainant has already filed an Original Suit

No.391 of 2004 (*Tauseef Ahmed vs. Uttar Pradesh Power Corporation*) for the same relief before the Court of Civil Judge (Junior Division), Moradabad in which summons has already been issued and the matter is pending. It was alleged that the premises of the claimant was checked on 11th August, 2004 in the presence of the complainant and on checking it was found that 6.945 KW of electricity had been illegally used instead of sanctioned load of 2 KW. It was brought to the notice of the Forum that use of excess load than the sanctioned electric load for any other purpose for which connection has been granted, comes within the meaning of "pilferage of electricity" as defined under U.P. Electricity (Consumers) Regulation, 1984 for which notice of assessment was sent to the complainant for recovery of sum of Rs.1,94,382/- which on hearing the parties was finalized to be Rs.1,07,985/- vide order dated 1st October, 2004.

12. **Case of Mohd. Yunus**

Mohd. Yunus filed a complaint before the District Consumer Protection Forum-II, Moradabad claiming to be a consumer of commercial electricity having connection No.2701/0-98494, with sanctioned load of 5 KW. It was alleged that on the basis of a checking report dated 17th November, 2004 revenue assessment notice dated 1st February, 2005 was served on him. He sought for a copy of the report and came to know that Junior Engineer had sent a false checking report to the Divisional Office because of non-payment of monthly "Suvidha Sulk" by the complainant. He challenged the revenue assessment notice dated 1st February, 2005 and claimed compensation of Rs.10,000/- for mental suffering and financial loss.

The U.P. Power Corporation Ltd. on appearance raised the question of maintainability of the petition. It was stated that the complainant is a consumer of L.M.V.-II category using electricity for commercial purposes, therefore, he does not fall under the definition of “consumer", as [illegible]n

2(1)(d) of the Consumer Protection Act. It was further alleged that on 17th November, 2004 on checking of the premises of the complainant by Sub-Divisional Officer-II, Moradabad and Junior Engineer it was found that the complainant was using the connection for industrial purposes under L.M.V.-6 category without any prior consent of the U.P. Power Corporation Ltd. He was using electrical energy for the purposes other than the purpose for which it was sanctioned. Therefore, the complainant was found to be guilty of pilferage of electricity.

13. All the cases against the U.P. Power Corporation Ltd. were filed before the District Consumer Protection Forum-II, Moradabad. The decision having given in favour of the complainants, U.P. Power Corporation Ltd moved before the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow which by its common judgment dated 31st January, 2007/Ist February, 2007 dismissed all the revision petitions filed by the U.P. Power Corporation Ltd.

14. For the said reason all the cases in which the question of jurisdiction of the Consumer Forum were raised, they were heard and decided by the National Commission initially by the impugned judgment dated 10th April, 2008/16th April, 2008, followed by other orders.

Submissions:

15. Learned counsel for the appellants contended as under:

(a) The proceedings under Sections126, 127, 135 etc. of the Electricity Act, 2003 initiated by the service providers are not related to deficiency of service in the supply of electricity by the service providers under the Electricity Act, 2003. Therefore, the complaints against the proceedings under Section 126, 127, 135 etc. of the Electricity Act, 2003 are not maintainable before the Forum constituted under the Consumer Protection Act, 1986.

(b) In absence of any inconsistency between Sections 126,

127, 135 etc. of the Electricity Act, 2003 and the provisions of Consumer Protection Act, 1986, Sections 173 and 174 of the Electricity Act, 2003 are not attracted.

16. Per contra, according to the respondents, a complaint under the Consumer Protection Act, 1986 against the final assessment order passed under Section 126 of the Electricity Act, 2003 is maintainable before the Consumer Forum.

17. To determine the question, it would be appropriate to refer to the Statement of Objects and Reasons and relevant provisions of the Consumer Protection Act, 1986, as quoted below:

"STATEMENT OF OBJECTS AND REASONS

The Consumer Protection Bill, 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matter connected therewith.

2. It seeks, inter alia, to promote and protect the rights of consumers such as-

(a) the right to be protected against marketing of goods which are hazardous to life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;

(d) the right to be heard [illegible]

consumers interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

(f) right to consumer education.

3. These objects are sought to be promoted and protected by the Consumer Protection Council to be established at the Central and State level.

4. To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be setup at the district, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give relief of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for noncompliance of the orders given by the quasi-judicial bodies have also been provided."

Scope of consumer complaint

18. "Consumer dispute" is defined under Section 2(e) of the Consumer Protection Act,1986 in the following manner:

"2(e) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint."

Therefore, for a valid consumer dispute an assertion and denial of a valid complaint is must.

19. "Complaint" is defined under Section 2(1) (c) of the Consumer Protection Act,1986 in the following manner:

"2(1)(c) "complaint" means any allegation in writing made by a complainant that-

(i) an unfair trade practice or a restrictive trade practice has been adopted by (any trader or service provider ;

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

(iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price-

(a) fixed by or under any law for the time being in force;

(b) displayed on the goods or any package containing such goods;

(c) displayed on the price list exhibited by him by or under any law for the time being inforce;

(d) agreed between the parties;

(v) goods which will be hazardous to life and safety when used, are being-offered for sale to the public-

(a) in contravention of any standard relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;

(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which su[illegible]e

known with due diligence to be injurious to life and safety;

with a view to obtaining any relief provided by or under this Act;"

Therefore, it is only in respect to aforementioned aspects that a consumer complaint can be filed viz.

* Unfair trade practice or restrictive trade practice.

* When there is a defective goods.

* Deficiency in services

* Hazardous goods

* Hazardous services

* a price in excess of the price fixed under any law etc.

20. Deficiency of service is defined under Section 2(g) of the Consumer Protection Act, 1986 in the following manner:

"2(g) "deficiency"means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service."

Therefore, it is clear that nature of transaction under Section 126 does not come within the ambit of "complaint".

21. Section 2(1)(b) of the Consumer Protection Act, 1986 defines "complainant" as follows:

"2(1)(b) "complainant" means-

(i) a consumer; or

(ii) any voluntary consumer association registered

under the Companies Act,1956 (1of 1956) or under any other law for the time being in force; or

(iii) the Central Government or any State Government; or

(iv) one or more consumers, where there are numerous consumers having the same interest;

(v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;"

22. Whereas "consumer" is defined under Section 2(1)(d) of the Consumer Protection Act, 1986 in the following manner:

"2(1)(d) "consumer" means any person who-(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; (but does not include a person who avails of such services for any commercial purpose;)

Explanation.-For the purposes of this clause, "commercial purpose" does not include use b s

bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;"

From a bare reading of the section aforesaid it is clear that person(s) availing services for 'commercial purpose' do not fall within the meaning of "consumer" and cannot be a "complainant" for the purpose of filing a "complaint" before the Consumer Forum.

23. "Service" as defined under Section 2(1)(o) of the Consumer Protection Act, 1986 includes supply of electrical or other energy and reads as follows:

"2(1)(o)"service" means service of any description which is made available to potential (users and includes, but not limited to, the provision of) facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, (housing construction,) entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

Therefore, a consumer within the meaning under Section 2(1) (d) may file a valid complaint in respect of supply of electrical or other energy, if the complaint contains allegation of unfair trade practice or restrictive trade practice; or there is a defective goods; deficiency in services; hazardous services or a price in excess of the price fixed by or under any law etc.

Maintainability of complaint filed by the respondents.

24. From the facts narrated in the preceding paragraph it is clear that Anis Ahmed, Rakhi Ghosh, Prithvi Pal Singh, Zulfikar, Shahzadey Alam, Atul Kumar Gupta, Tauseef Ahmed and Mohd. Yunus had electrical connections for industrial/ commercial purpose and, therefore, they do not come within the meaning of "consumer" as defined under Section 2(1)(d)

of the Consumer Protection Act, 1986; they cannot be treated as "complainant" nor they are entitled to file any "complaint" before the Consumer Forum.

25. Admittedly, the complainants made their grievance against final order of assessment passed under Section 126 of the Electricity Act, 2003. None of the respondents alleged that the appellant(s) used unfair trade practice or a restrictive trade practice or there is deficiency in service(s) or hazardous service(s) or price fixed by the appellant(s) is excess to the price fixed under any law etc. In absence of any allegation as stipulated under Section 2(1)(c) of the Consumer Protection Act,1986, their complaints were not maintainable.

26. Therefore, we hold that the complaint filed by the respondents were not maintainable before the Consumer Forum.

Maintainability of a complaint before the Consumer Forum against final order of assessment made under Section 126 of the Electricity Act, 2003 or action taken under Sections 135 to 140 of the Electricity Act, 2003

27. Section 2(15) of the Electricity Act, 2003 defines 'consumer' in the following manner:

"2(15). "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;"

28. From a bare reading of section aforesaid we find that the "consumer" as defined under Section 2(15) includes any person who is supplied with electricity [illegible] a

licensee and also includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, irrespective of the fact whether such person is supplied with electricity for his own use or not. Per contra under Section 2(1)(d) of the Consumer Protection Act, 1986those who were supplied with electricity for commercial purpose and those who do not avail services for consideration, irrespective of electricity connection in their premises do not come within the meaning of "consumer".

29. Section 126 of the Electricity Act, 2003 empowers the assessing officer to make assessment in case of “unauthorized use of electricity". It provides that if on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in "unauthorized use of electricity", he shall assess the electricity charges payable by such person or by any other person benefitted by such use, the Section reads as under:

"126.Assessment.- *(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.*

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under subsection (2) shall be entitled to file objections, if any,

against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to (twice) the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation.- For the purposes of this section,-

(a) “ assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) “ unauthorised use of electricity” means the usage of electricity –

(i) by any artificial means; or

*(ii) by a means not authorise*d

person or authority or licensee; or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorized; or

(v) for the premises or areas other than those for which the supply of electricity was authorized."

30. Section 145 of the Electricity Act, 2003 bars the jurisdiction of Civil Court to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126. A separate provision of appeal to the appellate authority has been prescribed under Section 127 so that any person aggrieved by the final order made under Section 126, may within thirty days of the said order, prefer an appeal, which reads as under:

127.Appeal to appellate authority.- *(1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.*

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub –section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount, shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent per annum compounded every six months."

Therefore, it is clear that after notice of provisional assessment to the person indulged in unauthorized use of electricity, the final decision by an assessing officer, who is a public servant, on the assessment of "unauthorized use of electricity"is a "Quasi Judicial" decision and does not fall within the meaning of "consumer dispute" under Section 2(1) (e) of the Consumer Protection Act, 1986.

31. Part XIV of the Electricity Act, 2003 relates to "offences and penalties". If Section 126 is read with Section 135 to 140 it will be clear that various acts of "unauthorized use of electricity" constitute "offences" mentioned under Sections 135 to 140 and attracts sentence and fine as prescribed therein.

32. For proper appreciation, we refer to Section 135 which relates to "theft of electricity". Interference with meters or work of licensee, taping of electricity, making or causing to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; tampering of meter, installation or use of tampered meter, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; damag[illegible]n

electrical meter, apparatus, equipment, use of electricity through a tampered meter; use of electricity for the purpose other than for which the usage of electricity was authorized constitute "theft of electricity" and constitute “offence" under Section 135 of the Electricity Act, 2003, which reads as follows:

“135. Theft of electricity.- (1) Whoever, dishonestly,--

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or

attempted consumption or attempted use--

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 Kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is provided that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such cons

1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hour from the time of such disconnect:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause., restore the supply line of electricity within forty-eight hours of such deposit or payment;]

(2) Any officer of the licensee or supplier as the case may be, authorised in this behalf by the State Government may--

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity [has been or is being], used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article

which [has been or is being], used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act."

33. "Theft of electric lines and materials" constitute offence under Section 136; whereas "receiving stolen property" constitute offence under Section 137. Interference with meters or works of licensee unauthorisedly connecting any meter, indicator or apparatus with any electric line; unauthorise reconnection of any meter, indicator or apparatus with electric line or other works; laying or causing to be laid, or connecting any works for the purpose of communicating with any other works belonging to a licensee; or injuring any meter, indicator, or apparatus belonging to a licensee ma[illegible]e

"offences" which attracts punishment under Section 138 of the Electricity Act, 2003. Section 138 of the Electricity Act reads as follows:

"138.Interference with meters or works of licensee.-(1)

Whoever,-

(a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or willfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering;

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such reconnection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer."

34. Clause (b) of the Explanation below Section 126, defines "unauthorized use of electricity" as the usage of electricity by any artificial means; or by a means not authorized by the concerned person or authority or licensee; or through a tampered meter; or for the purpose other than for which the usage of electricity was authorized; or for the premises or areas other than those for which the supply of electricity was authorized.

All the aforesaid acts constitute "offences" under Section 135 to 140 of the Electricity Act, 2003, as noticed above.

35. From a bare reading of Section 126 and Sections 135 to 140, it is clear that while acts of "unauthorized use of electricity" attracts civil consequence of penal charge of electricity, twice the rate of electricity, for which assessment is made by assessing officer under Section 126; the very same acts of "unauthorized use of electricity", constitute "offences" under Section 135 to 140 for which sentence and fine has been prescribed.

36. As per Section 153 of the Electricity Act, 2003, Special Courts are to be constituted for speedy trial for the offences referred to in Sections 135 to 140. The said Section reads as follows:

"153. Constitution of Special Courts.- *(1) The State Government may, for the purposes of providing speedy trial of offences referred to in [sections 135 to 140 and section 150], by notification in the Official Gazette, constitute as many Special Courts as may be necessary*

for such area or areas, as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.

(4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of--

(a) by a Judge, if any, exercising jurisdiction in the Special Court;

(b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the oridinary place of sitting of Special Court, as notified under sub-section (1)."

37. The Civil Court's jurisdiction to consider a suit with respect to the decision of assessing officer under Section 126, or decision of appellate authority under Section 145 of the Electricity Act,2003 , which reads as under:

"145. Civil Court not to have jurisdiction.- *No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an Appellate Authority*

referred to in Section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

38. The National Commission placed much reliance on sub sections (5) and(6) of Section 42 of the Electricity Act, 2003 to derive power to adjudicate dispute arising out of Section 126, but it failed to notice that Section 42 of the Electricity Act, 2003 is not applicable in the case of licensee who is a trader or supplier of electricity but it relates to "distribution licensees".

39. Section 14 of the Electricity Act, 2003 empowers the Appropriate Commission to grant a licence to any person to "transmit electricity" or "to distribute electricity" or "to undertake trading in electricity", the relevant portion of Section 14 reads as follows:

"14. Grant of licence.- *The Appropriate Commission may, on an application made to it under Section 15, grant a licence to any person –*

(a) *to transmit electricity as a transmission licensee; or*

(b) *to distribute electricity as a distribution licensee; or*

(c) *to undertake trading in electricity as an electricity trader,*

in any area as may be specified in the licence."

40. Amongst the three categories of licensee(s) viz."transmission licensee"; "distribution licensee" and the "licensee to undertake trading in electricity", the provisions with respect to "distribution licensees" have

Part VI of the Electricity Act, 2003 but not the two other licensees. Bare perusal of Part VI and Section 42 of the Electricity Act, 2003 makes it further clear. The same is quoted hereunder:

"Part VI

DISTRIBUTION OF ELECTRICITY

Provisions with respect to distribution licensees

42. Duties of distribution licensees and open access. *-(1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.*

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that [such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced [***] in the manner as

may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

[Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003 (57 of 2003) by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.]

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

(5) Every distribution licensee sh s

from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or disignated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections."

41. Section 50 of the Electricity Act, 2003 empowers the State Commission to specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, measures for preventing damage to electrical plant or electrical line or meter, entry of distribution licensee etc., and it reads as follows:

"50. The Electricity Supply Code.- *The State Commission shall specify an Electricity Supply Code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines*

or electrical plants or meter and such other matters."

From reading Section 50, it is clear that under the Electricity Supply Code provisions are to be made for recovery of electricity charges, billing of electricity charges, disconnection etc. and measures for preventing tampering, distress or damage to the electrical plant or line or meter etc. But the said code need not provide provisions relating to it do not relate to assessment of charges for "unauthorized use of electricity" under Section 126 or action to be taken against those committing 'offences' under Sections 135 to 140 of the Electricity Act, 2003.

42. Limitation under Section 173,174 and 175 of the Electricity Act, 2003 is only qua the scope of Consumer Protection Act, which read as under:

" 173. Inconsistency in laws.- *Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect insofar as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 (68 of 1986) or the Atomic Energy Act, 1962 (33 of 1962) or the Railways Act, 1989 (24 of 1989)."*

174. Act to have overriding effect. *- Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.*

175. Provisions of this Act to be in addition to and not in derogation of other laws. - *The provisions of this Act are in addition to and not in derogation of any other law for the time being in force."*

43. The inconsistency would arise only if the provisions of the Electricity Act, 2003 run counter to [illegible]e

Consumer Protection Act, 1986 or if while enforcing provision on one statute, provisions of other statute is violated. We find that the entire object and reasons of Consumer Protection Act is not crossed over by the Electricity Act, 2003 and whenever such situation arise the Electricity Act, 2003 has left the option open for the consumer to take recourse under other Laws.

44. The National Commission by its majority decision dated 10th April, 2008 referring to Section 3 of the Consumer Protection Act, 1986 and Sections 173, 174 and 175 of the Electricity Act, 2003 held as follows:

"A bare reading of the aforesaid Sections makes it abundantly clear that –

(i) The intention of the Parliament is not to bar the jurisdiction of the consumer fora under the CP Act. The Electricity Act also impliedly does not bar the jurisdiction of the consumer fora;

(ii) On the contrary, it saves the provisions of Consumer Protection Act, 1986, Atomic Energy Act, 1962 and the Railways Act, 1989;

(iii) By non-obstante clause, it has been provided that if anything in the Electricity Act, Rules or Regulations is inconsistent with any provisions of the Consumer Protection Act, it shall have no effect; and

(iv) Provisions of the Electricity Act are in addition to and not in derogation of any other law for the time being in force. The act supplements the existing redressal forum, namely, the Consumer Fora."

45. The National Commission though held that the intention of the Parliament is not to bar the jurisdiction of the Consumer Forum under the Consumer Protection Act and have saved the provisions of the Consumer Protection Act, failed to notice that

by virtue of Section 3 of the Consumer Protection Act, 1986 or Sections 173,174 and 175 of the Electricity Act, 2003, the Consumer Forum cannot derive power to adjudicate a dispute in relation to assessment made under Section 126 or offences under Sections 135 to 140 of the Electricity Act, as the acts of indulging in "unauthorized use of electricity" as defined under Section 126 or committing offence under Sections 135 to 140 do not fall within the meaning of "complaint" as defined under Section 2(1)(c) of the Consumer Protection Act, 1986.

46. The acts of indulgence in "unauthorized use of electricity" by a person, as defined in clause (b) of the Explanation below Section 126 of the Electricity Act,2003 neither has any relationship with "unfair trade practice" or "restrictive trade practice" or "deficiency in service" nor does it amounts to hazardous services by the licensee. Such acts of "unauthorized use of electricity" has nothing to do with charging price in excess of the price. Therefore, acts of person in indulging in 'unauthorized use of electricity', do not fall within the meaning of "complaint", as we have noticed above and, therefore, the "complaint" against assessment under Section 126 is not maintainable before the Consumer Forum. The Commission has already noticed that the offences referred to in Sections 135 to 140 can be tried only by a Special Court constituted under Section 153 of the Electricity Act, 2003. In that view of the matter also the complaint against any action taken under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before the Consumer Forum.

47. In view of the observation made above, we hold that:

(i) In case of inconsistency between the Electricity Act, 2003 and the Consumer Protection Act, 1986, the provisions of Consumer Protection Act will prevail, but ipso facto it will not vest the Consumer Forum with the power to redress any dispute with regard to the matters which do not come within the meaning of "service" as defined under

Section 2(1)(o) or "complaint"as defined under Section 2(1)(c) of the Consumer Protection Act, 1986.

(ii) A "complaint" against the assessment made by assessing officer under Section 126 or against the offences committed under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before a Consumer Forum.

(iii) The Electricity Act, 2003 and the Consumer Protection Act, 1986 runs parallel for giving redressal to any person, who falls within the meaning of "consumer" under Section 2(1)(d) of the Consumer Protection Act, 1986 or the Central Government or the State Government or association of consumers but it is limited to the dispute relating to "unfair trade practice" or a "restrictive trade practice adopted by the service provider"; or "if the consumer suffers from deficiency in service"; or "hazardous service"; or "the service provider has charged a price in excess of the price fixed by or under any law".

48. For the reasons as mentioned above, we have no hesitation in setting aside the orders passed by the National Commission. They are accordingly set aside. All the appeals filed by the service provider-licensee are allowed, however, no order as to costs.

Bibhuti Bhushan Bose Appeals allowed.

COMMISSIONER OF POLICE, NEW DELHI & ANR.
v.
MEHAR SINGH
(Civil Appeal No. 4842 of 2013)

JULY 2, 2013

[G.S. SINGHVI AND RANJANA PRAKASH DESAI, JJ.]

Service Law – Appointment – Cancellation of candidature – Delhi Police – Standing Order issued by Delhi Police incorporating policy for deciding cases of provisionally selected candidates involved in criminal cases (facing trial or acquitted) – Screening Committee constituted as per Standing Order –Opinion formed by Screening Committee and endorsed by the Deputy Commissioner of Police (Recruitment), Delhi, that both the respondents, who were subsequently acquitted /discharged in a criminal case, were not suitable for being appointed in the Delhi Police Force – Sustainability – Held: Sustainable – Tribunal and the High Court erred in setting aside the order of cancellation of the respondents' candidature – The Screening Committee was entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they were acquitted or discharged if it felt that the acquittal or discharge was on technical grounds or not honourable – While deciding whether a person against whom a criminal case was registered and who was later acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future – This decision can only be taken by the Screening Committee created for that purpose by the Delhi Police – If the Screening

Committee's decision is not mala fide or actuated by extraneous considerations, then, it cannot be questioned – Delhi Police (Appointment and Recruitment) Rules, 1980 – r.6.

Constitution of India, 1950 – Art. 136 – SLP – Rejection of , at the threshold without detailed reasons – Held: Does not constitute any declaration of law or a binding precedent.

Constitution of India, 1950 – Art. 14 – Doctrine of equality enshrined in Art.14 – Held: Does not envisage negative equality – It is not meant to perpetuate illegality or fraud because it embodies a positive concept – On facts, held, that if the Screening Committee constituted by the Delhi Police to carry out the object of the comprehensive policy to ensure that people with doubtful background do not enter the police force, deviates from the policy, makes exception and allows entry of undesirable persons, it is guilty of committing an act of grave disservice to the police force but one cannot allow that illegality to be perpetuated – Service Law – Appointment – Delhi Police.

The question before this Court is whether the candidature of the respondents who had made a clean breast of their involvement in a criminal case by mentioning this fact in their application/attestation form while applying for a post of constable in Delhi Police; who were provisionally selected subject to verification of their antecedents and who were subsequently acquitted/ discharged in the criminal case, could be cancelled by the Screening Committee of the Delhi Police on the ground that they are not found suitable for appointment to the post of constable.

Allowing the appeals, the Court

HELD:1.1. It is true that in Rule 6 of the Delhi Police (Appointment and Recruitment) Rules, 1980 which

provides for grounds for ineligibility, criminal antecedents of a person is not mentioned as a ground for ineligibility. But, to conclude from this that instances of moral turpitude, however grave, could be overlooked because they do not find mention in Rule 6, would be absurd. In any case, Standing Order No. 398/2010 issued by the Delhi Police empowers the police to take appropriate decision in such cases. Pertinently the respondents have not challenged the Standing Order. This Standing Order incorporates policy for deciding cases of candidates provisionally selected in Delhi Police involved in criminal cases (facing trial or acquitted). [Para 17] [450-D-G]

1.2. Clause 3 of the Comprehensive Policy delineated in the Standing Order refers to the Screening Committee comprising high police officers. After a candidate, who has disclosed his involvement, is acquitted or discharged, the Committee has to assess his/her suitability for appointment. Clause 6 states that those against whom serious offences or offences involving moral turpitude are registered and who are later on acquitted by extending benefit of doubt or because the witnesses have turned hostile due to fear of reprisal by the accused person shall not generally be considered suitable for government service. However, all such cases will be considered by the Screening Committee manned by senior officers. The word *'generally'* indicates the nature of discretion. As a matter of rule, such candidates have to be avoided. Exceptions will be few and far between and obviously must be substantiated with acceptable reasons. [Para 18] [453-F-H; 454-A-B]

1.3. A careful perusal of the policy leads to the conclusion that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acq[illegible]s

on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. This policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force. [Para 19] [454-B-F]

1.4. It cannot be said that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. Though the question of co-relation between a criminal case and a departmental inquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical namely whether to allow a person with doubtful integrity to work in the department. While the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full fledged trial, where there is no indication of the witnesses being won over. [Para 20] [454-F-H; 455-A-B]

1.5. In *S. Samuthiram* case, this Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted. Since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it. [Para 21] [455-D, H; 456-A-D]

1.6. In the instant case, as per the complaint, respondent 'M' and others armed with iron chains, lathis, danda, stones etc. stopped a bus, rebuked the conductor of the bus as to how he dared to take the fare from one of their associates. Those who intervened were beaten-up. They received injuries. The miscreants broke the side window panes of the bus by throwing stones. The complainant was also injured. This incident is undoubtedly an incident affecting public order. The assault on the conductor was pre-planned and pre-meditated. The FIR was registered under Sections 143, 341, 323 and 427 of the IPC. The order dated 30/01/2009 passed by the Additional Chief Judicial Magistrate shows that so far as offences under Sections 323, 341 and 427 of the IPC are concerned, the acc a

compromise with the complainant. Hence, the Magistrate acquitted respondent – 'M' and others of the said offences. The order further indicates that so far as offence of rioting i.e. offence under Section 147 of the IPC is concerned, three main witnesses turned hostile. The Magistrate, therefore, acquitted all the accused of the said offence. This acquittal can never be described as an acquittal on merits after a full fledged trial. Respondent – 'M' cannot secure entry in the police force by portraying this acquittal as an honourable acquittal. Pertinently, there is no discussion on merits of the case in this order. Respondent – 'M' has not been exonerated after evaluation of the evidence. So far as respondent – 'S' is concerned, the FIR lodged against him stated that he along with other accused abused and threatened the complainant's brother. They opened fire at him due to which he sustained bullet injuries. Offences under Sections 307, 504 and 506 of the IPC were registered against respondent – 'S' and others. Order dated 14/5/2010 passed by the Sessions Judge shows that the complainant and the injured person did not support the prosecution case. They were declared hostile. Hence, the Sessions Judge gave the accused the benefit of doubt and acquitted them. This again is not a clean acquittal. Use of firearms in this manner is a serious matter. For entry in the police force, acquittal order based on benefit of doubt in a serious case of this nature is bound to act as an impediment. [Paras 22, 23] [456-E-H; 457-A-F]

1.7. So far as respondent – 'M' is concerned, his case appears to have been compromised. The plea that acquittal recorded pursuant to a compromise should not be treated as a disqualification because that will frustrate the purpose of Legal Services Authorities Act, 1987 has no merit. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to

disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that. [Para 26] [459-H; 460-A-C]

1.8. The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case, but this does not improve their case. Disclosure of these facts in the application/ attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. While deciding whether a person against whom a criminal case was registered and who was later acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not *mala fide* or actuated by extraneous considerations, then, it cannot be questioned. [Para 27] [460-D-G]

1.9. The police force is a disciplined force. It shoulders the great responsibility of maintaining law and order and public order in the society

faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is *mala fide.* In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, this Court would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand. [Para 28] [460-H; 461-A-E]

1.10. Though the Screening Committee's proceedings have been assailed as being arbitrary, unguided and unfettered, but there is no evidence of this. However, certain instances have been pointed out where allegedly persons involved in serious offences have been recommended for appointment by the Screening Committee. It is well settled that to such cases the doctrine of equality enshrined in Article 14 of the Constitution of India is not attracted. This doctrine does not envisage negative equality. It is not meant to perpetuate illegality or

fraud because it embodies a positive concept. If the Screening Committee which is constituted to carry out the object of the comprehensive policy to ensure that people with doubtful background do not enter the police force, deviates from the policy, makes exception and allows entry of undesirable persons, it is undoubtedly guilty of committing an act of grave disservice to the police force but one cannot allow that illegality to be perpetuated by allowing the respondents to rely on such cases. It is for the Commissioner of Police, Delhi to examine whether the Screening Committee has compromised the interest of the police force in any case and to take remedial action if he finds that it has done so. Public interest demands an in-depth examination of this allegation at the highest level. Perhaps, such deviations from the policy are responsible for the spurt in police excesses. The Commissioner of Police, Delhi is expected to look into the matter and if there is substance in the allegations to take necessary steps forthwith so that policy incorporated in the Standing Order is strictly implemented. [Para 29] [461-F-H; 462-A-D]

Commissioner of Police v. Dhaval Singh **(1999) 1 SCC 246 and** *Ghurey Lal v. State of U.P.* **JT 2008(10) SC 324 – held inapplicable.**

R.P. Kapur v. Union of India **AIR 1964 SC 787: 1964 SCR 431;** *Deputy Inspector General of Police & Anr. v. S. Samuthiram* **(2013) 1 SCC 598: 2012 (11) SCR 174;** *Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal* **(1994) 1 SCC 541: 1993 (3) Suppl. SCR 586;** *Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar* **(1996) 11 SCC 605: 1996 (7) Suppl. SCR 199;** *Fuljit Kaur etc. v. State of Punjab etc.* **(2010) 11 SCC 455: 2010 (7) SCR 317 and** *Jainendra Singh v. State of Uttar Pradesh* **(2012) 8 SCC 748: 2012 (6) SCR 1047– referred to.**

Suresh Pathrella v. Oriental Bank **5)**

10 SCC 572: 2006 (7) Suppl. SCR 564; *K. Venkateshwarlu v. State of Andhra Pradesh* **(2012) 8 SCC 73;** *Chandigarh Administration & Anr. v. Jagjit Singh & Anr.* **AIR 1995 SC 705: 1995 (1) SCR 126 and** *Maharaj Krishan Bhatt & Anr. v. State of Jammu & Kashmir & Ors.* **(2008) 9 SCC 24: 2008 (11) SCR 670 – cited.**

2. In certain orders of this Court, according to the respondents, special leave petitions filed by the State, arising out of similar fact situations, have been dismissed. However, in limine dismissal of special leave petition does not mean that this Court has affirmed the judgment or the action impugned therein. The order rejecting the special leave petition at the threshold without detailed reasons does not constitute any declaration of law or a binding precedent. [Para 30] [462-E-F]

3. The opinion formed by the Screening Committee in both these cases which is endorsed by the Deputy Commissioner of Police (Recruitment), Delhi, that both the respondents are not suitable for being appointed in the Delhi Police Force does not merit any interference. It is legally sustainable. The Tribunal and the High Court erred in setting aside the order of cancellation of the respondents' candidature. The cancellation of candidature of the respondents is upheld. [Para 31] [462-G-H; 463-A]

Case Law Reference:

1996 (7) Suppl. SCR 199	**referred to**	**Para 13**
2006 (7) Suppl. SCR 564	**cited**	**Para 13**
2010 (7) SCR 317	**referred to**	**Para 13**
(2012) 8 SCC 73	**cited**	**Para 13**
2012 (11) SCR 174	**referred to**	**Para 13**

1995 (1) SCR 126	**cited**	**Para 13**
2008 (11) SCR 670	**cited**	**Para 13**
(1999) 1 SCC 246	**held inapplicable**	**Para 14**
JT 2008(10) SC 324	**held inapplicable**	**Para 14**
2012 (6) SCR 1047	**referred to**	**Para 15**
1964 SCR 431	**referred to**	**Para 20**
1993 (3) Suppl. SCR 586	**referred to**	**Para 21**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4842 of 2013.

From the Judgment and Order dated 09.07.2012 of the High Court of Delhi At New Delhi in W.P (C) No. 3918 of 2012.

WITH

C.A.No. 4965 of 2013

Rakesh Kr. Khanna, ASG, Satya Siddiqui, D.S. Mahra, Seema Thapliyal, S.K Mishra for the Appellants.

Ajesh Luthra, Vikrant Yadav for the Respondent.

The Judgment of the court was delivered by

(SMT.) RANJANA PRAKASH DESAI, J. 1. Leave granted in both the petitions.

2. In both the appeals the judgments of the Delhi High Court are under challenge. Appeal arising out of SLP (Civil) No. 38886 of 2012 is against Judgment dated 09/07/2012 passed in Writ Petition (Civil) No.3918 of 2012. Appeal arising out of SLP (Civil) No.4057 of 2013 is against Judgment dated 21/05/2012 passed in Writ Petition (Civil) No.3015 of 2012. Since both these appeals raise the same question of law, they can be disposed of by a common judgment e

that while issuing notice, this Court has stayed the orders impugned in both the appeals.

3. The facts relating to the appeal against respondent - Mehar Singh could be shortly stated.

4. FIR No.126/04 was registered against respondent - Mehar Singh and others under Sections 143, 341, 323 and 427 of the Indian Penal Code ("**the IPC**") upon a complaint received from Ramji Lal s/o. Mamraj Saini r/o. Khetri - the owner of Bus No.RJ-18P 0493. The substance of the complaint was that when the bus reached the bus stand of village Raipur on 15/5/2004 at about 3.15 p.m, respondent - Mehar Singh along with others armed with iron chain, lathi, belts, danda, stones etc. stopped the bus on the road and rebuked the conductor of the bus as to how he dared to take the fare from one of his associates. Sanjay Singh, Basant, Udai Bhan, Rajesh, Sandeep, Jagmal, Suresh and Karan Singh intervened and tried to save the conductor of the bus. During intervention, Sanjay and Basant suffered injuries on their back, eyes and ears. All the accused broke the side window panes of the bus by throwing stones and by giving blows with lathis/dandas. When the other passengers intervened, the accused fled the spot. The complainant along with the injured reached the police station and lodged the aforementioned complaint.

5. In the year 2009, the appellants issued an advertisement for filling-up the post of constables (Exe.) (male). It appears that in the criminal case registered against respondent - Mehar Singh, he arrived at a compromise with the complainant. In terms of the compromise, he and other accused were acquitted of the offences under Sections 323, 341 and 427 of the IPC on 30/1/2009. As regards the offence under Section 147 of the IPC, the trial court acquitted him and other co-accused for want of evidence. It is pertinent to note that the witnesses turned hostile. Respondent - Mehar Singh applied for the post of constable pursuant to the advertisement issued by the appellants. In relevant papers, he disclosed his involvement in

criminal case and his acquittal as both parties had entered into a compromise. He was assigned Roll No.422165 and put through the physical endurance and measurement test and written test. After interview, he was declared provisionally selected, subject to verification of character and antecedents. During character and antecedent verification, his involvement in the criminal case and his subsequent acquittal due to compromise between the parties was taken into account.

6. The case of respondent - Mehar Singh was examined by the Screening Committee constituted by respondent 1 i.e. the Commissioner of Police, Delhi. The Screening Committee observed that respondent - Mehar Singh and others had assaulted the bus conductor with iron chain, belt and stones in a preplanned manner and caused injuries to him, which showed respondent - Mehar Singh's violent nature and scant respect for the law of the land. The Screening Committee in the circumstances did not recommend his case for appointment to the post of constable.

7. On 3/3/2011, appellant 2 - the Deputy Commissioner of Police (Recruitment), New Delhi issued a notice to respondent - Mehar Singh calling upon him to show cause as to why his candidature should not be cancelled. He replied to the show cause notice. He submitted that he was falsely implicated in the criminal case and acquitted in the year 2009 after a full fledged trial. He submitted that a mere registration of an FIR would not show any criminal propensity. According to him the offence was falsely reported by the complainant due to local issues and to avoid prolonged proceedings, the issue was settled between him and the complainant and the trial court had acquitted him. The Screening Committee did not find his reply to be convincing. In his order dated 22/3/2011, the Deputy Commissioner of Police (Recruitment), New Delhi stated that the Screening Committee has, inter alia, observed that the actions of respondent - Mehar Singh depicted his violent nature and that he had no respect for the la[illegible]n

considering the totality of the circumstances, the Screening Committee held that he was not suitable for appointment to the post of constable. By the said letter, candidature of respondent - Mehar Singh was cancelled.

8. On 22/4/2011, respondent - Mehar Singh filed O.A. No.1819 of 2011 before the Central Administrative Tribunal (for short "**the Tribunal**"), Principal Bench, New Delhi challenging the order of the Screening Committee. The Tribunal by its order dated 7/3/2012 allowed his application. The Tribunal set aside order dated 22/03/2011 cancelling the candidature of Mehar Singh. The Tribunal referred to a couple of cases in which persons charged under Section 307 of the IPC were appointed by the appellants and held that there was total non-application of mind on the part of the appellants. A direction was given to consider the case of respondent - Mehar Singh if he was otherwise found to be fit, within six months.

9. Aggrieved by the order dated 7/3/2012 passed by the Tribunal, the appellants filed a writ petition before the Delhi High Court. The Delhi High Court dismissed the writ petition holding that since respondent - Mehar Singh had been acquitted of the offences for which he had faced trial, the same cannot be held against him. Being aggrieved by the said judgment and order, the appellants have preferred this appeal by special leave.

10. The facts relating to the appeal against respondent - Shani Kumar could be shortly stated. In 2007, FIR No.114/2007 was registered against respondent Shani - Kumar under Sections 307, 504 and 506 of the IPC at Police Station Babri, District Muzuffar Nagar, (U.P.). Admittedly, pursuant to an advertisement issued in the year 2009 for the post of Constable (Exe.) (male) in Delhi Police for Phase II respondent - Shani Kumar applied for it. He mentioned in his application as well as attestation form that a criminal case was registered against him. On 23/4/2010, he was provisionally selected to the said post subject to verification of antecedents. On 14/5/2010, he was acquitted in the said case by giving him benefit of doubt.

On 3/3/2011, the appellants issued a show cause notice to respondent - Shani Kumar calling upon him to show cause as to why his candidature to the post of Constable (Exe) (male) in Delhi Police should not be cancelled as he along with other co-accused was found involved in the offence of attempt to commit murder with deadly weapons and causing bullet injuries to the complainant's brother. Respondent - Shani Kumar sent a reply to the show cause notice on 14/3/2011, which did not find favour with the appellants. By order dated 22/3/2011, the Deputy Commissioner of Police, (Recruitment), NPL, Delhi cancelled respondent - Shani Kumar's candidature to the post of Constable (Exe.) (male).

11. Being aggrieved by this cancellation, respondent - Shani Kumar filed O.A. No.1821 of 2011 before the Tribunal. By order dated 24/1/2012, the Tribunal allowed the application and set aside order dated 22/3/2011 cancelling his candidature. A direction was issued that respondent - Shani Kumar be offered appointment to the said post as expeditiously as possible. Being aggrieved by the Tribunal's order, the appellants filed writ petition before the Delhi High Court. The High Court dismissed the appellants' writ petition. Hence, this appeal by special leave.

12. We have heard Mr. Rakesh Kumar Khanna, learned Additional Solicitor General appearing on behalf of the appellants and Mr. Ajesh Luthra, learned counsel appearing on behalf of the respondents. We have perused the written submissions filed by the appellants as well as by the respondents in both the appeals.

13. Mr. Rakesh Kumar Khanna, learned Additional Solicitor General, submitted that the employment in Delhi Police is of a very sensitive nature. Therefore, the character, integrity and antecedents of a candidate aspiring to join it, assume importance. Keeping this in mind, the Commissioner of Police issued a Standing Order No.398/2010 dated 23/11/2010 laying down a uniform policy for deciding

provisionally selected in Delhi Police involved in criminal cases (facing trial or acquitted). A Screening Committee has been constituted for that purpose. Taking an overall view of the matter, in the interest of Delhi Police, which is a disciplined force, the Screening Committee has taken a decision to cancel the candidature of both the respondents. The respondents have not challenged the Standing Order. The decision taken by the Screening Committee, in the circumstances, ought not to be interfered with. Counsel submitted that it is the settled law that acquittal of a person in a criminal case does not entitle him to reinstatement as a matter of right. The appointing authority may still find such a person unfit to be appointed to the post. Counsel submitted that even in cases of acquittal, departmental proceedings may follow when the acquittal is otherwise than honourable. If the acquittal in a criminal case is on account of flawed prosecution, it would not have any impact on the finding of misconduct recorded in a departmental enquiry on the basis of adequate evidence. It is only if a person is honourably acquitted, that he can possibly argue that he should be appointed to any post. Counsel submitted that assuming the appellants have appointed some persons with criminal antecedents in the past; the doctrine of equality is not attracted to such cases. He submitted that if some candidates have been granted some benefits inadvertently, such order does not confer any right on the respondents to get the same relief. Counsel submitted that the impugned order does not take note of the above vital aspects and, therefore, must be set aside. In support of his submissions, counsel relied on the judgments of this Court in *Delhi Administration through its Chief Secretary & Ors. v. Sushil Kumar*[1]*; Suresh Pathrella v. Oriental Bank of Commerce*[2]*; Fuljit Kaur etc. v. State of Punjab etc*[3]*; K. Venkateshwarlu v. State of Andhra Pradesh*[4]*; Deputy Inspector*

1. (1996) 11 SCC 605.
2. (2006) 10 SCC 572.
3. (2010) 11 SCC 455.
4. (2012) 8 SCC 73.

General of Police & Anr. v. S. Samuthiram[5]*; Chandigarh Administration & Anr. v. Jagjit Singh & Anr*[6]*.* and *Maharaj Krishan Bhatt & Anr. v. State of Jammu & Kashmir & Ors.*[7].

14. Mr. Ajesh Luthra, learned counsel for the respondents submitted that the appellants' reliance on *Sushil Kumar* is misplaced because *Sushil Kumar* has been distinguished in *Commissioner of Police v. Dhaval Singh*[8]*. Sushil Kumar* was a case of concealment of facts whereas in this case, there is no concealment. Counsel submitted that, many a time, due to personal enmity and political reasons, people are falsely implicated in criminal cases. Very often, criminal cases end in acquittal or are compounded. Compounding or acquittal of a criminal case should, therefore, not act as an obstacle to a person being appointed to any post. Counsel submitted that an order of acquittal is always honourable. An acquittal is an acquittal for all purposes. Relying on *Ghurey Lal v. State of U.P.*[9]*,* counsel submitted that a person is innocent unless proved otherwise. Administrative authorities cannot adjudicate the suitability of a selected candidate in this manner. Quasi judicial authorities cannot overreach the judgments delivered by a competent court of law. Counsel submitted that Lok Adalats have been created under the provisions of the Legal Services Authorities Act, 1987 to encourage compromises. If a selectee is to be denied appointment by adjudging him unsuitable because the criminal case against him has ended into acquittal only because of compromise, then, it will defeat the object of the said Act. Counsel submitted that the present case is different from cases involving departmental proceedings. In the matter of appointments, principles relating to pendency of criminal case and initiation of departmental

5. (2013) 1 SCC 598.
6. AIR 1995 SC 705.
7. (2008) 9 SCC 24.
8. (1999) 1 SCC 246.
9. JT 2008 (10) SC 324.

proceedings will not be applicable. Counsel attacked the proceedings of the Screening Committee as being arbitrary, unguided and unfettered. He cited cases where, according to him, the Screening Committee has recommended candidates against whom FIRs have been registered for serious offences, for appointment. Counsel further pointed out that involvement in a criminal case is not a disqualification or a stipulation towards ineligibility in Delhi Police (Appointment and Recruitment) Rules, 1980 ("**the Delhi Police Rules**"). Counsel submitted that for verification of antecedents, the appellants must not rely upon the criminal case where acquittal has been the final outcome. It is open for the appellants to conduct an independent enquiry about the character and antecedents of a candidate concerned. Counsel submitted that inasmuch as the respondents have honestly disclosed that criminal cases were registered against them and they ended either in acquittal or acquittal on account of compromise, they cannot be denied appointment in Delhi Police once having been selected for the same. He submitted that the appeals, therefore, be dismissed.

15. Before we deal with the rival submissions, it is necessary to refer to the judgment of this Court in *Jainendra Singh v. State of Uttar Pradesh*[10]. In that case the appellant had applied for the post of constable and was selected for the same. He had suppressed the fact that a criminal case was registered against him. Subsequently the said fact came to light and his appointment was terminated. Thereafter, he was acquitted in the criminal case. The question which fell for consideration of this Court was whether, after a person is appointed to a post in a disciplined force, it comes to light that he had suppressed the fact that he was involved in a criminal case his appointment can be terminated on the ground of suppression of material facts. Noticing conflicting decisions of this Court on this point and also the fact that different yardsticks are being applied in the matter of grant of relief, this Court formulated issues and referred them to a larger bench. Since all the formulated issues

10. (2012) 8 SCC 748.

are premised on suppression of facts and since in this case there is no suppression of facts it is not necessary for us to defer the judgment of this case till the reference is answered by a larger Bench.

16. The question before this Court is whether the candidature of the respondents who had made a clean breast of their involvement in a criminal case by mentioning this fact in their application/attestation form while applying for a post of constable in Delhi Police; who were provisionally selected subject to verification of their antecedents and who were subsequently acquitted/discharged in the criminal case, could be cancelled by the Screening Committee of the Delhi Police on the ground that they are not found suitable for appointment to the post of constable.

17. We must first deal with the submission that under the Delhi Police Rules, past involvement of a person in a criminal case is not a disqualification for appointment. It is true that Rule 6 thereof which provides for grounds for ineligibility, criminal antecedents of a person is not mentioned as a ground for ineligibility. But, to conclude from this that instances of moral turpitude, however grave, could be overlooked because they do not find mention in Rule 6, would be absurd. In any case, Standing Order No. 398/2010 issued by the Delhi Police to which our attention is drawn empowers the police to take appropriate decision in such cases. Pertinently the respondents have not challenged the Standing Order. This Standing Order incorporates policy for deciding cases of candidates provisionally selected in Delhi Police involved in criminal cases (facing trial or acquitted). It would be appropriate to re-produce the relevant portions of the said Standing Order:

"STANDING ORDER NO. 398/2010

POLICY FOR DECIDING CASES OF CANDIDATES PROVISIONALLY SELECTED IN DELHI POLICE INVOLVED IN CRIMINAL CASES

ACQUITTED).

During the recruitments made in Delhi Police, several cases come to light where candidates conceal the fact of their involvement in criminal cases in the application Form/ Attestation Form in the hope that it may not come to light and disclosure by them at the beginning of the recruitment process itself may debar them from participating in the various recruitment tests. Also the appointment if he/she has been acquitted but not honourably.

In order to formulate a comprehensive policy, the following rules shall be applicable for all the recruitments conducted by Delhi Police:-

(1). xxx xxx xxx

2). xxx xxx xxx

3). If a candidate had disclosed his/her involvement and/ or arrest in criminal cases, complaint case, preventive proceedings etc. and the case is pending investigation or pending trial, the candidature will be kept in abeyance till the final decision of the case. After the court' judgment, if the candidate is acquitted or discharged, the case will be referred to the Screening Committee of the PHQ comprising of Special Commissioner of Police/ Administration, Joint Commissioner of Police/ Headquarters and Joint Commissioner of Police/Vigilance to assess his/her suitability for appointment in Delhi Police.

4) If a candidate had disclosed his/her involvement in criminal case, complaint case, preventive proceedings etc. both in the application form as well as in the attestation form but was acquitted or discharged by the court, his/her case will be referred to the Screening Committee of PHQ to assess his/her suitability for appointment in Delhi Police.

5). xxx xxx xxx

6). Such candidates against whom charge-sheet in any criminal case has been filed in the court and the charges fall in the category of serious offences benefit of doubt or the witnesses have turned hostile due to fear of reprisal by the accused person, he/she will generally not be considered suitable for government service. However, all such cases will be judged by the Screening Committee of PHQ to assess their suitability for the government job. The details of criminal cases which involve moral turpitude may kindly be perused at Annexure 'A'.

7) Such cases in which a candidate had faced trial in any criminal case which does not fall in the category of moral turpitude and is subsequently acquitted by the court and he/she discloses about the same in both application form as well as attestation form will be judged by the Screening Committee to decide about his/her suitability for the government job.

8) xxx xxx xxx

9). If any candidate is discharged by extending the benefit of Probation of Offenders Act, 1958 this will also not be viewed adversely by the department for his/her suitability for government service.

10). If a candidate was involved in a criminal case which was withdrawn by the State Government, he/she will generally be considered fit for government service, unless there are other extenuating circumstances."

Annexure 'A' as mentioned in Clause 6 above lays down the following offences involving moral turpitude:

1. Criminal Conspiracy (Section 120-B, IPC)

2. Offences against the State (Sections 121 – 130, IPC)

3. Offences relating to Army, Navy and Air Force (Sections 131-134, IPC)

4. Offence against Public Tranquility (Section 153–A & B, IPC).

5. False evidence and offences against Public Justice (Sections 193-216A, IPC)

6. Offences relating to coin and government stamps (Section 231-263A, IPC).

7. Offences relating to Religion (Section 295-297, IPC)

8. Offences affecting Human Body (Sections 302-304, 304B, 305-308, 311-317, 325-333, 335, 347, 348, 354, 363-373, 376-376-A, 376-B, 376-C, 376-D, 377, IPC)

9. Offences against Property (Section 379-462, IPC)

10. Offences relating to Documents and Property Marks (Section 465-489, IPC)

11. Offences relating to Marriage and Dowry Prohibition Act (Section 498-A, IPC)

18. Clause 3 of the Comprehensive Policy delineated in the Standing Order is material for the present case. It refers to the Screening Committee comprising high police officers. After a candidate, who has disclosed his involvement, is acquitted or discharged, the Committee has to assess his/her suitability for appointment. Clause 6 states that those against whom serious offences or offences involving moral turpitude are registered and who are later on acquitted by extending benefit of doubt or because the witnesses have turned hostile due to fear of reprisal by the accused person shall not generally be considered suitable for government service. However, all such

cases will be considered by the Screening Committee manned by senior officers. In our opinion, the word *'generally'* indicates the nature of discretion. As a matter of rule, such candidates have to be avoided. Exceptions will be few and far between and obviously must be substantiated with acceptable reasons.

19. A careful perusal of the policy leads us to conclude that the Screening Committee would be entitled to keep persons involved in grave cases of moral turpitude out of the police force even if they are acquitted or discharged if it feels that the acquittal or discharge is on technical grounds or not honourable. The Screening Committee will be within its rights to cancel the candidature of a candidate if it finds that the acquittal is based on some serious flaw in the conduct of the prosecution case or is the result of material witnesses turning hostile. It is only experienced officers of the Screening Committee who will be able to judge whether the acquitted or discharged candidate is likely to revert to similar activities in future with more strength and vigour, if appointed, to the post in a police force. The Screening Committee will have to consider the nature and extent of such person's involvement in the crime and his propensity of becoming a cause for worsening the law and order situation rather than maintaining it. In our opinion, this policy framed by the Delhi Police does not merit any interference from this Court as its object appears to be to ensure that only persons with impeccable character enter the police force.

20. We find no substance in the contention that by cancelling the respondents' candidature, the Screening Committee has overreached the judgments of the criminal court. We are aware that the question of co-relation between a criminal case and a departmental inquiry does not directly arise here, but, support can be drawn from the principles laid down by this Court in connection with it because the issue involved is somewhat identical namely whether to allow a person with doubtful integrity to work in

the standard of proof in a criminal case is the proof beyond all reasonable doubt, the proof in a departmental proceeding is preponderance of probabilities. Quite often criminal cases end in acquittal because witnesses turn hostile. Such acquittals are not acquittals on merit. An acquittal based on benefit of doubt would not stand on par with a clean acquittal on merit after a full fledged trial, where there is no indication of the witnesses being won over. In *R.P. Kapur v. Union of India*[11] this Court has taken a view that departmental proceedings can proceed even though a person is acquitted when the acquittal is other than honourable.

21. The expression '*honourable acquittal'* was considered by this Court in *S. Samuthiram*. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 of the IPC and under Section 4 of the Eve-teasing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in *Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal*[12], where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions *'honourable acquittal', 'acquitted of blame'* and *'fully exonerated'* are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression *'honourably acquitted'.* This Court expressed that

11. AIR 1964 SC 787.

12. (1994) 1 SCC 541.

when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted. In light of above, we are of the opinion that since the purpose of departmental proceedings is to keep persons, who are guilty of serious misconduct or dereliction of duty or who are guilty of grave cases of moral turpitude, out of the department, if found necessary, because they pollute the department, surely the above principles will apply with more vigour at the point of entry of a person in the police department i.e. at the time of recruitment. If it is found by the Screening Committee that the person against whom a serious case involving moral turpitude is registered is discharged on technical grounds or is acquitted of the same charge but the acquittal is not honourable, the Screening Committee would be entitled to cancel his candidature. Stricter norms need to be applied while appointing persons in a disciplinary force because public interest is involved in it.

22. Against the above background, we shall now examine what is the nature of acquittal of the respondents. As per the complaint lodged by Ramji Lal, respondent Mehar Singh and others armed with iron chains, lathis, danda, stones etc. stopped a bus, rebuked the conductor of the bus as to how he dared to take the fare from one of their associates. Those who intervened were beaten-up. They received injuries. The miscreants broke the side window panes of the bus by throwing stones. The complainant was also injured. This incident is undoubtedly an incident affecting public order. The assault on the conductor was pre-planned and pre-meditated. The FIR was registered under Sections 143, 341, 323 and 427 of the IPC. The order dated 30/01/2009 passed by the Additional Chief Judicial Magistrate, Khetri shows that so far as offences under Sections 323, 341 and 427 of the IPC are concerned, the accused entered into a compromise with the complainant. Hence, learned Magistrate acquitted res h

and others of the said offences. The order further indicates that so far as offence of rioting i.e. offence under Section 147 of the IPC is concerned, three main witnesses turned hostile. Learned Magistrate, therefore, acquitted all the accused of the said offence. This acquittal can never be described as an acquittal on merits after a full fledged trial. Respondent - Mehar Singh cannot secure entry in the police force by portraying this acquittal as an honourable acquittal. Pertinently, there is no discussion on merits of the case in this order. Respondent - Mehar Singh has not been exonerated after evaluation of the evidence.

23. So far as respondent - Shani Kumar is concerned, the FIR lodged against him stated that he along with other accused abused and threatened the complainant's brother. They opened fire at him due to which he sustained bullet injuries. Offences under Sections 307, 504 and 506 of the IPC were registered against respondent - Shani Kumar and others. Order dated 14/5/2010 passed by the Sessions Judge, Muzaffarnagar shows that the complainant and the injured person did not support the prosecution case. They were declared hostile. Hence, learned Sessions Judge gave the accused the benefit of doubt and acquitted them. This again is not a clean acquittal. Use of firearms in this manner is a serious matter. For entry in the police force, acquittal order based on benefit of doubt in a serious case of this nature is bound to act as an impediment.

24. In this connection, we may usefully refer to *Sushil Kumar.* In that case, the respondent therein had appeared for recruitment as a constable in Delhi Police Services. He was selected provisionally, but, his selection was subject to verification of character and antecedents by the local police. On verification, it was found that his antecedents were such that his appointment to the post of constable was not found desirable. Accordingly, his name was rejected. He approached the Tribunal. The Tribunal allowed the application on the ground that since the respondent had been discharged and/or

acquitted of the offence punishable under Section 304, Section 324 read with Section 34 and Section 324 of the IPC, he cannot be denied the right of appointment to the post under the State. This Court disapproved of the Tribunal's view. It was observed that verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State. This Court observed that though the candidate was provisionally selected, the appointing authority found it not desirable to appoint him on account of his antecedent record and this view taken by the appointing authority in the background of the case cannot be said to be unwarranted. Whether the respondent was discharged or acquitted of the criminal offences, the same has nothing to do with the question as to whether he should be appointed to the post. What would be relevant is the conduct or character of the candidate to be appointed to a service and not the actual result thereof. It was argued that *Sushil Kumar* must be distinguished from the facts of the instant case because the respondent therein had concealed the fact that a criminal case was registered against him, whereas, in the instant case there is no concealment. It is not possible for us to accept this submission. The aspect of concealment was not considered in *Sushil Kumar* at all. This Court only concentrated on the desirability to appoint a person, against whom a criminal case is pending, to a disciplined force. *Sushil Kumar* cannot be restricted to cases where there is concealment of the fact by a candidate that a criminal case was registered against him. When the point of concealment or otherwise and its effect was not argued before this Court, it cannot be said that in *Sushil Kumar* this Court wanted to restrict its observations to the cases where there is concealment of facts.

25. Reliance placed by the respondents on *Dhaval Singh* is misplaced. In *Dhaval Singh,* the respondent had not mentioned the fact that a criminal case was pending against him in the application form submitted by him on 21-27/8/1995 seeking post of a constable. He was pro d

was interviewed pending verification of his character. Before any order of appointment could be issued in his favour, he, realizing the mistake, wrote a letter to the Deputy Commissioner of Police on 15/11/1995 that a criminal case was pending against him and he had inadvertently not mentioned this fact in the application form. On the ground that the respondent had concealed a material fact, his candidature was cancelled on 20/11/1995. He was acquitted in the criminal case on 8/12/1995. On being so acquitted, he filed a representation before the Commissioner of Police which was turned down. He approached the Tribunal. The Tribunal set aside the cancellation of candidature of the respondent and the rejection of his representation. Aggrieved by this, the Commissioner of Police approached this Court. This Court confirmed the Tribunal's order basically on the ground that the order of cancellation dated 20/11/1995 did not show that the information furnished by the respondent vide his letter dated 15/11/1995 was communicated to the Commissioner of Police. There was no indication in the record that the competent authority had a look at the letter. Therefore, the cancellation of candidature was without any proper application of mind and without taking into consideration all relevant materials. The Tribunal's order was upheld on the ground of non-application of mind by the Commissioner of Police to a vital fact. Besides, this Court also noted that pursuant to the Tribunal's order the respondent therein was already reinstated. This decision will have no application to the present case. Reliance on *Ghurey Lal* is also misplaced. There can be no debate over the observation made by this Court in that case that an accused is presumed to be innocent till proved guilty. These observations were made while dealing with a reversal of acquittal by the High Court. They are not relevant to the present case.

26. So far as respondent - Mehar Singh is concerned, his case appears to have been compromised. It was urged that acquittal recorded pursuant to a compromise should not be

treated as a disqualification because that will frustrate the purpose of Legal Services Authorities Act, 1987. We see no merit in this submission. Compromises or settlements have to be encouraged to bring about peaceful and amiable atmosphere in the society by according a quietus to disputes. They have to be encouraged also to reduce arrears of cases and save the litigants from the agony of pending litigation. But these considerations cannot be brought in here. In order to maintain integrity and high standard of police force, the Screening Committee may decline to take cognizance of a compromise, if it appears to it to be dubious. The Screening Committee cannot be faulted for that.

27. The respondents are trying to draw mileage from the fact that in their application and/or attestation form they have disclosed their involvement in a criminal case. We do not see how this fact improves their case. Disclosure of these facts in the application/attestation form is an essential requirement. An aspirant is expected to state these facts honestly. Honesty and integrity are inbuilt requirements of the police force. The respondents should not, therefore, expect to score any brownie points because of this disclosure. Besides, this has no relevance to the point in issue. It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later acquitted or discharged should be appointed to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement, whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future. This decision, in our opinion, can only be taken by the Screening Committee created for that purpose by the Delhi Police. If the Screening Committee's decision is not *mala fide* or actuated by extraneous considerations, then, it cannot be questioned.

28. The police force is a disciplined e

great responsibility of maintaining law and order and public order in the society. People repose great faith and confidence in it. It must be worthy of that confidence. A candidate wishing to join the police force must be a person of utmost rectitude. He must have impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged in the criminal case, that acquittal or discharge order will have to be examined to see whether he has been completely exonerated in the case because even a possibility of his taking to the life of crimes poses a threat to the discipline of the police force. The Standing Order, therefore, has entrusted the task of taking decisions in these matters to the Screening Committee. The decision of the Screening Committee must be taken as final unless it is *mala fide.* In recent times, the image of the police force is tarnished. Instances of police personnel behaving in a wayward manner by misusing power are in public domain and are a matter of concern. The reputation of the police force has taken a beating. In such a situation, we would not like to dilute the importance and efficacy of a mechanism like the Screening Committee created by the Delhi Police to ensure that persons who are likely to erode its credibility do not enter the police force. At the same time, the Screening Committee must be alive to the importance of trust reposed in it and must treat all candidates with even hand.

29. The Screening Committee's proceedings have been assailed as being arbitrary, unguided and unfettered. But, in the present cases, we see no evidence of this. However, certain instances have been pointed out where allegedly persons involved in serious offences have been recommended for appointment by the Screening Committee. It is well settled that to such cases the doctrine of equality enshrined in Article 14 of the Constitution of India is not attracted. This doctrine does not envisage negative equality (*Fuljit Kaur)*. It is not meant to perpetuate illegality or fraud because it embodies a positive concept. If the Screening Committee which is constituted to

carry out the object of the comprehensive policy to ensure that people with doubtful background do not enter the police force, deviates from the policy, makes exception and allows entry of undesirable persons, it is undoubtedly guilty of committing an act of grave disservice to the police force but we cannot allow that illegality to be perpetuated by allowing the respondents to rely on such cases. It is for the Commissioner of Police, Delhi to examine whether the Screening Committee has compromised the interest of the police force in any case and to take remedial action if he finds that it has done so. Public interest demands an in-depth examination of this allegation at the highest level. Perhaps, such deviations from the policy are responsible for the spurt in police excesses. We expect the Commissioner of Police, Delhi to look into the matter and if there is substance in the allegations to take necessary steps forthwith so that policy incorporated in the Standing Order is strictly implemented.

30. Our attention is drawn to certain orders of this Court where, according to the respondents, special leave petitions filed by the State, arising out of similar fact situations, have been dismissed. It is not necessary for us to state that in limine dismissal of special leave petition does not mean that this Court has affirmed the judgment or the action impugned therein. The order rejecting the special leave petition at the threshold without detailed reasons does not constitute any declaration of law or a binding precedent. This submission is, therefore, rejected.

31. In the ultimate analysis, we are of the view that the opinion formed by the Screening Committee in both these cases which is endorsed by the Deputy Commissioner of Police (Recruitment), Delhi, that both the respondents are not suitable for being appointed in the Delhi Police Force does not merit any interference. It is legally sustainable. The Tribunal and the High Court, in our view, erred in setting aside the order of cancellation of the respondents'

circumstances, the appeals are allowed. The orders of the Delhi High Court impugned in both the appeals are set aside. The cancellation of candidature of the respondents - Mehar Singh and Shani Kumar is upheld.

Bibhuti Bhushan Bose Appeals allowed.

MAHARSHI MAHESH YOGI VEDIC VISHWAVIDYALAYA
v.
STATE OF M.P. & ORS.
(Civil Appeal No. 6736 of 2004)

JULY 3, 2013

[DR. B.S. CHAUHAN AND FAKKIR MOHAMED IBRAHIM KALIFULLA, JJ.]

Maharshi Mahesh Yogi Vedic Vishwavidyalaya Adhiniyam, 1995:

s. 4(1)(as amended by Amendment Act 5 of 2000) – Constitutional validity of – Establishment of the University – With the objective of imparting knowledge in Vedas, and its allied subjects – By issuing Ordinance, the University apart from prime subjects on Vedas, also included numerous professional courses – s. 4(1) amended to the effect that disbursement of the knowledge by the University would be confined only to the exclusive field of vedic learning – Held: The University was established for imparting education in Vedas and simultaneously to teach Sanskrit, Science and technology and for spreading knowledge in all fields – If the scope of imparting knowledge is restricted only to vedic learning by way of amendment, the very purpose of establishing the University would be frustrated – Right to education is a fundamental right – The University was established mainly for imparting education – The amendment creates an embargo on the right to education – Therefore, it is in clear violation of Articles 14 and 21 of the Constitution and hence ultra vires, the Constitution – Constitution of India, 1950 – Articles 14, 21, 21A, 41, 45, 46 and 51A(k).

s. 4 Proviso (as amended by Amendment Act 5 of 2000) – State Government stipulating condition on the University to seek prior approval of State Government before conducting

any course and before establishing any centre – Constitutional validity of – Held: The subjects of conducting of courses and establishment of centres are governed by s. 12 of University Grants Commission Act which fall within exclusive realm of Entry 66 of List I and not under Entry 25 of List III of VII Schedule of Constitution – Thus, the State lacks legislative competence to stipulate the restrictions – Constitution of India, 1950 – VII Schedule, List I-Entry 66 and List II-Entry 25 – University Grants Commission Act, 1956.

s. 9(2) (as amended by Amendment Act 5 of 2000) – Procedure for appointment of Chancellor – Challenged – Held: Though the appointment of Chancellor was subject to approval of State Government, but such appointment could be made only from the panel prepared by the Board of Management – Thus the procedure did not impinge upon Constitutional or fundamental rights of the University and also does not affect its autonomy.

Interpretation of Statutes – Determination of scope of applicability of a statute – By the aid of preamble to the statute – Preamble cannot control the scope of applicability of the statute – If the provision contained in the main Act are clear and without any ambiguity and legislative intent is clear, there is no need to look into the preamble.

Maxim – 'Noscitur a Sociis' – Applicability of – Held: This rule of construction is not applicable to cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined words correspondingly wider.

Words and Phrases:

Dissemination of knowledge' – Meaning of.

Expression 'Gyan-Vigyan' – In the context of Maharshi Mahesh Yogi Vedic Vishwavidyalaya Adhiniyam, 1995 – Connotation of.

The appellant-University was created by the Maharshi Mahesh Yogi Vedic Vishwavidyalaya Adhiniyam, 1995 (1995 Act), which was to provide for education and prosecution of research in vedic learnings and practices and to provide for matters connected therewith or incidental thereto. The University framed Ordinance No. 15 which contained courses of studies. The Ordinance, apart from prime subjects on Vedas, also included other professional courses such as Project Management, Human Resources Management, Financial Management, Marketing Management, Accounting and Auditing, Banking, as well as vocational courses in typing, stenography, secretarial practice, computer technology marketing and sales, dress designing and manufacturing, textile designing and printing, horticulture, seed production, crop production, sericulture, as well as, short term courses in various international topics such as, political science, theory of Government, theory of defense, theory of education, theory of management etc. The appellant University was added in the list of Universities maintained by the University Grants Commission, as provided under Section 2(f) of the University Grants Commission Act, 1956. The appellant University also opened up as many as 55 centers. The Department of Higher Education, sent a memorandum, alleging that the course of study prescribed in Clause 1(i) and (j) of Ordinance No.15, were contrary to the aims and objectives of the University and therefore, not acceptable. Thereafter, the Amendment Act 5 of 2000 came to be introduced. By Amendment Act 5 of 2000, the provisions u/ss. 2, 4, 9, 17 of the Act were amended and ss. 31-A, 31-B, 31-C, 37-A, 37-B were inserted to the Act. These amendments and insertions were challenged by filing the present writ petition and the same was partially allowed by Division Bench of High Court. Hence the present appeal.

Partly allowing the appeal, the Court

HELD: 1.1. The purport of establishing the appellant-University was to ensure that the ancient knowledge embedded in Vedas, Upvedas, Agam Tantra, Itihas, Puranas etc., are kept intact and the wealth of knowledge contained in these Vedas, Upvedas etc., are not only spread by establishing an institution, but by teaching them through well established institutions and thereby, ensuring that such wealth of knowledge is kept intact for the future generations to come. [Para 9] [486-B-C]

1.2. Though under Section 4(1), reference to Vedic learning and its allied subjects was made in the opening sentence, the University was not established for the purpose of imparting education in Vedas alone, but it was intended for spreading the knowledge of Vedas and simultaneously to teach Sanskrit, science and technology and also as specifically mentioned in Section 4, for spreading of knowledge in all fields. [Para 69] [512-E-G]

1.3. By virtue of the amendment introduced to Section 4(1), an embargo has been clearly created in one's right to seek for education, which is a Constitutionally protected Fundamental Right. Therefore, there was a clear violation of Articles 14 and 21 of the Constitution and consequently, such a provision by way of an amendment cannot stand the scrutiny of the Court of Law. [Para 80] [519-F-G]

Society for Unaided Private Schools of Rajasthan vs. Union of India **(2012) 6 SCC 1: 2012 (2) SCR 715;** *Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel* **(2012) 9 SCC 310: 2012 (7) SCR 1054;** *State of T.N. vs. K. Shyam Sunder* **(2011) 8 SCC 737: 2011 (11) SCR 1094;** *Satimbla Sharma vs. St. Paul's Sr. Sec. School* **(2011) 13 SCC 760: 2011 (10) SCR 203;** *Ashoka Kumar Thakur vs. Union of India* **(2008) 6 SCC 1: 2008 (4) SCR 1 – relied on.**

1.4. Right to Education is a Fundamental Right. Imparting of education is a Fundamental Right, in as much as, the establishment of the appellant University was mainly for the purpose of imparting education, while promotion of Vedic learning is one of the primary objectives of the University. Any attempt on the part of the State to interfere with the said main object viz., imparting of education, would amount to an infringement of the Fundamental Right guaranteed under the Constitution. Consequently, the amendment, which was introduced to Section 4(1) and also the insertion of the proviso, has to be held *ultra-vires*. [Para 80] [520-C-E]

1.5. Framing of the Ordinance 15, which provided for the study on various courses in the appellant University was consciously approved by the State Government without any inhibition. A perusal of the course contents in the Ordinance discloses that there were as many as 49 courses connected with Vedic learning and practices and about 33 courses on other subjects. By introducing the amendment under Act 5 of 2000 and thereby, insisting that imparting of education in the appellant University can be restricted only to Vedic learning and that the science and technology should also be only for the purpose of learning Vedas and its practices, is creating a formidable restriction on the right to education, which is a guaranteed Constitutional right and thereby, clearly violating Articles 14 and 21 of the Constitution. Equally, the addition of the expression "in the above fields and in these fields may....." while deleting the expression "dissemination of knowledge", drastically interfered with the right to education sought to be advanced by the University by its creation originally under the 1995 Act, which restriction now sought to be imposed can never be held to be a reasonable restriction, nor can it be held to have any rationale, while creating such a restriction by way of an amendment to Section 4[illegible]l; 519-A-D]

1.6. Dissemination of learning is for acquisition of knowledge in every kind of discipline and that such a perception should be maintained at all cost. "Dissemination of knowledge" as it originally stood in Section 4(1), which was deleted by way of the Amendment Act 5 of 2000, caused havoc by restricting the scope of acquisition of knowledge to be gathered by an individual from the facilities made available in the appellant University. [Para 83] [521-E-G]

Ishwar Singh Bindra and Ors. vs. State of U.P. **AIR 1968 SC 1450: 1969 SCR 219 – relied on.**

Osmania University Teachers' Association vs. State of Andhra Pradesh and another **(1987) 4 SCC 671: 1987 (3) SCR 949 – referred to.**

1.7. The deletion of the expression "dissemination of knowledge", will have to be held to be an arbitrary action of the respondent State and thereby, violating equality in law and equal protection of law as enshrined under Article 14 of the Constitution, in as much as all other Universities, which were being controlled and administered by the State by the 1973 Act, enjoy the freedom of setting up any course with the approval of the University Grants Commission, the appellant alone would be deprived of such a right and liberty by restricting the scope of imparting education in any field other than Vedas and its practices. [Para 88] [523-F-G]

1.8. The legal maxim *Noscitur A Sociis*, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful or otherwise not clear

that the present rule of construction namely *Noscitur A Sociis* can be usefully applied. [Para 58] [508-C-D]

State of Bombay and others vs. Hospital Mazdoor Sabha and others **AIR 1960 SC 610: 1960 SCR 866;** *Rohit Pulp and Paper Mills Ltd. vs. Collector of Central Excise* **AIR 1991 SC 754: 1990 (2) SCR 797;** *Kerala State Housing Board and others vs. Ramapriya Hotels (P) Ltd. and others* **(1994) 5 SCC 672: 1994 (2) Suppl. SCR 338;** *Samantha vs. State of Andhra Pradesh* **AIR 1997 SC 3297: 1997 (2) Suppl. SCR 305;** *K. Bhagirathi G. Shenoy and others Vs. K.P. Ballakuraya and another* **AIR 1999 SC 2143: 1999 (2) SCR 438;** *Brindavan Bangle Stores and others vs. Assistant Commissioner of Commercial Taxes and another* **AIR 2000 SC 691: 2000 (1) SCR 97;** *CBI, AHD, Patna Vs. Braj Bhushan Prasad and others* **AIR 2001 SC 4014: 2001 (3) Suppl. SCR 627 – relied on.**

State of Orissa and Anr. vs. Mamata Mohanty **(2011) 3 SCC 436: 2011 (2) SCR 704;** *Ramesh Rout vs. Rabindra Nath Rout* **(2012) 1 SCC 762: 2011 (16) SCR 254;** *State of Rajasthan and Anr. vs. Sripal Jain* **AIR 1963 SC 1323: 1964 SCR 742;** *M/s. Shriram Vinyl and Chemical Industries vs. Commissioner of Customs, Mumbai* **(2001) 4 SCC 286;** *Union of India (UOI) and Anr. vs. Hansoli Devi and Ors.* **(2002) 7 SCC 273: 2002 (2) Suppl. SCR 324 – referred to.**

1.9. Though the expression 'and' has been used, prior to the expression 'promotion and development of the study of Sanskrit.....' and again prior to the set of expression 'for the advancement' and again prior to the set of expression 'dissemination of knowledge', the context in which the Legislation was brought into force and reading the said section along with the Preamble and other sub clauses of Section 4, the expression 'and' has to be read disjunctively and not conjunctively. Therefore, in the present case, the expression 'dissemination of knowledge', as well as 'promotion of

the study of Sanskrit' and 'to make provision for research', were all expressions which have been used disjunctively and not conjunctively with the words Vedic learning and practice. [Para 95] [527-D-G]

Ishwar Singh Bindra and Ors. vs. State of U.P. **AIR 1968 SC 1450: 1969 SCR 219;** *Prof. Yashpal and Anr. vs. State of Chhattisgarh and Ors.)* **(2005) 5 SCC 420: 2005 (2) SCR 23;** *Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. Others* **1987 (1) SCC 424: 1987 (2) SCR 1;** *Joint Director of Mines and Safety vs. T & N Stone Quarries (P) Ltd.* **(1987) 3 SCC 208: 1987 (2) SCR 801 – relied on.**

Utkal Contractors and Joiners Pvt. Ltd. and Ors vs. State of Orissa and others **(1987) 3 SCC 279: 1987 (3) SCR 317 – held inapplicable.**

Green vs. Premier Glynrhonwy State Co. **(1928) 1 KB 561;** *Mersey Docks and Harbour Board vs. Henderson Bros.* **(1888) 13 AC 595 – referred to.**

1.10. So far as the expression "promotion and development of the study of Sanskrit as the University may from time to time determine" is concerned, the study of Sanskrit is totally unconnected to the learning of Vedas and its allied subjects, except that the scripts of Vedas may be in Sanskrit. For that purpose, there need not necessarily be a specific provision to the effect that there should be promotion and development of the study of Sanskrit. Therefore, apart from Vedic learning and its practices, the establishment of the appellant University was for the purpose of providing education in the field of science and technology, intensive learning of Sanskrit and provision for research in every other field for the advancement and disbursement of knowledge. Only such an interpretation to the un-amended Section 4(1) would be the only way of interpretation that can be

accorded to the said provision. In view of such interpretation, the amendment which was introduced by Act 5 of 2000, was clearly intended to purposely do away with its original intendment and thereby, restrict the scope of activities of the appellant University to the learning of Vedas and its practices and nothing else. The restriction so created by introducing the amendment was self-destructive and thereby, the original object and purpose of establishing the appellant University was done away with. [Paras 78 and 79] [518-B-G]

1.11. The expression Gyan-Vigyan was specifically mentioned in Section 4(1), not merely to make a scientific study of what is contained in Vedas, as even such a study may not fulfill the purpose for which the University was created. If a scientific study exclusively about Vedas is made for that purpose alone a creation of a University would not have been necessitated. On the other hand, it is the other way around, in as much as Vedas contains very many scientific subjects such as, mathematics, study about atoms, human anatomy and physiology and other formulae. At this juncture, the inclusion of the expression "Gyan-Vigyan", will have to be understood to have been inserted with a view to study modern science and technology as it exists and study the same in consonance with the basic principles contained in Vedas and Puranas. In fact, such an approach, while reading the provisions would be the proper way of reading the said provisions. Gyan Vigyan is nothing but a systematic study of science through senses by applying one's mind with absolute consciousness. If it is the meaning to be attributed to the expression "Gyan Vigyan", it will have to be held that the said expression used in Section 4(1) cannot be restricted to a mere study on Vedas and its practices. Such a narrow interpretation will be doing violence to the whole concept of Gyan Vigyan, which is the combination of human s d

consciousness, which should be applied to every aspect of human life, which would include all other academic subjects viz., science, mathematics, philosophy, management, etc. [Para 77] [517-B-G; 518-A-B]

1.12. Establishment of the University as the Preamble goes to state was to provide for education in the forefront. It will be appropriate to hold that such a provision for education in so far as the appellant University was concerned, should concentrate and focus in the prosecution of research in Vedic learning and practices and to provide for matters connected therewith or incidental thereto. Merely because such specific reference was made to prosecution of research in Vedic learnings, if it is could be held that the imparting of education in the appellant University should be restricted to the said subject alone and not in any other subject, such a narrow interpretation would be doing violence to the very basic concept of education, and would create a serious restrain on the University, where, imparting of education is the primary objective and dealing with any specific subject may be for enabling any one to acquire special knowledge on such subjects. In other words, any such restrictive interpretation would go against the basic tenets of the concept of education, which no Court can venture to state. [Paras 74 and 75] [515-B-F]

1.13. The Preamble cannot control the scope of the applicability of the Act. If the provision contained in the main Act are clear and without any ambiguity and the purpose of the Legislation can be thereby duly understood without any effort, there is no necessity to even look into the Preamble for that purpose. [Para 84] [522-A-B]

Union of India vs. Elphinstone Spinning and Weaving Co. Ltd. and others etc. **AIR 2001 SC 724: 2001 (1) SCR 221 – relied on.**

1.14. It is the statutory provision, which will have to be read and analyzed for the purpose of understanding the scope and purport for which the Legislation was intended and the brief statement contained in the Preamble will be of very little value. Even a reading of the Preamble shows the importance attached to imparting of education in the appellant University, as has been highlighted in the forefront while making a mention about the other aspects of providing scope for research oriented education on Vedas and its practices by the appellant University. [Para 86] [522-H; 523-A-B]

1.15. Vedas has not left any subject untouched. The Division Bench has noted the various fields, which have been dealt with and associated in Vedas. The Division Bench has gone to the extent of saying that some scientists have seen the atomic dance in the deity of 'Natraj'. It has also been noted that mathematic formulae are much more concise and precise in Vedas. It is said that Vedic learning is concerned with human anatomy and physiology. It was further found that there were enough materials in Vedas, which pertains to seed production, crop production, sericulture, health care, management, beauty culture, marketing and accounting. [Para 76] [515-H; 516-A-C]

1.16. According to the Maharshi, who was the man behind the establishment of the appellant University, in order to develop the limitless inner potential of students and teachers, the only solution is education and to achieve that end, according to him, ancient Vedic sciences have to be revived and the knowledge for systematic unfolding the range of human consciousness. In fact, this knowledge was stated to be Maharshi technology of the unified field, which included Transcendental Meditation and Transcendental Meditation Siddhi Programmes. It is also stated that Transcendental Me

more than three million people worldwide and implemented in public and private educational institutions in more than 20 countries through Universities, colleges, schools and educational institutions. Therefore, considering the very purport and intent of the Maharshi, who relentlessly fought for the establishment of the appellant University for nearly four decades and ultimately achieved the said objective for establishing the University, it can never be held that his sole purport was only to spread vedic learning and nothing else. Therefore, by virtue of the amendment, the un-amended Section 4(1) will become meaningless and that the very purport of establishing the appellant University would become a futile exercise, if it were to restrict its courses only to mere Vedic learning, without providing scope for learning all other incidental and ancillary subjects dealt with by Vedas viz., all other worldly subjects such as, Project Management, Finance Management, Crop Management, Human Resource Management, mathematics and other sciences for which fundamental basic provisions have been prescribed in Vedas and practices including, Darshan, Agam Tantra, Itihas, Puranas and Upvedas. [Para 76] [516-C-H; 517-A-B]

1.17. The appellant University has proceeded to establish its institution for the purpose of imparting education by making huge investments. A major part of which would have definitely come by way of fees collected from the students who had joined the institution aspiring for improving their educational career, it is the responsibility of the State to ensure that such high expectation of the students who joined the appellant University is not impaired and that for whatever expenses incurred by the students, appropriate returns should be provided to them by way of imparting education in the respective fields which, they choose to associate themselves by getting themselves admitted in the

appellant University. Therefore, such expectations of the students, as well as their parents cannot be dealt with so very lightly by the State, while considering for any change to be brought about in the Constitution and functioning of the appellant University. It can therefore be validly held that such expectations of the students and their parents, as well as that of the appellant University, can validly be held to be a legitimate expectation and considering the challenge made to the amendment introduced on various grounds raised at the instance of the appellant, the legitimate expectation of the appellant University, as well as the student community, would also equally support the contentions of the appellant University, while challenging the amendments in particular the amendment introduced to Section 4(1), as well as the addition of a proviso to the said Section. [Para 110] [536-B-G]

1.18. The establishment of the appellant University at the repeated persuasion of Maharshi Mahesh Yogi was definitely to provide full-fledged education on Vedas and the various intricate subjects, which are found in Vedas, as well as its practices, Ithihas, Puranas etc. In fact, there can be no two opinion that such an institution with such a laudable objective for imparting education in different fields based on the teachings in Vedas, was very rare and it is said that the appellant University is stated to be an unique University created and established by the founders of the said institution headed by Maharshi Mahesh Yogi. Therefore, when such a premium University, which is stated to be only one of its kind in the whole of the Country was successfully established based on the 1995 Act, such a well established institution should be allowed to survive by enabling the said University to conduct courses as has been planned by it and introduced under Ordinance 15 and thereby, make the appellant University a viable on h

alone, ensure the successful existence and continued running of the University in the further years and thereby, benefit very many aspirants from among the younger generation who wish to learn more and more about very many subjects by understanding such subjects based on the teachings that are found and established in Vedic learnings, its practices, Ithihas and Puranas etc. Therefore, on this ground as well, any attempt made from any quarters, which would disrupt the running of the appellant University, will only amount to interfering with its various Constitutional rights and fundamental rights enshrined in the Constitution. Therefore, when such interference is brought to the notice of this Court, the Court has to necessarily come to the rescue of the appellant University by saving it from any such onslaught being made on its continued existence. [Para 111] [536-G-H; 537-A-F]

Brown v Board of Education **347 U.S. 483(1954) – referred to.**

Mohini Jain vs. State of Karnataka and others **(1992) 3 SCC 666: 1992 (3) SCR 658;** *Unni Krishnan J.P. and others vs. State of Andhra Pradesh and others* **(1993) 1 SCC 645: 1993 (1) SCR 594;** *M.C. Mehta vs. State of Tamil Nadu and others* **(1996) 6 SCC 756: 1996 (9) Suppl. SCR 726;** *Bandhua Mukti Morcha vs. Union of India and others* **(1997) 10 SCC 549: 1997 (2) SCR 379;** *P.A. Inamdar and others vs. State of Maharashtra and others* **(2005) 6 SCC 537: 2005 (2) Suppl. SCR 603;** *Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. and Others* **1987 (2) SCR 1;** *Utkal Contractors and Joiners Pvt. Ltd.and Ors vs. State of Orissa and ors.* **(1987) 3 SCC 279: 1987 (3) SCR 317 – referred to.**

2.1. The proviso added to Section 4 is to the effect that no courses should be conducted and no centers should be established or run without the prior approval

of the State Government. It is beyond the legislative competence of the State Legislature to stipulate any restriction, as regards the conduct of the courses by getting the approval of the State Government and such lack of competence would equally apply to the running of the centers as well. Section 12 of the University Grants Commission Act, 1956 would encompass apart from determining the course contents with reference to which the standard of teaching and its maintenance is to be monitored by the University Grants Commission, would also include the infrastructure that may be made available, either in the University or in other campuses, such as the centers, in order to ensure that such standard of education, teaching and examination, as well as research are maintained without any fall in standard. [Paras 98 and 105] [528-F; 534-A-D]

2.2. The running of centers by the appellant University would fall within the exclusive realm of Entry 66 of List – I, and not under Entry 25 of List III of VII Schedule of the Constitution, which would in turn be governed by Section 12 of the University Grants Commission Act and consequently the State Government to that extent should be held to lack the necessary legislative competence to meddle with such centers set up by the appellant University. The entire proviso to Section 4(1) has to be held to be ultra-vires. [Paras 108 and 109] [535-E-F]

Prof. Yashpal and Anr. vs. State of Chhattisgarh and Ors.) **(2005) 5 SCC 420: 2005 (2) SCR 23;** *R. Chitralekha vs. State of Mysore* **AIR 1964 SC 1823: 1964 SCR 368;** *The Gujarat University, Ahmedabad vs. Krishna Ranganath Mudholkar and Ors.* **1963 Supp (1) SCR 112;** *Osmania Universtity Teachers' Association vs. State of Andhra Pradesh and Anr.* **1987 (3) SCR 949;** *Dr. Preeti Srivastava and another Vs. State of M.P.* **(1999) 7 SCC 120: [illegible] R 249;** *Annamalai University vs. Secre[illegible]t,*

Information and Tourism Department) **(2009) 4 SCC 590: 2009 (3) SCR 355;** *State of Tamil Nadu vs. S.V.Bratheep* **(2004) 4 SCC 513: 2004 (2) SCR 1218;** *State of Tamil Nadu and Anr. vs. Adhiyaman Educational and Research Institute and others)* **(1995) 4 SCC 104: 1995 (2) SCR 1075;** *Gujarat University, Ahmedabad vs. Krishna Ranganath Mudholkar)* **1963 Supp. 1 SCR 112 – relied on.**

3. Under the un-amended s. 9(2) of 1995 Act, after the first Chancellor viz., Maharshi Mahesh Yogi, the Board of Management was empowered to appoint the Chancellor from among the persons of eminence and renowned scholar of Vedic education who can hold office for a term of five years and who would be eligible for reappointment. Under the amended Section 9(2), it was stipulated that after the first Chancellor, the Board of Management should prepare and submit a panel of three persons to the State Government and out of the panel, one person should be appointed as Chancellor by the Board of Management, after obtaining the approval of the State Government. As far as the period of holding office was concerned, there was no change in its terms. Even after the amendment, the Management had the power of recommendation and they could recommend a person of eminence and renowned scholar of Vedic education and even if the ultimate appointment is to be made with the approval of the State Government, since any such appointment can be only from the panel prepared by the Board of management, such a stipulation contained in the amendment does not in any way impinge upon any right, much less the Constitutional Right or Fundamental Right of the appellant University, nor does it affect the autonomy of the appellant University. [Paras 112 and 113] [538-C-G]

Case Law Reference

347 U.S. 483(1954)	**referred to**	**Para 23**

1992 (3) SCR 658	**referred to**	**Para 29**
1993 (1) SCR 594	**referred to**	**Para 30**
1996 (9) Suppl. SCR 726	**referred to**	**Para 31**
1997 (2) SCR 379	**referred to**	**Para 32**
2005 (2) Suppl. SCR 603	**referred to**	**Para 41**
2011 (2) SCR 704	**referred to**	**Para 53**
2011 (16) SCR 254	**referred to**	**Para 53**
1964 SCR 742	**referred to**	**Para 53**
(2001) 4 SCC 286	**referred to**	**Para 53**
2002 (2) Suppl. SCR 324	**referred to**	**Para 53**
1969 SCR 219	**relied on**	**Para 54**
1987 (2) SCR 801	**relied on**	**Para 54**
2005 (2) SCR 23	**relied on**	**Para 54**
1995 (2) SCR 1075	**relied on**	**Para 55**
1963 Supp. 1 SCR 112	**relied on**	**Para 55**
1960 SCR 866	**relied on**	**Para 58**
1990 (2) SCR 797	**relied on**	**Para 58**
1994 (2) Suppl. SCR 338	**relied on**	**Para 58**
1997 (2) Suppl. SCR 305	**relied on**	**Para 58**
1999 (2) SCR 438	**relied on**	**Para 58**
2000 (1) SCR 97	**relied on**	**Para 58**
2001 (3) Suppl. SCR 627	**relied on**	**Para 58**
1964 SCR 368	**relied on**	**Para 65**
1963 Supp (1) SCR 112	**relied on**	

1987 (3) SCR 949	**relied on**	**Para 65**
1999 (1) Suppl. SCR 249	**relied on**	**Para 65**
2009 (3) SCR 355	**relied on**	**Para 65**
2004 (2) SCR 1218	**relied on**	**Para 65**
1987 (2) SCR 1	**referred to**	**Para 67**
1987 (3) SCR 317	**referred to**	**Para 67**
2012 (2) SCR 715	**relied on**	**Para 80(i)**
2012 (7) SCR 1054	**relied on**	**Para 80(ii)**
2011 (11) SCR 1094	**relied on**	**Para 80(iii)**
2011 (10) SCR 203	**relied on**	**Para 80(iv)**
2008 (4) SCR 1	**relied on**	**Para 80(v)**
1987 (3) SCR 949	**relied on**	**Para 82**
2001 (1) SCR 221	**relied on**	**Para 85**
1987 (3) SCR 317	**held inapplicable**	**Para 87**
1987 (2) SCR 1	**relied on**	**Para 88**
1987 (2) SCR 801	**relied on**	**Para 93**
(1928) 1 KB 561	**referred to**	**Para 95**
(1888) 13 AC 595	**referred to**	**Para 95**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6736 of 2004.

From the Judgment & Order dated 20.03.2002 of the High Court of Judicature at M.P. at Jabalpur in W.P. No. 1065 of 2001.

L. Nageshwar Rao, Santosh Kumar, V. Sushant Gupta (for Mushtaq Ahmad), Vibha Datta Makhija, Archi Agnihotri, Varun Thakur, Varinder Kumar Sharma, Chander Shekhar Ashri for the Appearing parties.

The Judgment of the Court was delivered by

FAKKIR MOHAMED IBRAHIM KALIFULLA, J. 1. This appeal is directed against the Division Bench decision of the High Court of Madhya Pradesh at Jabalpur, dated 20.03.2002, in W.P.No.1065 of 2001, in and by which, the Division Bench allowed the writ petition in part. The challenge in the writ petition was to the amendment introduced to Sections 2, 4, 9 and 17, as well as insertion of Sections 31-A, 31-B, 31-C, 37-A, 37-B to the Maharshi Mahesh Yogi Vedic Vishwavidyalaya Adhiniyam, 1995 (Act No.37 of 1995), hereinafter referred to as "1995 Act". The amendment was by way of Amendment Act No.5 of 2000, hereinafter called the "Amendment Act".

2. The Division Bench upheld the amendment to Section 4(1) of 1995 Act. The Division Bench also held that the amendment to Sections 9(2), 31-A(1) and (2), 31-B, 31-C, 37-B(a), 37-B(b), 37-B(d) and 37-B (e) are intra-vires. The Division Bench further held that the proviso to Section 4 is intra-vires, as far as it provides that no Centres shall be established without prior approval of the State Government and no centre would mean no further Centres excluding the existing ones. The Division Bench further held that the said proviso as far as it stipulated that no courses should be conducted or run without the prior approval of the State Government is ultra-vires, as far as, it related to the present stream of courses and the existing Centres. Section 37-A was held to be ultra-vires in its entirety. Section 37-B (e) was held to be not ultra-vires.

3. To understand the scope of challenge made in this appeal, the brief facts are required to be stated. The appellant is the University, which was a creation by way of a Statute viz., 1995 Act. Therefore, in the forefront, it will be better to note the scheme of the Act, which received the assent of the Governor on 25th November 1995 and was pub[illegible]a

Pradesh Gazette dated 29th November 1995. The Preamble of the Act would state that it was an Act to establish and incorporate a University, in the State of Madhya Pradesh and to provide for education and prosecution of research in Vedic learnings and practices and to provide for matters connected therewith or incidental thereto. Section 2 defines the various expressions, including the expressions "Board of Management", "Distance Education System", "Institution", "Statutes" and "Ordinance" and the definition of "University" under Section 2(u) means the appellant University. Again Section 3(1) refers to the appellant University and Section 3(2) refers to the headquarters of the University to be at village Karondi in District Jabalpur, Madhya Pradesh, providing for establishment of campuses at such other places within its jurisdiction. Under sub-section (3) to Section 3, the First Chancellor, Vice Chancellor and the first Members of the Board of Management of the Academic Council etc., has been set out.

4. The crucial section is Section 4 and in particular sub-clause (1) of Section 4, which refers to the powers of the University, which specifically states that such power would provide for instruction in all branches of Vedic Learning, as well as promotion and development of the study of Sanskrit, as the University may from time to time determine and also to make provision for research and for the advancement and dissemination of knowledge.

5. Sub-clauses (ii) to (xxviii) of Section 4 refers to the various other powers such as granting diplomas and certificates; to organize and undertake extra-mural studies; conferment of honorary degree; facilities for distance education system; to recognize an institution of higher learning for such purposes as the University may determine; to recognize persons for imparting instructions in any college or institution maintained by the University; to appoint persons working in any other University or organization, as a teacher of the University for a specific period; to create teaching, as well as

administrative posts; to co-operate or collaborate with any other University or authority; to establish other campus, special centers, specified laboratories etc., to institute and award fellowships, scholarships etc., to establish and maintain colleges and institutions; to make provision for research and advisory service; to organize and conduct refresher courses; to make special arrangements for teaching women students; to appoint on contract or otherwise visiting professors, scholars; to confer autonomous status on a college or an institution or a department; to determine standards of admission of the University etc.; to fix quota for reserved class students; to demand and receive payment of fees and other charges; to take care of the hostels of the students with other inmates of the college; to lay down conditions of service of all categories of employees; to frame discipline; to receive benefications, gifts, etc., and to do all such other acts and things as may be necessary, incidental or conducive for attainment of all or any of its objects.

6. Section 5 states that the jurisdiction of the University would extend to the whole of the State of Madhya Pradesh. The status of the Chancellor has been described in Section 9. Sub-section (1) of Section 9 recognizes the status of Maharshi Mahesh Yogi as its first Chancellor, who was entitled to hold office during his lifetime. Sub-section (2) to Section 9 provides the manner in which the next Chancellor can be appointed by the Board of Management and the qualification and eligibility for appointment as Chancellor. Section 10 deals with the position of the Vice Chancellor, qualification and procedure for filling up of the said post. Section 11 deals with the status of the Pro-Vice Chancellor. Sections 12, 13 and 14 deals with the position of Deans of Schools, the Registrar and the Finance Officer of the appellant University.

7. Section 15 deals with the manner of appointment, powers and duties of the other officers of the University, which has to be prescribed by the Statutes [illegible] 8

specifically deal with the power of the Board of Management and its constitution. Section 19 deals with the Academic Council, while Section 20 deals with the Planning Board and Section 24 enumerates the powers to make Statutes and the provisions to be contained therein. Section 25 enumerates as to how the Statues has to be made. Section 26 stipulates as to how all Ordinances should be made. Section 28 deals with the preparation of annual report of the University, including the annual accounts and the balance sheet duly audited by a chartered accountant under the direction of the Board of Management. Sections 30 and 31 prescribe the procedure for appeal and arbitration in disciplinary cases against students. Section 32 deals with the creation of provident and pension funds. Section 34 deals with the constitution of committees, while Section 35 deals with the manner in which the casual vacancies are to be filled up. The transitional provisions are specified in Section 38 of the Act. The last Section 39 stipulates that every Statute, Ordinance or Regulation made under the Act, should be published in the Official Gazette and that it should be laid down, as soon as it is made before the Madhya Pradesh Legislative Assembly.

8. A conspicuous reading of the above provisions of the 1995 Act, discloses that the appellant University was established and incorporated under Section 3 of the Act. At the very outset, it must be stated that the establishment of the University itself was at the behest of Maharshi Mahesh Yogi, who was the man behind the institution and was an inspiration, if we may say so, for the establishment and effective functioning of it. The State Government came forward to pass the legislation for establishing the appellant University on his initiative and persuasion. It was his vision of spreading total knowledge on the holistic interpretation of the 'Vedas' and it must be stated that his move to propagate natural law and technology of consciousness was very laudable. It is stated that he was instrumental for establishing many such Universities at various places throughout the world. Therefore, it was his vision,

as well as mission, to establish this University with the laudable object of spreading the holistic principle enshrined in the Vedas, Upvedas, Agam Tantra, Itihas, Puranas, as well as Gyan-Vigyan.

9. The purport of establishing this University at his instance was to ensure that the ancient knowledge embedded in those Vedas, Upvedas, Agam Tantra, Itihas, Puranas etc., are kept intact and the wealth of knowledge contained in these Vedas, Upvedas etc., are not only spread by establishing an institution, but by teaching them through well established institutions and thereby, ensuring that such wealth of knowledge is kept intact for the future generations to come.

10. In this context, we must state that the Division Bench of the Madhya Pradesh High Court in its scholarly judgment has dealt with the intricacies of the wealth of knowledge contained in Vedas, running for several pages and hence, we only state that the same shall be read as part and parcel of this judgment for its better understanding.

11. When we refer to the subjects dealt with in Vedas, it will be worthwhile to note the details garnered and noted in the judgment of the Division Bench, which in our considered opinion have to be referred to in order to appreciate the challenge made to the amendment by the State Government with particular reference to Section 4(1) of the 1995 Act. In fact the Division Bench has dealt with the above aspects in several pages, however, for the purpose of this case, it will be sufficient if we refer to certain relevant portions of the judgment in order to get a better understanding that the concept of Vedas deals with various aspects of life, which also includes science in general, as well as human autonomy. Reference can be made to paragraph 29 and 30 of the judgment, where the Division Bench has noted the four different branches of Vedas viz., Rigveda, Samaveda, Yajurveda and Atharvaveda, along with the four Upvedas viz., Ayurveda, Gandharvaveda, Dhanurveda and Sthapatyaveda. If all these Vedas [illegible] ir

proper perspective, we can find that they deal with various aspects of life, the way of living, the culture, sculpture, medicines and quintessence of civilization and so on and so forth.

12. The Division Bench has also noted that in Vedas there are formulae, which deals with mathematics. The Vedic sutras enable a person to solve complex mathematical problems because of its cogency, compactness and simplicity. The Division Bench has also stated that it is a total misconception for any one to state that Vedas are only relatable to rituals. It went on to add that mathematicians have observed that while ordinary multiplication methods require many steps, in Sanskrit sutra, only one line method is sufficient. To quote a few, the Division Bench has referred to 'Urdhwa', 'Tiryak Sutra', 'Ekadhiken Purva Sutra' and 'Kalana-Kalna Sutra'. A little more detailed analysis made by the Division Bench, as regards the in-depth contents in Vedas can be profitably referred to by extracting paragraph 33 of the judgment of the Division Bench, which reads as under:

"33. The modern physicists are also connecting certain theories propagated by the ancient Indians. Some scientists have seen atomic dance in the deity of 'Natraj'. The empirical knowledge which has been achieved, had been perceived knowledge which has been achieved, had been perceived by the ancient 'Drastas'. The memories of cells, which is the modern discovery finds place in the wise men of the past. The Psychology, Psychiatry, Neurology had also been adverted in their own way in the Shastras. Presently scholars recognize one continuous shining background which had its base is the pure consciousness. Thoreau, the eminent thinker, realised this and expressed so through his writing, Psychological quiescence is not unknown to the ancients. The principle that there cannot be difference between the body and mind was found by them. The great American, Emerson expressed :

"They reckon ill who leave me out; When me they fly I am the wings; I am the doubter and the doubt, And, I the hymn the Brahamana sings."

Possibly for these reasons T.S. Eliot wrote: "Mankind cannot bear too much of reality."

13. Again in paragraph 43, the Division Bench has highlighted how Vedic learning is also concerned with human anatomy and physiology. It mentions that Atharvaveda gives a picture of human bio-existence in a different manner. It is also stated that Vedas qua human anatomy, coincides more or less with the medical science of today. It is further mentioned that the language of interpretation may be different, but the essence of science is one and the same. The Division Bench states that the Atharvaveda does not perceive man's physiology, as delineated in terms of science, but visualizes in subtler elements, by making specific reference to the nadis, annihilation, exhalation, retention of air in the body, which has its corresponding note in the winds and vayu.

14. We have ventured to make a detailed reference to the above facets highlighted in the judgment in order to state and understand that by making reference to Vedas and its other allied subjects, one cannot arrive at a conclusion that it only deals with rituals and some religious tenets and that it has nothing to do with other aspects of life. On the other hand, a detailed reference was made by the Division Bench by making an in depth study disclosing that the study of Vedas should enlighten a person in all aspects of life not necessarily restricted to religion or rituals simpliciter.

15. When we attempt to understand the intricacies of Vedas, which as stated by us earlier has been dealt with by the Division Bench in several pages in the opening part of its judgment, we also wish to make a reference to the meaning of the expression "Gyan Vigyan", as has been expressed by Dr.Subash Sharma, Dean of Indian Bus[illegible]a

in his article *"From Newton to Nirvana: Science, Vigyan and Gyan"*. A reading of the said note on "Gyan Vigyan" by the author really gives a clear picture about the said concept. We feel that it is worthwhile to make a brief reference to what has been attempted to be explained by the said author. According to the writer, "Gyan Vigyan" can be analyzed in two ways, viz., Vishesh Gyan and Vishya Gyan. The world science has linkages with senses and hence, scientific knowledge has got its roots in senses. He would state that the traditional knowledge gets legitimacy only if it can be tested on the basis of objectivity, through the senses. He would elaborate his idea by stating that while science relies on senses, Vigyan i.e. Vishesh Gyan, can be acquired through 'mind'. Therefore, Vigyan is more than science as 'mind' is more than senses. He would conclude his analysis by saying that 'Gyan' both in terms of its metaphysical and spiritual meaning, is acquired through 'consciousness' and that it is more than Vigyan as 'consciousness' is more than 'mind'. If the analysis made by the writer is understood, it can be held that if one represents senses, mind and consciousness in terms of three concentric circles, we may observe that radius of consciousness is larger than the radius of the mind and radius of mind is larger than the radius of the senses.

16. He would therefore, conclude by saying that just as senses, mind and consciousness are interconnected, the three circles of science, Vigyan and Gyan are also interconnected. It can therefore be safely stated that "Gyan Vigyan" would be nothing but a systematic study of science through senses, by applying one's mind with absolute consciousness.

17. Keeping the above perception about the basics of Vedas i.e., Upvedas, Agam Tantra, Itihas, Puranas etc., in consonance with Gyan Vigyan, it will be necessary to briefly refer as to how the University came to be established after the coming into force of 1995 Act. It is also imminently required in as much as, such an establishment had resulted in the investment of considerable sum of money for the purpose of

imparting education on Vedas and its allied subjects, including Gyan Vigyan and for dissemination of knowledge, as was originally thought of by the lawmakers, while enacting 1995 Act for the purpose of establishing the appellant University.

18. One of the main themes, which was propagated by Maharshi Mahesh Yogi was that the solution of the problems in the field of education lies in developing the limitless inner potential of its students and teachers. According to him, to achieve the said goal, it was necessary to revive the ancient Vedic science and knowledge for the systematic unfolding of the full range of human consciousness. The said line of thinking of the Yogi contains the technology of the unified field that includes the Transcendental Meditation (TM) and Transcendental Meditation Siddhi Programmes. It was also highlighted by the Yogi that there were enough materials in Vedas, which pertains to seed production, crop production, sericulture, health care, management, beauty culture, marketing and accounting. It was further claimed that Vedas are the structure of pure knowledge, having infinite creative potential, which an individual can harvest. In order to highlight the valueability of the above intricate subjects, considerable investment had to be made while establishing the appellant University.

19. It was in this background that the Yogi is stated to have made an attempt for nearly four decades by repeatedly knocking at the doors of the Legislators who came forward with the Statute viz., 1995 Act for establishing the institution with the laudable object of spreading the knowledge on Vedas and its intricate subjects, through the medium of education. After the Statute viz., 1995 Act, came into effect, the appellant University took every effort to create the necessary infrastructure of high standards in education and teaching. It is revealed that the infrastructure comprised of permanent furnished buildings, teachers, staff, transport facilities, library, hostel facilities etc., and the capital expenditure as on 31.0

be Rupees 12.74 crores. Besides this, the recurring expenditure was also of an equal sum. After its commencement, it is stated that 3006 students, who received education from the University, were conferred with certificates/diplomas and degrees. In the academic year 2000-01, the student strength was stated to be 3136 and that it has also awarded Ph.D degrees to 10 students, while 70 other students were pursuing their doctorate education by enrolling themselves with the University. Amongst the 70 students who enrolled themselves for pursuing their doctorate courses in the University, 46 students were granted scholarship in the range of Rs.1500 to Rs.2000 per month.

20. In the rejoinder affidavit filed in the High Court, the University further claimed that it has Rs.60 crores deposit and has realized a sum of Rs.2.5 crores by way of tuition fees and stated that the University has invested huge sums for the purpose of imparting education in Vedas, as well as in other science and art subjects, which according to the University were essential requirements to be established for the purpose of attaining its objectives.

21. The appellant University would therefore, contend that in the field of education, though the main objective of the University was to reinforce the greatness of Vedas, Upvedas, agam tantra, itihas, darshan, upanashid, puranas etc., in as much as every other field of education was intrinsically connected with the main objective of spreading the knowledge of Vedas. It was contended that the attempt of the State Government to cripple the activities of the University by restricting the scope of education in the University to Vedas alone would be doing grave injustice to the University, as well as to its beneficiaries.

22. Having analysed the emergence of the appellant University based on enactment viz., 1995 Act, we are of the considered opinion that it will also be appropriate to emphasis the need of education and its benefits in order to appreciate

the issue involved in this litigation in particular to the challenge made at the instance of the appellant to certain of the amendments, which were introduced in the said 1995 Act, by the Amendment Act. It is needless to state that education, a Constitutional right, has been explained as an essential part in every one's life. In order to understand its consequential effects on the society at large, the Father of the Nation, Mahatma Gandhi, while referring to education has stated, ***"live as if you were to die tomorrow. Learn as if you were to live forever"***. Later reinforced by Nelson Mandela ***"Education is the most powerful weapon which you can use to change the world"***. The process of learning, as has been highlighted by the father of the nation, emphasises the need for one to have an everlasting thirst for acquiring knowledge by getting himself educated. It is stated that education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual's image of the future. A man without education is no more than an animal. Education emancipates the human beings and leads to liberation from ignorance. According to Pestalozzi who is a *Swiss pedagogue* and educational reformer stated that education is a constant process of development of innate powers of man, which are natural, harmonious and progressive. It is said that in the 21st Century, *'a nation's ability to convert knowledge into wealth and social good through the process of innovation is going to determine its future*.' Accordingly the 21st Century is termed as the '*century of knowledge*'.

23. *Mr. Will Durrant* defines '*education*' as the *'transmission of civilization*'. *George Peabody* has defined '*education*' as "*a debt due from present to future generations*". Education confers dignity to a man. The significance of education was very well explained by the US Supreme Court first, in the case of *Brown V Board of Education* – 347 U.S. 483(1954), in following words: *"It is the very foundation of good citizenship. Today, it is principal instrument in awakening the child to cultural value, in preparing hin al*

training and in helping him to adjust normally to his environment." Hence, it is said that a child is the future of the nation.

24. A private organization, named the International Bureau of Education, was established in Geneva in 1924 and was transformed into an inter-governmental organization in 1929, as an international coordinating centre for institutions concerned with education. A much broader approach was chosen, however with the establishment of UNESCO in 1945. United Nations, on 10th December, 1998 adopted the Universal Declaration of Human Rights (UDHR). The Preamble to the UDHR stated that: *"every individual and organ of society...., shall strive by teaching and education to promote respect for these rights and freedoms...."* In accordance with the Preamble of UDHR, education should aim at promoting human rights by importing knowledge and skill among the people of the nation States.

25. Article 26 of the Universal Declaration of Human Rights declares:

> *"**Everyone has the right to education**. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and Professional education shall be generally available and higher education shall be equally accessible to all on the basis of merit." (Emphasis added)*

26. The same concept has been repeated in the UN Declaration of the Rights of the Child, which seeks to ensure;

> *"Right to free and compulsory education at least in the elementary stages and education to promote general culture, abilities, judgment and sense of responsibility to become a useful member of society and opportunity to recreation, and play to attain the same purpose as of education."*

27. The role of international organizations regarding the implementation of the right to education is just not limited to the preparation of documents and conducting conferences and conventions, but it also undertakes the operational programmes assuring, access to education of refugees, migrants, minorities, indigenous people, women and the handicaps. India participated in the drafting of the Declaration and has ratified the covenant. Hence, India is under an obligation to implement such provisions. As a corollary from the Human Rights perspective, constitutional rights in regard to education are to be automatically ensured.

28. Having briefly analyzed the International Conventions, we would like to refer to the provisions in our own Constitution, which provides for the significance and need for education. The Founding Fathers of the nation, recognizing the importance and significance of the right to education, made it a constitutional goal, and placed it under Chapter IV Directive Principles of State Policy of the Constitution of India. Article 45 of the Constitution requires the State to make provisions within 10 years for *'free and compulsory education'* for all children until they complete the age of 14 years.

29. Further, Article 46 declares that the state shall promote with special care the educational and economic interests of the weaker sections of the people. It is significant to note that among several Articles enshrined under Part IV of the Indian Constitution, Article 45 had been given much importance, as education is the basic necessity of the democracy and if the people are denied their right to education, then democracy will be paralyzed; and it was, therefore, emphasized that the objectives enshrined under Article 45 in Chapter IV of the Constitution should be achieved within ten years of the adoption of the Constitution. By establishing the obligations of the State, the Founding Fathers made it the responsibility of future governments to formulate a programme in order to achieve the given goals, but the unresponsive and

government to achieve the objectives enshrined under Article 45, belied the hopes and aspirations of the people. However, the Judiciary showed keen interest in providing free and compulsory education to all the children below the age of fourteen years. In the case of *Mohini Jain V State of Karnataka and others* - (1992) 3 SCC 666, this Court held that right to education is a fundamental right enshrined under Article 21 of the Constitution. The right to education springs from right to life. The right to life under Article 21 and the dignity of the individual cannot fully be appreciated without the enjoyment of right to education. The Court observed:

> *"Right to life" is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to make endeavour to provide educational facilities at all levels to its citizens."*

30. In the case of *Unni Krishnan J.P. and others V State of Andhra Pradesh and others* reported in (1993) 1 SCC 645, this Court was asked to examine the decision of Mohini Jain's case. In *Unni Krishnan* (supra) this Court partly overruled the decision rendered in Mohini Jain's case. The Court held that, the right to education is implicit in the right to life and personal liberty guaranteed by Article 21 and must be interpreted in the light of the Directive Principles of State Policy contained in Articles 41, 45 and 46. This Court, however, limited the State obligation to provide educational facilities as follows:

> (i) Every Citizen of this Country has a right to free education until he completes the age of fourteen years;

> (ii) Beyond that stage, his right to education is subject to the limits of the economic capacity of the state.

His Lordship *Mr. Justice Mohan,* as he then was, has stated as under in paragraph 10 & 11:

> *"10. The fundamental purpose of Education is the same at all times and in all places. It is to transfigure the human personality into a pattern of perfection through a synthetic process of the development of the body, the enrichment of the mind, the sublimation of the emotions and the illumination of the spirit. Education is a preparation for a living and for life, here and hereafter.*
>
> *11. An old Sanskrit adage states: "**That is Education which leads to liberation"- liberation from ignorance which shrouds the mind; liberation from superstition which paralyses effort, liberation from prejudices which blind the Vision of the Truth.**"*
>
> *(Emphasis added)*

31. Further, this Court in *M.C. Mehta V State of Tamil Nadu and others* reported in (1996) 6 SCC 756, observed that, to develop the full potential of the children, they should be prohibited from doing hazardous work and education should be made available to them. In this regard, the Court held that the government should formulate programmes offering job oriented education, so that they may get education and the timings be so adjusted so that their employment is not affected.

32. Again in *Bandhua Mukti Morcha V Union of India and others*, reported in (1997) 10 SCC 549, Justice K. Ramaswamy and Justice Saghir *Ahmad* observed that illiteracy has many adverse effects in a democracy governed by a rule of law. It was held that educated citizens could meaningfully exercise their political rights, discharge social responsibilities satisfactorily and develop sprit of to[illegible]. Therefore, compulsory education is one [illegible]e

stability of democracy, social integration and to eliminate social evils. This Court by rightly and harmoniously construing the provision of Part III and IV of the Constitution has made 'Right to education' a basic fundamental right.

33. The Government of India by Constitutional (86th Amendment Act) Act, 2002 had added a new Article 21A, which provides that *"the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law determine".* Further, they strengthened this Article 21A by adding a clause (k) to Article 51-A, which provides for those who are a parent or guardian to provide opportunities for education to his/her child or ward between the age of 6 and 14 years. On the basis of the Constitutional mandate provided under Articles 41, 45, 46, 21-A, 51-A(k) and various judgments of this Court, both the Government of India, as well as this Court has taken several steps to eradicate illiteracy, improve the quality of education and simultaneously ensure that the dropouts are brought to nil. Some of these programmes are the National Technology Mission, District Primary Education Programme, and Nutrition Support for Primary Education, National Open School, Mid-Day Meal Scheme, Sarva Siksha Abhiyan and other state specific initiatives. Besides this, several States have enacted legislations to provide free and compulsory primary education such as: The Right of Children to Free and Compulsory Education Act, 2009, The Kerala Education Act 1959, The Punjab Primary Education Act 1960, The Gujarat Compulsory Primary Education Act 1961, U.P. Basic Education Act 1972, Rajasthan Primary Education Act 1964, Tamil Nadu Right of Children to Free and Compulsory Education Rules, 2011, *etc*.

34. The right to education will be meaningful only and only if all the levels of education reach to all sections of people, otherwise it will fail to achieve the target set out by our Founding Fathers, who intended to make the Indian society an egalitarian society.

35. The 15th official census in India was calculated in the year 2011. In a country like India, literacy is the main foundation for social and economic growth. When the British rule ended in 1947, the literacy rate was just 12%. Over the years, India has changed socially, economically, and globally. After the 2011 census, literacy rate in India, during 2011 was found to be 74.04%. Compared to the adult literacy rate here, the youth literacy rate is about 9% higher. Though this seems like a very great accomplishment, it is still a matter of concern that still so many people in India cannot even read and write. The number of children who do not get education especially in the rural areas are still high. Though the government has made a law that every child under the age of 14 should get free education, the problem of illiteracy is still at large.

36. Now, if we consider female literacy rate in India, then it is lower than the male literacy rate, as many parents do not allow their female children to go to schools. They get married off at a young age instead. Though child marriage has been lowered to very low levels, it still happens. Many families, especially in rural areas believe that having a male child is better than having a baby girl. So the male child gets all the benefits. Today, the female literacy levels according to the Literacy Rate 2011 census are 65.46%, where the male literacy rate is over 80%. The literacy rate in India has always been a matter of concern, but many NGO initiatives and government ads, campaigns and programs are being held to spread awareness amongst people about the importance of literacy. Also the government has made strict rules for female equality rights. Indian literacy rate has shown a significant rise in the past 10 years.

37. According to us, illiteracy is one of the major problems faced by the developing nations. In Africa and South East Asia, it has been identified as a major cause of socio economic and ethical conflicts that frequently surfaced in the region. Therefore, literacy has now become part of the H[illegible]e.

Now most of the nations of the world have also accepted their obligation to provide at least free elementary education to their citizens.

38. *Owens and Shaw* have stated in their book '*Development Reconsidered*' *"It is self-evident that literacy is a basic element of a nationwide knowledge system. The most important element of a literacy program is not the program itself, but the incentive to become and remain literate."*

39. Education is thus, viewed as an integral part of national development and held as an instrument by which the skills and productive capacities are developed and endowed. Literacy forms the cornerstone for making the provision of equality of opportunity a reality.

40. With great respect, it will also have to be stated that bereft of improvement in the educational field when we pose to ourselves the question as to what extent it has created any impact, it will have to be stated that we are yet to reach the preliminary level of achievement of standardised literate behaviour. In fact, in the earlier years, though the literate level was not as high as it now stands, the human value had its own respected place in the society. It will be worthwhile to recall the control the elders could administer over the youngsters, *de hors* the lack of education. It is unfortunate that today education instead of reforming the human behaviour, in our humble opinion appear to have failed to achieve its objective. Instead we find troubled atmosphere in the society at large, which calls for immediate reformation with the efforts of one and all. Therefore, it has become imperative to see that the institution, the teachers, the parents, the students and the society at large can do for bringing about such a transformation. When by and large the development of education has been achieved and the percentage of literacy has considerably improved, at least to more than 60%, there should not be any difficulty for the educated mass to prevail upon every section of the society in order to ensure that the orderly society emerges, which would

pave the way for a decent and safe living for every human being who is part of the society.

41. We can usefully refer to the importance of the education as highlighted by the seven Judge Bench of this Court in *P.A. Inamdar and others V. State of Maharashtra and others* – (2005) 6 SCC 537. In paragraphs 81, 85 and 90, it has been held as under:

> ***81.*** *"Education" according to Chambers Dictionary is "bringing up or training; … strengthening of the powers of body or mind; culture".*
>
> ***85.*** *Quadri, J. has well put it in his opinion in Pai Foundation:*
>
> *"287. Education plays a cardinal role in transforming a society into a civilised nation. It accelerates the progress of the country in every sphere of national activity. No section of the citizens can be ignored or left behind because it would hamper the progress of the country as a whole. It is the duty of the State to do all it could, to educate every section of citizens who need a helping hand in marching ahead along with others."*
>
> ***90.*** *In short, education is national wealth essential for the nation's progress and prosperity.*

42. The following quote of the Hon'ble Supreme Court in *Unni Krishnan's* case sums up the importance of education;

> *"Victories are gained, peace is preserved, progress is achieved, civilisation is built up and history is made not on the battlefields where ghastly murders are committed in the name of patriotism, not in the Council Chambers where insipid speeches are spun out in the name of debate, not even in factories where are manufactured novel instruments to strangle life, but in educational institutions which are the seed-b*

children in whose hands quiver the destinies the future, are trained. From their ranks will come out when they grow up, statesmen and soldiers, patriots and philosophers, who will determine the progress of the land."

43. Having thus highlighted the importance of Education, when we now refer to the core issue involved in this appeal, the provocation for the appellant to file the writ petition was the amendment introduced by Amendment Act 5 of 2000, by which, Sections 2, 4, 9 and 17 of 1995 Act was amended, while simultaneously Sections 31-A, 31-B, 31-C, 37-A and 37-B were inserted.

44. Before adverting to the consequence of the amendments introduced to two of the crucial provisions viz., Section 4(1) and its proviso and Section 9(2) of the un-amended Act, it will have to be kept in mind that after the coming into force of the 1995 Act, the appellant University has framed its Statutes, as well as Ordinance No.15. Ordinance No.15, contains the courses of studies, which are numerous. Apart from prime subjects on Vedas there were also other professional courses such as Project Management, Human Resources Management, Financial Management, Marketing Management, Accounting and Auditing, Banking, as well as vocational courses in typing, stenography, secretarial practice, computer technology marketing and sales, dress designing and manufacturing, textile designing and printing, horticulture, seed production, crop production, sericulture, as well as, short term courses in various international topics such as, political science, theory of Government, theory of defense, theory of education, theory of management etc.

45. One other relevant factor to be noted is that the appellant University was added in the list of Universities maintained by the University Grants Commission, as provided under Section 2(f) of the University Grants Commission Act, 1956. The same was addressed by way of a communication to the University Grants Commission dated 24.08.1998, in and

by which, the inclusion of the appellant University in the schedule to the University Grants Commission Act, 1956 was notified. One other factor which is also to be kept in mind is that by virtue of the provisions contained in the un-amended Act, the appellant University also opened up as many as 55 centers in which an average of 35 students stated to have got themselves enrolled to pursue various courses of study.

46. Keeping the above factors and details in mind, when we examine the challenge made in the writ petition, in the forefront, the challenge was to the amendment, which was made to Section 4(1) of the 1995 Act.

47. The next challenge was to the proviso to Section 4 and the third crucial challenge was to the amendment to Section 9(2) of the 1995 Act. In fact, Mr.Nagaeshwara Rao, learned senior counsel for the appellant in his submissions, mainly concentrated on the above three aspects on which the amendments impinge upon the rights of the appellant.

48. In the first instance, we wish to take up the amendment to Section 4(1) of the Act. In order to appreciate the submissions of the respective counsel, it will be worthwhile to note the un-amended Section 4(1), the amended Section 4(1), as well as the Preamble to the Act which are as under:

"4 (i) to provide for instruction in all branches of Vedic learning and practices including Darshan, Agam Tantra, Itihas, Puranas, Upvedas and Gyan-Vigyan and the promotion and development of the study of Sanskrit as the University may, from time to time determine and to make provision for research and for the advancement and dissemination of knowledge."

The amended provision reads as under:—

"to provide for instruction only in all branches of Vedic learning and practices including Darshan, Agam Tantra, Itihas, Puranas, Upvedas and G[illegible]e

promotion and development of the study of Sanskrit as the University may from time to time determine and to make provison for research and for the advancement in the above fields and in these fields may ....."

Preamble:

"An Act to establish and incorporate a University in the State of Madhya Pradcsh and to provide for education and prosecution of research in Vedic learnings and practices and to provide for matters connected therewith or incidental thereto."

49. A reading of the above amendments to Section 4(1) discloses that by way of the amendment, the expression "only" and the expression "in the above fields and in these fields may..." were added, while the last set of expressions "dissemination of knowledge" were deleted. After the amendment, the grievance of the appellant was that, prior to the coming into force of the Amendment Act viz., Act 5 of 2000, the Officer on Special Duty, in the Department of Higher Education, sent a memorandum, alleging that the course of study prescribed in Clause 1(i) and (j) of Ordinance No.15, were contrary to the aims and objectives of the University and therefore, not acceptable. The University submitted through its reply vide Annexure P-7, explaining in detail with cogent reasons as to why it was entitled to conduct those courses. It is in the above stated background that the Amendment Act 5 of 2000 came to be introduced.

50. In the above stated background, when we examine the amendment to Section 4 (1), it is quite apparent that by adding the word "only" after the expressions "instruction" in the opening part of the Section and by adding expression "in the above fields and in these fields may...", the State Legislature apparently wanted to restrict the scope of providing instructions to its students only in respect of studies in branches of Vedic learning and practices, including Darshan, Agam Tantra, Itihas,

Puranas, Upvedas and Gyan-Vigyan and also the promotion and development of study of Sanskrit, which was left to be determined by the University. It was also entitled to make provisions for research and for the advancement in the fields mentioned above. By omitting or by deleting the set of expression "dissemination of knowledge", apparently the State Legislature wanted to give a thrust to its intendment of restricting the scope of study in the appellant University to Vedic instructions and its allied subjects. By taking up the deletion of the expression "dissemination of knowledge", by way of the amendment as stated earlier, the State Legislature wanted to restrict the scope of study in the appellant University to Vedic instructions alone. The expression "dissemination of knowledge" is, to put it precisely, the spreading of knowledge over wide frontiers. Going by the dictionary meaning and to put it differently, "dissemination of knowledge" would mean spreading of knowledge widely or disbursement of knowledge widely. Therefore, the said set of expressions on their own, would only mean any attempt for spreading of knowledge or disbursement of knowledge. With the said set of expressions as originally contained in Section 4(1), the question for consideration was as to whether such spreading of knowledge or disbursement of knowledge should be confined only to the exclusive field of Vedic learning alone, or whether it should be read disjunctively to be applied for such spreading of knowledge, on a wide spectrum. In fact, the Division Bench has even concluded that even by retaining these set of expressions, the position would be that such dissemination of knowledge would be referable only to Vedic learning and not for general application.

51. Mr. Nageshwar Rao, learned senior counsel in his submissions took pains to contend that by reading the un-amended Section 4(1) by virtue of the word 'and' prior to the set of expressions "for the advancement" and "dissemination of knowledge", the learned senior counsel contended that the whole idea and purpose, while estab[illegible]t

University was for the cause of advancement and spreading of knowledge in a wide spectrum and not by restricting it to the field of Vedic learning alone. To reinforce his submissions, the learned senior counsel vehemently contended that Section 4(1), apart from providing scope for Vedic learning and practices, including Darshan, Agam Tantra, Itihas, Puranas and Upvedas also used the expression "Gyan-Vigyan" which is nothing but science and technology. The learned senior counsel therefore, contended that apart from spreading the process of learning in the field of Vedas, the establishment of the appellant University was also in other fields such as, science and technology and other vocational courses, by way of dissemination of knowledge. The learned senior counsel therefore, contended that by bringing out the amendment to Section 4(1), by way of an addition to the expressions "only" and "in the above fields and in these fields may…", the State Government has violated the Constitutional right of the appellant in the field of education, thereby conflicting with Articles 14, 19 and 21 of the Constitution.

52. The learned senior counsel further contended that the State Legislature lacks competence, in as much as education is a subject contained in Entry-66 of List-I and is already governed by the central legislation viz., the University Grants Commission Act, 1956 and therefore, the State was incompetent to restrict the scope of education in various fields by bringing out an amendment, as has been made in Act 5 of 2000.

53. To support the above submission, the learned senior counsel by referring to the Preamble of 1995 Act contended that the Act was enacted to provide for education primarily and prosecution of research in Vedic learning and practices, apart from providing for matters connected therewith or incidental thereto. The submissions of the learned senior counsel was that going by the Preamble to the enactment, the purport of the legislation was to provide education in all fields in the forefront,

apart from prosecution of research in Vedic learning and practices. The learned senior counsel would contend that the said submission was rejected by the Division Bench by restricting the consideration to the words preceding the expression "dissemination of knowledge" and by applying the principle *Noscitur A Sociis*. The learned senior counsel would contend that such an approach of the Division Bench was not justified and relied upon the decisions reported in (2011) 3 SCC 436 *(State of Orissa and Anr. Vs. Mamata Mohanty),* (2012) 1 SCC 762 *(Ramesh Rout Vs. Rabindra Nath Rout),* AIR 1963 SC 1323 *(State of Rajasthan and Anr. Vs. Sripal Jain),* (2001) 4 SCC 286 *(M/s. Shriram Vinyl and Chemical Industries Vs. Commissioner of Customs, Mumbai)* and (2002) 7 SCC 273 *(Union of India (UOI) and Anr. Vs. Hansoli Devi and Ors.*).

54. The learned senior counsel also referred to Section 6 of the Madhya Pradesh University Act, 1973 and contended that "dissemination of knowledge" is referable to spreading of knowledge in all other fields which may also include Vedic learning. The learned senior counsel also relied upon AIR 1968 SC 1450 *(Ishwar Singh Bindra and Ors. Vs. State of U.P.),* (1987) 3 SCC 208 *(Joint Director of Mines Safety Vs. Tandur and Nayandgi Stone Quarries (P) Ltd.)* and (2005) 5 SCC 420 *(Prof. Yashpal and Anr. Vs. State of Chhattisgarh and Ors.)* for the proposition as to how to understand the expression "and".

55. Apart from the submission on Section 4(1), the learned senior counsel, while attacking the amendment made by introducing proviso to Section 4, contended that as far as the introduction of various courses, as well as opening of centers are concerned, they are exclusively governed by the University Grants Commission Regulations, which was framed under the provisions of the University Grants Commission Act, 1956 and therefore, the introduction of the said proviso was directly in conflict with the occupied field by the University Grants Commission Act and consequentl

Constitutional provisions. The learned senior counsel relied upon *Prof. Yashpal and another (supra),* (1995) 4 SCC 104 *(State of Tamil Nadu and Anr. v. Adhiyaman Educational and Research Institute and others)* and 1963 Supp. 1 SCR 112 *(Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar)*. Reference was also made to Section 12 of the University Grants Commission Act, 1956 in support of the said submission.

56. As far as the challenge relating to Section 9(2) of the Act, was concerned, the learned senior counsel contended that the submission based on Entry 66 of List-I of the Constitution would equally apply to the said challenge. Besides this, he also contended that as the appellant University was created by a Statute, the amendment only seeks to interfere with its independence by casting onerous conditions on the appellant to submit a panel of three persons to the State Government, and by empowering the State Government to grant its approval as a pre-condition for the appointment of the Chancellor. According to the learned senior counsel such a condition imposed was highly arbitrary and therefore, was liable to be set aside.

57. The learned senior counsel therefore, contended that the insertion of the word "only" in Section 4(1) of the Act, was made by simultaneously deleting the expression "dissemination of knowledge" and thereby, the un-amended provision has been made meaningless. According to the learned senior counsel, the conclusion of the Division Bench that even without the deletion, the position remains the same, was not correct because every word in the legislation has a purpose and the principle *Noscitur A Sociis* was not applicable to the case on hand because the term "dissemination of knowledge" is of wider import.

58. The above proposition of law as contended by the learned senior counsel has been widely dealt with by this Court in a catena of decisions right from *State of Bombay and others*

vs. Hospital Mazdoor Sabha and others (AIR 1960 SC 610), *Rohit Pulp and Paper Mills Ltd. Vs. Collector of Central Excise* (AIR 1991 SC 754), *Kerala State Housing Board and others Vs. Ramapriya Hotels (P) Ltd. and others,* (1994) 5 SCC 672), *Samantha Vs. State of Andhra Pradesh* (AIR 1997 SC 3297), *K. Bhagirathi G. Shenoy and others Vs. K.P. Ballakuraya and another* (AIR 1999 SC 2143), *Brindavan Bangle Stores and others Vs. Assistant Commissioner of Commercial Taxes and another* (AIR 2000 SC 691) ending with the decision in *CBI, AHD, Patna Vs. Braj Bhushan Prasad and others* (AIR 2001 SC 4014 at page 4020). It has been held that the legal maxim *Noscitur A Sociis*, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful or otherwise not clear that the present rule of construction namely *Noscitur A Sociis* can be usefully applied.

59. As far as the proviso to Section 4 was concerned, the submission of the learned senior counsel was, what applied to the courses would equally apply to centers and since the Division Bench has held that the State Government was not competent to legislate, as regards the courses to be introduced, on the same logic, the Division Bench ought not to have set aside the proviso in its entirety.

60. As against the above submissions Ms.Vibha Datta Makhija, learned counsel for the State contended that the University Grants Commission Rules was related to the standard of education and not on courses. According to the learned counsel, going by the Preamble to 1995 Act, it is categorical and unambiguous to the effect that the establishment of the University was only to provide education in Vedic learning and therefore, it can only be in courses

connected with Vedas. As a corollary it was submitted that any course not connected with Vedic learning will stand excluded.

61. The learned counsel submitted that even going by the un-amended Section 4, it is clear that it referred only to all learning connected with Vedic study, since the various sub-clauses to Section 4 also disclosed that it was more Vedic centric rather than on general subjects. By referring to Section 17, the learned counsel pointed out that the degree of autonomy granted to the appellant University, as compared to other Universities was limited in scope.

62. The learned counsel also referred to the object and scope of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 (Act 22 of 1973) in particular to the Objects and Reasons and contended by making reference to the object of the said Act, which purported to consolidate and amend the law relating to Universities and to make better provisions for the organization and administration of Universities in Madhya Pradesh. The learned counsel further contended that the various provisions of the said Act viz., Section 4(17), Section 6 (1) & (8), Sections 7, 12, 24, 25, 26 and 39 provides the required authority to the State Government to regulate the manner of functioning of the Universities in the State of Madhya Pradesh, including the appellant University.

63. As far as the legislative competence is concerned, the learned counsel referred to Entries 63 to 66 of List-I, which deals with "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions". By referring to Entry 32 of List – II, which deals with incorporation and regulation of Universities, as well as Entry 25 of List – III, which again deals with Education, including technical education, medical education and Universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I, the learned counsel contended what was taken away was only "co-ordination and determination of standards of education" as covered by Entries 63 to 66 and by virtue of the

enabling provision in Entry 32 of List-II, which empowers the State Government for incorporating an University and regulating its functioning, ample powers are vested with the State Government to pass the impugned legislation. The learned counsel therefore, contended that Section 4(1) only deals with the scope within which the appellant University can function and that it does not talk about curriculum or standard. In such circumstances, when the said provision empowers the University to set up an institution by regulating the same by taking certain measures, it cannot be held that such an exercise can be questioned on the ground of lack of competence.

64. The learned counsel would contend that the amendment introduced by the State Government was in public interest, which falls squarely under Entry 32 of List-II, as well as Entry 25 of List-III and therefore, there was no repugnancy with Entry 66 of List-I of the Constitution. In support of the above submission, the learned counsel also referred to Section 2(f) of the University Grants Commission Act, 1956 and contended that the definition of the term 'University' under the said Act means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act and therefore, the University which was established under the 1995 Act can always be regulated by the State Government by passing appropriate amendments to the Act by which the State created the said University.

65. The learned counsel also referred to Section 12 of the University Grants Commission Act, 1956 to contend that the general duty of the Commission is to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, apart from examination and research in Universities for which it can take certain actions. In support of her submission, the learned counsel rel[illegible]s reported in AIR 1964 SC 1823 *(R. Ch[illegible]of*

Mysore), 1963 Supp (1) SCR 112 *(The Gujarat University, Ahmedabad Vs. Krishna Ranganath Mudholkar and Ors),* 1987 (3) SCR 949 *(Osmania Universtity Teachers' Association Vs. State of Andhra Pradesh and Anr.)* and (1999) 7 SCC 120 (Dr. Preeti Srivastava and another Vs. State of M.P.). The learned counsel also relied upon (2009) 4 SCC 590 *(Annamalai University Vs. Secretary to Government, Information and Tourism Department)* and (2004) 4 SCC 513 *(State of Tamil Nadu Vs. S.V.Bratheep)*.

66. The sum and substance of the submissions of the learned counsel for the State was that the state had competence to legislate by introducing the amendments, that the autonomy of the appellant University was also subject to the regulation by the State and that the only thing to be ensured was that such regulatory measures should be reasonable and in consonance with Article 19(1)(j) of the Constitution.

67. On the proviso to Section 4, the learned counsel contended that so long as the Centre is connected with the establishment of University, it would fall under Entry 32 of List-II and therefore, the said proviso was rightly held to be intra-vires by the Division Bench. According to the learned counsel, the effect of the amendment was not a curtailment, but was only by way of clarification. According to the learned counsel to interpret the amendment, the principle of Mischief Rule will have to be applied. The learned counsel further contended that the word "and" used in the Preamble, as well as under Section (4), will have to be read conjunctively and relied upon 1987 (2) SCR 1 (Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd., and Others) and (1987) 3 SCC 279 *(Utkal Contractors and Joiners Pvt. Ltd., and Ors Vs. State of Orissa and others)*.

68. Having heard the learned senior counsel for the appellant, as well as the learned counsel for the State, and having bestowed our serious consideration to the respective submissions and having perused the scholarly judgment of the

Division Bench and other material papers, at the very outset we are of the view that providing education in an University is the primary concern and objective, while all other activities would only be incidental and adjunct. In this context, it would be worthwhile to emphasis the importance of education which has been emphasised in the 'Neethishatakam' by Bhartruhari (First Century B.C.) in the following words: "Translation: Education is the special manifestation of man; Education is the treasure which can be preserved without the fear of loss; Education secures material pleasure, happiness and fame; Education is the teacher of the teacher; Education is God incarnate; Education secures honour at the hands of the State, not money; A man without education is equal to animal." For this very reason, we have elaborately stated the importance of education as stated by the Father of our Nation, other renowned Authors and great men in public life as well as the mindset of our Constitutional framers in paragraphs 22 to 42. We have also referred to some of the leading judgments of this Court where it has already been held that Right to Education is a Fundamental Right, guaranteed by Article 21 of our Constitution.

69. Keeping the said basic principles in mind, when we examine the issue involved in this appeal, the burden of the appellant was that though under Section 4(1), reference to Vedic learning and its allied subjects was made in the opening sentence, the University was not established under the 1995 Act, only for the purpose of imparting education in Vedas alone, but it was intended for spreading the knowledge of Vedas and simultaneously to teach Sanskrit, science and technology and also as specifically mentioned in Section 4, for spreading of knowledge in all fields. In fact, in the pursuit of our above perception, we have quoted extensively the view points of various personalities, as well as the importance of education and the various constitutional provisions, which were incorporated mainly with a view to spread education in the independent India in order to ensure that the Society is enlightened and by such enlightenment e

and orderly society is ensured in this Country. Also while referring to a decision of this Court rendered in *Mamata Mohanty (supra)*, the importance of imparting education is emphasized as hereunder:

> *"**29.** Education is the systematic instruction, schooling or training given to the young persons in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. Education connotes the process of training and developing the knowledge, skill, mind and character of students by formal schooling…."*
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> ***
>
> ***33.** In view of the above, it is evident that education is necessary to develop the personality of a person as a whole and in totality as it provides the process of training and acquiring the knowledge, skills, developing mind and character by formal schooling. Therefore, it is necessary to maintain a high academic standard and academic discipline along with academic rigour for the progress of a nation. Democracy depends for its own survival on a high standard of vocational and professional education. Paucity of funds cannot be a ground for the State not to provide quality education to its future citizens. It is for this reason that in order to maintain the standard of education the State Government provides grant-in-aid to private schools to ensure the smooth running of the institution so that the standard of teaching may not suffer for want of funds."*

70. With the above said prelude, as regards the importance of education in an orderly society, when we come to the core issue, the appellant was aggrieved by the amendment Act 5 of 2000 by which Section 4(1) of 1995 Act was altered and thereby, the State want to contend that the appellant University can impart education only in the field of

Vedic learning and practices, including Darshan, Agam Tantra, Itihas, Puranas and Upvedas. 'Darshan' means a proper reading of one's own self and the environment. Agam Tantra is oriental research, which includes history and geography. Itihas, Puranas as the very words suggest, relates to history. Upvedas are part of Vedas. The section as it originally stood stated that the University can provide education in all branches of Vedic learning and practices, which also mentioned Gyan-Vigyan, as well as promotion and development of the study of Sanskrit as the University may from time to time determine. It also mentioned that the University can make provision for research and for the advancement and dissemination of knowledge.

71. According to Mr. L. Nageshwar Rao, the learned senior counsel for the appellant, the words "and" preceding the expression "Gyan-Vigyan", "the promotion and development of study of Sanskrit", "as well as for the advancement and dissemination of knowledge", have to be read disjunctively and not conjunctively with the first part of the provision viz., "providing for instruction in all branches of Vedic learning".

72. As against the above submission, Ms. Makhija the learned counsel for the State would contend that having regard to the manner in which the provision has been couched, it will have to be read conjunctively and not disjunctively.

73. Both the learned counsel referred to the Preamble in support of their submissions. When we refer to the Preamble of the 1995 Act, we find that it has been stated that "an Act to establish and incorporate a University in the State of Madhya Pradcsh and to provide for education and prosecution of research in Vedic learnings and practices and to provide for matters connected therewith or incidental thereto." Here again, while Mr.Nageshwar Rao the learned senior counsel would contend that the expression "and" used clearly distinguish each set of expression, according to the learned counsel for the State, the same will have to be read conjuncti

74. Having considered the various submissions and the analysis made based on detailed circumstances leading to the intricacies of Vedas, the field it covers, as noted by the Division Bench, as well as the concept of education, which has been explained by very many learned and prominent persons to whom we have made detailed references to in the earlier part of our judgment, we are of the considered view that education is the base for every other subject to be taught in the process of learning. Therefore, establishment of the University as the Preamble goes to state was to provide for education in the forefront. It will be appropriate to hold that such a provision for education in so far as the appellant University was concerned, should concentrate and focus in the prosecution of research in Vedic learning and practices and to provide for matters connected therewith or incidental thereto. While holding so, it will have to be stated in uncontroverted terms that merely because such specific reference was made to prosecution of research in Vedic learnings, it could be held that the imparting of education in the appellant University should be restricted to the said subject alone and not in any other subject.

75. In our considered view, such a narrow interpretation would be doing violence to the very basic concept of education, and would create a serious restrain on the University, where, imparting of education is the primary objective and dealing with any specific subject may be for enabling any one to acquire special knowledge on such subjects. In other words, any such restrictive interpretation would go against the basic tenets of the concept of education, which no Court can venture to state.

76. In this context, we must state that if such a narrow interpretation is sought to be placed, it would even create an embargo in the prosecution of research in Vedic learning and practices. In this context, as has been widely considered and referred to by the Division Bench, which we have also noted, in a precise form in the earlier part of the judgment, we find that Vedas has not left any subject untouched. The Division Bench

has noted in paragraphs 20 and 30 the various fields, which have been dealt with and associated in Vedas. The Division Bench has gone to the extent of saying that some scientists have seen the atomic dance in the deity of 'Natraj'. It has also been noted that mathematic formulae are much more concise and precise in Vedas. It is said that Vedic learning is concerned with human anatomy and physiology. It was further found that there were enough materials in Vedas, which pertains to seed production, crop production, sericulture, health care, management, beauty culture, marketing and accounting. In fact, according to the Maharshi, who was the man behind the establishment of the appellant University, in order to develop the limitless inner potential of students and teachers, the only solution is education and to achieve that end, according to him, ancient Vedic sciences have to be revived and the knowledge for systematic unfolding the range of human consciousness. In fact, this knowledge was stated to be Maharshi technology of the unified field, which included Transcendental Meditation and Transcendental Meditation Siddhi Programmes. It is also stated that Transcendental Meditation is learnt by more than three million people worldwide and implemented in public and private educational institutions in more than 20 countries through Universities, colleges, schools and educational institutions. Therefore, considering the very purport and intent of the Maharshi, who relentlessly fought for the establishment of the appellant University for nearly four decades and ultimately achieved the said objective for establishing the University, it can never be held that his sole purport was only to spread vedic learning and nothing else. Therefore, in that view when we examine the respective submissions of the learned counsel we find force in the submission of the learned senior counsel for the appellant when he contended that by virtue of the amendment, the un-amended Section 4(1) will become meaningless and that the very purport of establishing the appellant University would become a futile exercise, if it were to restrict its courses only to mere Vedic learning without providing scope for learning all other i y

subjects dealt with by Vedas viz., all other worldly subjects such as, Project Management, Finance Management, Crop Management, Human Resource Management, mathematics and other sciences for which fundamental basic provisions have been prescribed in Vedas and practices including, Darshan, Agam Tantra, Itihas, Puranas and Upvedas.

77. It will have to be stated that the expression Gyan-Vigyan was specifically mentioned in Section 4(1), not merely to make a scientific study of what is contained in Vedas, as even such a study may not fulfill the purpose for which the University was created. When we think aloud as to what would happen if a scientific study exclusively about Vedas is made, we wonder whether for that purpose a creation of a University would have been necessitated. On the other hand, it is the other way around, in as much as Vedas contains very many scientific subjects such as, mathematics, study about atoms, human anatomy and physiology and other formulae. At this juncture, the inclusion of the expression "Gyan-Vigyan", will have to be understood to have been inserted with a view to study modern science and technology as it exists and study the same in consonance with the basic principles contained in Vedas and puranas. In fact, such an approach, while reading the provisions in our considered opinion, would be the proper way of reading the said provisions and not as contended by the learned counsel for the State that the study of Gyan-Vigyan should be exclusively for the purpose of understanding Vedas and Vedic principles. We have earlier explained what is "Gyan Vigyan" by making reference to an Article "From Newton to Nirvana: Science, Vigyan and Gyan" by Dr.Subash Sharma, Dean of Indian Business Academy, Noida. Based on the said Article, we have noted that Gyan Vigyan is nothing but a systematic study of science through senses by applying one's mind with absolute consciousness. If it is the meaning to be attributed to the expression "Gyan Vigyan", it will have to be held that the said expression used in Section 4(1) cannot be restricted to a mere study on Vedas and its practices. Such a narrow

interpretation will be doing violence to the whole concept of Gyan Vigyan, which as explained by Dr. Subash Sharma, is the combination of human senses, mind and consciousness, which should be applied to every aspect of human life, which would include all other academic subjects viz., science, mathematics, philosophy, management, etc.

78. In this context, when we refer to the expression "promotion and development of the study of Sanskrit as the University may from time to time determine", we find that even indisputably the said provision for the study of Sanskrit is totally unconnected to the learning of Vedas and its allied subjects, except that the scripts of Vedas may be in Sanskrit. For that purpose, there need not necessarily be a specific provision to the effect that there should be promotion and development of the study of Sanskrit. Therefore, apart from Vedic learning and its practices, the establishment of the appellant University was for the purpose of providing education in the field of science and technology, intensive learning of Sanskrit and provision for research in every other field for the advancement and disbursement of knowledge.

79. We are of the considered opinion that only such an interpretation to the un-amended Section 4(1) would be the only way of interpretation that can be accorded to the said provision. Once, we steer clear of the interpretation of the said provision in the above said manner, we find that the amendment, which was introduced by Act 5 of 2000, was clearly intended to purposely do away with its original intendment and thereby, restrict the scope of activities of the appellant University to the learning of Vedas and its practices and nothing else. The restriction so created by introducing the amendment was self-destructive and thereby, the original object and purpose of establishing the appellant University was done away with. In this context, the framing of the Ordinance 15, which provided for the study on various courses in the appellant University was consciously approved by the State Go

inhibition. A perusal of the course contents in the Ordinance discloses that there were as many as 49 courses connected with Vedic learning and practices and about 33 courses on other subjects. By introducing the amendment under Act 5 of 2000 and thereby, insisting that imparting of education in the appellant University can be restricted only to Vedic learning and that the science and technology should also be only for the purpose of learning Vedas and its practices, will have to be stated unhesitatingly as creating a formidable restriction on the right to education, which is a guaranteed Constitutional right and thereby, clearly violating Articles 14 and 21 of the Constitution. Equally, the addition of the expression "in the above fields and in these fields may....." while deleting the expression "dissemination of knowledge", in our considered opinion, drastically interfered with the right to education sought to be advanced by the University by its creation originally under the 1995 Act, which restriction now sought to be imposed can never be held to be a reasonable restriction, nor can it be held to have any rationale, while creating such a restriction by way of an amendment to Section 4(1).

80. Having regard to our fundamental approach to the issue raised in this appeal and our conclusion as stated above, we are convinced that the arguments based on the Legislative competence also pales into insignificance. Even without addressing the said question, we have in as much found that by virtue of the amendment introduced to Section 4(1), an embargo has been clearly created in one's right to seek for education, which is a Constitutionally protected Fundamental Right. Therefore, there was a clear violation of Articles 14 and 21 of the Constitution and consequently, such a provision by way of an amendment cannot stand the scrutiny of the Court of Law. To support our conclusion, we wish to refer to the following decisions rendered by this Court, right from *Mohini Jain case*, viz.,

(i) *Society for Unaided Private Schools of Rajasthan v. Union of India*- (2012) 6 SCC 1

(ii) *Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel* - (2012) 9 SCC 310

(iii) *State of T.N. v. K. Shyam Sunder* (2011) 8 SCC 737

(iv) *Satimbla Sharma v. St. Paul's Sr. Sec. School* (2011) 13 SCC 760

(v) *Ashoka Kumar Thakur v. Union of India* - (2008) 6 SCC 1;

wherein, this Court has consistently held that Right to Education is a Fundamental Right. Thus, our conclusion is fortified by the various judgments of this Court, wherein, it has been held that imparting of education is a Fundamental Right, in as much as, we have held that the establishment of the appellant University was mainly for the purpose of imparting education, while promotion of Vedic learning is one of the primary objectives of the University. Any attempt on the part of the State to interfere with the said main object viz., imparting of education, would amount to an infringement of the Fundamental Right guaranteed under the Constitution. Consequently, the amendment, which was introduced under the 1995 Act to Section 4(1) and also the insertion of the proviso, has to be held ultra-vires.

81. Having arrived at the above conclusion, when we examine the stand of the State, at the very outset, we are not persuaded to accede to the submission of the learned counsel that the amendment was only by way of a clarification of the existing provision. In fact, the Division Bench also proceeded on the footing that 'dissemination of knowledge' as it originally existed, did not empower the University to provide education to other courses other than Vedas and its practices. With great respect to the Division Bench, we are of the view that such an approach was directly in conflict with the basic principle of the Constitutionally protected Fundament o

Education and consequently the said line of reasoning of the Division Bench and the submissions on that basis cannot also be countenanced.

82. In fact, in this context, the decision relied upon by the learned counsel for the respondent State reported in (1987) 4 SCC 671 *(Osmania University Teachers' Association Vs. State of Andhra Pradesh and another)*, rather than supporting the respondent State can be usefully applied to state that "dissemination of knowledge" in every respect would apply to any subject and cannot be restricted to any particular subject. In paragraph 30 of the said decision, while concluding as to the role of the University Grants Commission in the matter of academic education, it has been stated as under:

> "…***Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs.*** *It is hoped that University Grants Commission will duly discharge its responsibility to the Nation and play an increasing role to bring about the needed transformation in the academic life of the University.*" (Emphasis added)

83. The above sentence amply establishes that dissemination of learning is for acquisition of knowledge in every kind of discipline and that such a perception should be maintained at all cost. We therefore, hold that "dissemination of knowledge" as it originally stood in Section 4(1), which was deleted by way of the Amendment Act 5 of 2000, caused havoc by restricting the scope of acquisition of knowledge to be gathered by an individual from the facilities made available in the appellant University. We make it clear that it can never be held that the said expression used in the un-amended Section 4(1) can be held to have a limited application for acquisition of knowledge on Vedas alone and not in other fields.

84. As far as the argument of the learned counsel for the respondent based on the expression used in the Preamble was

concerned, at the very outset, it will have to be held that the Preamble cannot control the scope of the applicability of the Act. If the provision contained in the main Act are clear and without any ambiguity and the purpose of the Legislation can be thereby duly understood without any effort, there is no necessity to even look into the Preamble for that purpose.

85. In fact, the Division Bench itself has made reference to a decision of this Court in *Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and others etc.,* reported in AIR 2001 SC 724. The extent to which a Preamble of an Act can be referred to or relied upon has been succinctly stated as under :

> *"…The preamble of an Act, no doubt can also be read along with other provisions of the Act to find out the meaning of the words in enacting provision to decide whether they are clear or ambiguous but the preamble in itself not being an enacting provision is not of the same weight as an aid to construction of a Section of the Act as are other relevant enacting words to be found elsewhere in the Act. The utility of the preamble diminishes on a conclusion as to clarity of enacting provisions.* ***It is, therefore, said that the preamble is not to influence the meaning otherwise ascribable to the enacting parts unless there is a compelling reason for it.*** *If in an Act the preamble is general or brief statement of the main purpose, it may well be of little value…. We cannot, therefore, start with the preamble for construing the provisions of an Act, though we could be justified in resorting to it nay we will be required to do so if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application…."* (Emphasis added)

86. The above statement of law makes the position abundantly clear that it is the statutory pr… e

to be read and analyzed for the purpose of understanding the scope and purport for which the Legislation was intended and the brief statement contained in the Preamble will be of very little value. That apart, we have noted in the earlier part of the judgment as to how even a reading of the Preamble shows the importance attached to imparting of education in the appellant University, as has been highlighted in the forefront while making a mention about the other aspects of providing scope for research oriented education on Vedas and its practices by the appellant University.

87. In the light of our above discussions, we hold that the submission of the learned counsel for the State by making a detailed reference to the Preamble is of no assistance to the respondents. For the very same reason, the arguments of the learned counsel that any course to be conducted in the appellant University should be Vedic centric cannot also be countenanced. On the other hand, as held by this Court in *Osmania University case*, "dissemination of knowledge" as originally incorporated in the un-amended Section 4(1) alone would serve the purpose of effective functioning of the appellant University in imparting and spreading knowledge on every other field available, apart from providing intensive educational curriculum in Vedic learning and its practices.

88. In the light of our above conclusion, the deletion of the said expression will have to be held to be an arbitrary action of the respondent State and thereby, violating equality in law and equal protection of law as enshrined under Article 14 of the Constitution, in as much as all other Universities, which were being controlled and administered by the State by the 1973 Act, enjoy the freedom of setting up any course with the approval of the University Grants Commission, the appellant alone would be deprived of such a right and liberty by restricting the scope of imparting education in any field other than Vedas and its practices.

89. As far as the decision relied upon by the learned

counsel for the State for the proposition that the word "and" in the Preamble, as well as in Section 4 will have to be read conjunctively viz., the decision reported in (1987) 3 SCC 279 *(Utkal Contractors and Joiners Pvt. Ltd. and Ors Vs. State of Orissa and others)*, in the light of our conclusions based on the context in which the 1995 Act was brought into force and the reading of Section 4(1) in the said context, the expression "and" used in the said Section will have to be necessarily read disjunctively. We do not find any scope to apply the said decision to the facts of this case.

90. As far as the decision reported in 1987 (1) SCC 424 *(Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd., and Others),* we find the following paragraph as more relevant in order to appreciate the present controversy with which we are concerned; paragraph 33 reads as under:

> **33.** Interpretation must depend on the text and the context. They are the bases of interpretation. **One may well say if the text is the texture, context is what gives the colour**. Neither can be ignored. Both are important. **That interpretation is best which makes the textual interpretation match the contextual**. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no w[illegible]e

construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place…."

(Emphasis added)

91. Reading the said paragraph and having analyzed the 1995 Act on the whole along with the Preamble, the various definition clauses, Section 4(1) and the sub-clauses (ii) to (xxviii) and the provision providing for enacting the Statutes and Ordinances, we have to hold that the expression "and" used in Section 4(1) will have to be read disjunctively and not conjunctively. In this context, we wish to rely on the decision rendered by this Court in *Prof. Yashpal and another* (supra), wherein, it has been held in paragraph 17 as under:

> *"**17.** In Constitutional Law of India by Seervai, the learned author has said in para 2.12 (3rd Edn.) that the golden rule of interpretation is that **words should be read in their ordinary, natural and grammatical meaning subject to the rider that in construing words in a Constitution conferring legislative power the most liberal construction should be put upon the words so that they may have effect in their widest amplitude.** This is subject to certain exceptions and a restricted meaning may be given to words if it is necessary to prevent a conflict between two exclusive entries." (Emphasis added)*

92. Besides the above two decisions, which discuss about the methodology of interpretation of a Statute, we also refer to the following decisions rendered by this Court in *Ishwar Singh Bindra* (supra), wherein in para 11 it has been held as under:

> *"11……..It would be much more appropriate in the context to read it disconjunctively. In Stroud's Judicial Dictionary, 3rd Edn. it is stated at p. 135 that "and" has generally a cumulative sense, requiring the fulfillment of all the*

> *conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as "or". **Similarly in Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other"**."(Emphasis added)*

93. We may also refer to para 4 of the decision rendered by this Court in (1987) 3 SCC 208 *(Joint Director of Mines and Safety Vs. T & N Stone Quarries (P) Ltd.,)* :

> *"**4.** According to the plain meaning, the exclusionary clause in sub-section (1) of Section 3 of the Act read with the two provisos beneath clauses (a) and (b), the word "and" at the end of para (b) of sub-clause (ii) of the proviso to clause (a) of Section 3(1) must in the context in which it appears, be construed as "or"; and if so construed, the existence of any one of the three conditions stipulated in paras (a), (b) and (c) would at once attract the proviso to clauses (a) and (b) of sub-section (1) of Section 3 and thereby make the mine subject to the provisions of the Act. The High Court overlooked the fact that the use of the negative language in each of the three clauses implied that the word "and" used at the end of clause (b) had to be read disjunctively. **That construction of ours is in keeping with the legislative intent manifested by the scheme of the Act which is primarily meant for ensuring the safety of workmen employed in the mines.**"*

(Emphasis added)

94. Applying the ratio as laid down in the above mentioned decisions, we are convinced that our above conclusion is fully supported by the said principles and therefore, we are not inclined to hold that the expression "and"

as well as in Section 4 should be read conjunctively as contended by the learned counsel for the State. On the other hand, in the context in which the said expression is used, it will have to be read as "or" creating a disjunctive reading of the provision.

95. In this context it will be worthwhile to refer to what Scrutton, L.J. has stated in the celebrated decision reported in *Green Vs. Premier Glynrhonwy State Co.* (1928) 1 KB 561, "You do sometimes read 'or' as 'and' in a statute. But you do not do it unless you are obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or' ". And as pointed out by Lord Halsbury the reading of 'or' as 'and' is not to be resorted to, 'unless some other part of the same statute or the clear intention of it requires that to be done'. [refer *Mersey Docks and Harbour Board Vs. Henderson Bros.,* (1888) 13 AC 595 at pg.603 (HL)]. In fact in the case on hand we have found that though the expression 'and' has been used, prior to the expression 'promotion and development of the study of Sanskrit…..' and again prior to the set of expression 'for the advancement' and again prior to the set of expression 'dissemination of knowledge', the context in which the Legislation was brought into force and reading the said section along with the Preamble and other sub clauses of Section 4, the expression 'and' has to be read disjunctively and not conjunctively. Therefore, even applying the principle laid down by Lord Scrutton and Lord Halsbury, we are fortified by our conclusion that in the case on hand the expression 'dissemination of knowledge', as well as 'promotion and development of the study of Sanskrit' and 'to make provision for research', were all expressions which have been used disjunctively and not conjunctively with the words Vedic learning and practice.

96. The decision relied upon by the learned senior counsel for the appellant reported in *Hansoli Devi* (supra), para 9 also supports the above proposition of law. Para 9 of the said decision reads as under:

*"**9.** Before we embark upon an inquiry as to what would be the correct interpretation of Section 28-A, we think it appropriate to bear in mind certain basic principles of interpretation of a statute. The rule stated by Tindal, C.J. in Sussex Peerage case still holds the field. The aforesaid rule is to the effect: (ER p. 1057)*

> *"If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do, in such case, best declare the intention of the lawgiver."*

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute*……"*

97. The above said proposition of law laid down by this Court fully supports the claim of the appellant.

98. With this, when we come to the other submission of the learned counsel for the appellant relating to the challenge made to the proviso added to Section 4., the proviso which has been added is to the effect that no courses should be conducted and no centers should be established or run without the prior approval of the State Government. The contention of the learned counsel for the appellant before the Division Bench, as well as before us was that the creation of courses, as well as the centers are governed by the provisions of 1995 Act and such activities of the appellant University can at best be regulated only by the University Grants Commission, by virtue of the statutory prescription under Section 12 of the University Grants Commission Act, read along with Entry 66 of List-I of the

Constitution and that the State Legislature has no competence to deal with the said issue.

99. While dealing with the above contention, the Division Bench after making a detailed reference to various Entries commencing from Entries 63 to 66 of List-I, as well as Entry 25 of List-III and also Section 12 of the Universities Grants Commission Act, 1956 ultimately held that having regard to the inclusion of the appellant University in the list of Universities maintained by the Commission under Section 2(f) of the 1956 Act, as reflected in Annexure P-5, dated 24.08.1988, the existence of Ordinance 15, which came into being in accordance with law that once the University Grants Commission Act is in force, the running of the courses and determination thereof, has to be controlled by the University Grants Commission. The proviso stipulating that no course should be conducted and no centers should be established and run without the prior approval of the State Government. The restriction is so far as it related to conduct of courses is concerned, the same was beyond the Legislative competence of the State Legislature. So holding thus, the Division Bench declared that the proviso so far as it related to the aspect that no course should be conducted and run without the prior approval of the State, was ultra vires and beyond the Legislative competence of the State Legislature.

100. This Court in *Prof. Yashpal and another (supra)* held in paragraphs 28, 33 and 34 as under:

> *"**28.** Though incorporation of a university as a legislative head is a State subject (Entry 32 List II) but basically a university is an institution for higher education and research. Entry 66 of List I is coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. There can thus be a clash between the powers of the State and that of the Union. The interplay of various entries in this regard in the three lists of the*

Seventh Schedule and the real import of Entry 66 of List I have been examined in several decisions of this Court. In Gujarat University v. Krishna Ranganath Mudholkar a decision by a Constitution Bench rendered prior to the Forty-second Amendment when Entry 11 of List II was in existence, it was held that Items 63 to 66 of List I are carved out of the subject of education and in respect of these items the power to legislate is vested exclusively in Parliament. The use of the expression "subject to" in Item 11 of List II of the Seventh Schedule clearly indicates that the legislation in respect of excluded matters cannot be undertaken by the State Legislatures. In AIR para 23, the Court held as under: (SCR pp. 137-38)

> *"Power of the State to legislate in respect of education including universities must to the extent to which it is entrusted to the Union Parliament, whether such power is exercised or not, be deemed to be restricted. If a subject of legislation is covered by Items 63 to 66 even if it otherwise falls within the larger field of 'education including universities' power to legislate on that subject must lie with Parliament. … Item 11 of List II and Item 66 of List I must be harmoniously construed.* ***The two entries undoubtedly overlap: but to the extent of overlapping, the power conferred by Item 66 List I must prevail over the power of the State under Item 11 of List II.*** *It is manifest that the excluded heads deal primarily with education in institutions of national or special importance and institutions of higher education including research, sciences, technology and vocational training of labour."*

***

33. The consistent and settled view of this Court, therefore, is that in spite of incorporation of universities as a legislative hea

List, the whole gamut of the university which will include teaching, quality of education being imparted, curriculum, standard of examination and evaluation and also research activity being carried on will not come within the purview of the State Legislature on account of a specific entry on coordination and determination of standards in institutions for higher education or research and scientific and technical education being in the Union List for which Parliament alone is competent. *It is the responsibility of Parliament to ensure that proper standards are maintained in institutions for higher education or research throughout the country and also uniformity in standards is maintained.*

34. *In order to achieve the aforesaid purpose, Parliament has enacted the University Grants Commission Act. First para of the Statement of Objects and Reasons of the University Grants Commission Act, 1956 (for short "the UGC Act") is illustrative and consequently it is being reproduced below:*

"The Constitution of India vests Parliament with exclusive authority in regard to 'coordination and determination of standards in institutions for higher education or research and scientific and technical institutions'. It is obvious that neither coordination nor determination of standards is possible unless the Central Government has some voice in the determination of standards of teaching and examination in universities, both old and new. It is also necessary to ensure that the available resources are utilised to the best possible effect. The problem has become more acute recently on account of the tendency to multiply universities. The need for a properly constituted Commission for determining and allocating to universities funds made available by the Central Government has also become more urgent on this account." (Emphasis added)

101. In yet another decision, this Court has held in para 7 of the decision reported in *R. Chitralekha (supra)* as follows:

> *"7. …This and similar other passages indicate that if the law made by the State by virtue of entry 11 of List II of the Seventh Schedule to the Constitution makes impossible or difficult the exercise of the legisiative power of the Parliament under the entry "Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions" reserved to the Union, the State law may be bad. This cannot obviously be decided on speculative and hypothetical reasoning. If the impact of the State law providing for such standards on entry 66 of List I is so heavy or devastating as to wipe out or appreciably abridge the central field, it may be struck down. But that is a question of fact to be ascertained in each case….*

102. While considering the submission of the learned senior counsel for the appellant, it will be worthwhile to make a reference to Section 12 of the University Grants Commission Act, 1956 wherein while describing the functions of the University Grants Commission, it has been stipulated that it is the general duty of the Commission to take, in consultation with the Universities or other bodies concerned, all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities, and for the purpose of performing its functions under this Act, the Commission may hold certain enquiry and do certain other activities. In fact, the Division Bench while holding that conduct of courses come exclusively within the realm of control of the University Grants Commission, apparently relied upon the said provision.

103. In fact the Division Bench has made a specific reference to the expression used in the said Section while ultimately holding that it was within the e of

the University Grants Commission i.e., the running of the Courses. The Division Bench has held to the effect "we have no hesitation in our mind that once the University Grants Commission Act is in force, the running of the courses and determination thereof has to be controlled by the University Grants Commission". The said sets of expressions have been more or less borrowed from the expression used in Section 12 itself.

104. When we examine the ultimate conclusion of the Division Bench that such a control by the University Grants Commission will not extend to the running of the centers, we are of the considered view that what all may apply to conduct of courses, should equally apply to the running of centers as well. In this context, it will be worthwhile to make a further reference to the stipulation contained in Section 12 of the University Grants Commission Act, which makes the position clear. Under Section 12, the general duty of the Commission to take in consultation with the Universities or other bodies is concerned, is all such steps as it may think fit for the promotion and co-ordination of University education and for the determination and maintenance of standards of teaching, examination and research in Universities. It also further stipulates that such a decision should be taken by the University Grants Commission for the purpose of the Universities to perform its functions under the Act. The Division Bench itself has noted that the running of the courses and determination thereof, can be controlled only by the University Grants Commission by virtue of the operation of Section 12. If it is for the University Grants Commission to take a decision in consultation with the Universities, such steps as it thinks fit for the promotion and co-ordination of Universities education, then it will have to be held that, that it should include, apart from the course content, the manner in which education is imparted viz., the process of teaching, while at the same time ensuring the standard of such teaching is maintained by deciding as to whether such teaching process can be allowed to be imparted

in places other than the University campus viz., in the centers or other colleges.

105. In our considered opinion, Section 12 of the University Grants Commission Act, 1956 would encompass apart from determining the course contents with reference to which the standard of teaching and its maintenance is to be monitored by the University Grants Commission, would also include the infrastructure that may be made available, either in the University or in other campuses, such as the centers, in order to ensure that such standard of education, teaching and examination, as well as research are maintained without any fall in standrard. Therefore, while upholding the conclusion of the Division Bench that it is beyond the legislative competence of the State Legislature to stipulate any restriction, as regards the conduct of the courses by getting the approval of the State Government, in the same breath, such lack of competence would equally apply to the running of the centers as well.

106. In *Dr. Preeti Srivastava* (supra) while dealing with the scope of Entry 66 of List-I vis-à-vis Entry 25 of List-III, this Court considered on what basis the standard of education in an institution can be analyzed. In paragraph 36, it has been held as under:

> *"36….. Standards of education in an institution or college depend on various factors. Some of these are:*
>
> *(1) The caliber of the teaching staff; (2) A proper syllabus designed to achieve a high level of education in the given span of time; (3) The student-teacher ratio; (4) The ratio between the students and the hospital beds available to each student; (5) The caliber of the students admitted to the institution; (6) Equipment and laboratory facilities, or hospital facilities for training in the case of medical colleges; (7) Adequate accommodation for the college and the attached hospital; and (8) The standard of examinations held including the*

papers are set and examined and the clinical performance is judged."

107. The above statement of law on Entry 66 of List-I vis-à-vis Entry 25 of List-III throws much light on this issue. For instance, in the case of the appellant, while it has got its own infrastructure facilities for imparting education on various courses spelt out in Ordinance 15, which has opened up centers in various places falling within its jurisdiction viz. the State of Madhya Pradesh for imparting education on the very same courses specified in Ordinance 15. If we apply the principle spelt out in paragraph 36 of the above decision, where the standard for examining the standard on education of an University, the various factors culled out in the said paragraph can be held to be the factors to be considered. In the same line of reasoning, it will have to be held that the various centers created by the appellant University, would also fall as one of the items along with the eight items spelt out in the said paragraph.

108. In the light of the said reasoning also, it will have to be held that the running of centers by the appellant University would fall within the exclusive realm of Entry 66 of List – I, which would in turn be governed by Section 12 of the University Grants Commission Act and consequently the State Government to that extent should be held to lack the necessary legislative competence to meddle with such centers set up by the appellant University.

109. We therefore, hold that the entire proviso to Section 4(1) has to be held to be ultra-vires. The contention of the learned counsel for the appellant therefore, merits acceptance and the contention to the contrary made by the learned counsel for the State stands rejected.

110. It is also necessary to note, as well as mention that after the University was established for its initial establishment and for running the institution, according to the appellant, more

than Rs.12 crores were spent by way of an investment and that nearly Rs.60 crores have been spent for running the University and its various centers throughout the State of Madhya Pradesh. The recurring expenditure was stated to be Rs.11 crores. Therefore, when the appellant University has proceeded to establish its institution for the purpose of imparting education by making huge investments, a major part of which would have definitely come by way of fees collected from the students who had joined the institution aspiring for improving their educational career, in our considered opinion, it is the responsibility of the State to ensure that such high expectation of the students who joined the appellant university is not impaired and that for whatever expenses incurred by the students, appropriate returns should be provided to them by way of imparting education in the respective fields which, they choose to associate themselves by getting themselves admitted in the appellant University. Therefore, on this ground as well, it will have to be held that such expectations of the students, as well as their parents cannot be dealt with so very lightly by the State, while considering for any change to be brought about in the Constitution and functioning of the appellant University. It can therefore be validly held that such expectations of the students and their parents, as well as that of the appellant University, can validly be held to be a legitimate expectation and considering the challenge made to the amendment introduced on various grounds raised at the instance of the appellant, the legitimate expectation of the appellant University, as well as the student community, would also equally support the contentions of the appellant University, while challenging the amendments in particular the amendment introduced to Section 4(1), as well as the addition of a proviso to the said Section.

111. One other relevant factor which is also to be kept in mind is the establishment of the appellant University at the repeated persuasion of Maharshi Mahesh Yogi was definitely to provide full-fledged education on Vedas and the various intricate subjects, which are found in

practices, Ithihas, Puranas etc. In fact, there can be no two opinion that such an institution with such a laudable objective for imparting education in different fields based on the teachings in Vedas, was very rare and it is said that the appellant University is stated to be an unique University created and established by the founders of the said institution headed by Maharshi Mahesh Yogi. Therefore, when such a premium University, which is stated to be only one of its kind in the whole of the Country was successfully established based on the 1995 Act, in our considered opinion, such a well established institution should be allowed to survive by enabling the said University to conduct courses as has been planned by it and introduced under Ordinance 15 and thereby, make the appellant University a viable one. Such an approach alone, in our considered view, ensure the successful existence and continued running of the University in the further years and thereby, benefit very many aspirants from among the younger generation who wish to learn more and more about very many subjects by understanding such subjects based on the teachings that are found and established in Vedic learnings, its practices, Ithihas and Puranas etc. Therefore, on this ground as well, in our considered opinion, any attempt made from any quarters, which would disrupt the running of the appellant University, will only amount to interfering with its various Constitutional rights and fundamental rights enshrined in the Constitution. Therefore, when such interference is brought to the notice of this Court, the Court has to necessarily come to the rescue of the appellant University by saving it from any such onslaught being made on its continued existence. We, therefore, find force in the submission of the learned senior counsel for the appellant while attacking the amended Section 4(1) and its proviso, by which the appellant University was deprived of its valuable right to hold very many programmes in the conduct of the course enumerated in its Ordinance 15, which consequently resulted in violation of its Constitutional, as well as Fundamental Rights in the running of its educational institutions.

112. With this, we come to the last part of the submission made on behalf of the appellant, which related to the amendment to Section 9(2) of the 1995 Act. Under the un-amended provision, after the first Chancellor viz., Maharshi Mahesh Yogi, the Board of Management was empowered to appoint the Chancellor from among the persons of eminence and renowned scholar of Vedic education who can hold office for a term of five years and who would be eligible for reappointment. Under the amended Section 9(2), it was stipulated that after the first Chancellor, the Board of Management should prepare and submit a panel of three persons to the State Government and out of the panel, one person should be appointed as Chancellor by the Board of Management, after obtaining the approval of the State Government. As far as the period of holding office was concerned, there was no change in its terms. The Division Bench while considering the said amendment introduced under Act 5 of 2000, has held that even after the amendment, the Management had the power of recommendation and they can recommend a person of eminence and renowned scholar of Vedic education and even if the ultimate appointment is to be made with the approval of the State Government, since any such appointment can be only from the panel prepared by the Board of management, such a stipulation contained in the amendment does not in any way impinge upon any right, much less the Constitutional Right or Fundamental Right of the appellant University.

113. Having bestowed our serious consideration to the above conclusion of the Division Bench, we do not find anything wrong with the said conclusion. We also hold that the said provision does not in any way offend Article 14 of the Constitution, nor does it affect the autonomy of the appellant University. Apart from the above challenges, no other submission relating to the other amended provisions were seriously argued before us.

114. In the light of our above conclusion, this appeal is partly allowed. We hold that the amended Section 4(1) under Act 5 of 2000 inclusive of the introduction of proviso to the said Section is ultra-vires of the Constitution and the same is liable to be set aside. In other respects, the judgment of the Division Bench stands confirmed. The application for intervention considered, no merits, the same is dismissed.

Kalpana K. Tripathy Appeal partly allowed.

P. SUDHAKAR RAO & ORS.
v.
U. GOVINDA RAO & ORS.
(Civil Appeal Nos 1712-1713 of 2002)

JULY 3, 2013

[R.M. LODHA, MADAN B. LOKUR AND KURIAN JOSEPH JJ.]

Service Law – Seniority – Weightage of service for purposes of seniority – Andhra Pradesh Engineering Service – Grant of retrospective seniority benefits to Supervisors on their appointment as Junior Engineers – Challenged – Held: Retrospective operation can be given to statutory rules – But, retroactivity must still meet the test of Arts.14 and 16 of the Constitution and must not adversely trench upon the entitlement of seniority of others – Retrospective seniority cannot be given to an employee from a date when he was not even born in the cadre – So also, seniority cannot be given with retrospective effect so as to adversely affect others – Injustice ought not to be done to one set of employees in order to do justice to another set – On facts, grant of retrospective seniority to Supervisors adversely impacted on the promotion chances of existing Junior Engineers by bringing them down in seniority – This was impermissible – To pass the scrutiny of Art.14 of the Constitution, seniority of Supervisors to be reckoned only from the date on which they satisfied all the real and objective procedural requirements of the Service Rules and the law laid down by Supreme Court – This did not happen in the present appeals creating a situation of unreasonableness and unfairness – Some of the Supervisors were given retrospective seniority on the date when they were not even eligible for appointment as Junior Engineers – This was impermissible, more particularly when there was no indication of the vacancy position, that is, whether

the Supervisors could be adjusted in the grade of Junior Engineers from the date on which they were given notional retrospective seniority – Grant of retrospective seniority to Supervisors on their appointment as Junior Engineers violated Art.14 of the Constitution – Weightage of service given to the Supervisors could be taken advantage of only for the purpose of eligibility for promotion – It could not be utilized for obtaining retrospective seniority over and above the existing Junior Engineers – Constitution of India, 1950 – Arts. 14 and 16.

Service Law – Seniority – Weightage of service for purposes of promotion and weightage of service for purposes of seniority in a grade – Distinction between.

Engineers in the State of Andhra Pradesh were either in the Andhra Pradesh Engineering Subordinate Service or in the Andhra Pradesh Engineering Service. The Andhra Pradesh Engineering Subordinate Service consisted, *inter alia*, of Junior Engineers who possessed a degree in engineering and Supervisors who possessed a diploma in engineering. A Junior Engineer or a Supervisor was eligible for appointment by transfer as an Assistant Engineer in the Andhra Pradesh Engineering Service as it existed. This continued to be so till the Special Rules for the Andhra Pradesh Engineering Service were promulgated by issuance of G.O.Ms. No. 285 PWD dated 22.2.1967.

With effect from 22.2.1967, the Andhra Pradesh Engineering Service consisted of five categories of officers, the juniormost being Category 5 - Assistant Engineer. Later, by issuance of G.O.Ms No. 1149 dated 5.11.1973 a sixth category of officers was included, namely, Junior Engineer with effect from 28.2.1972. The inclusion of the post of Junior Engineer in the Andhra Pradesh Engineering Service resulted in its consequent exclusion from the Andhra Pradesh Engineering Subordinate Service. The effect of this was that a separate

cadre of Junior Engineers, distinct from erstwhile Junior Engineers/Supervisors was formed. This meant that despite having an engineering degree, Supervisors were not eligible for appointment as Junior Engineers on transfer. However, the mode of recruitment for the next higher post of Assistant Engineer was by way of direct recruitment, by promotion of a Junior Engineer having not less than 5 years service in the grade and by transfer of a Supervisor having a minimum service of 10 years in the grade. To remedy this situation, in the case of Supervisors, who had obtained an engineering degree prior to 28.2.1972, the State Government issued G.O.Ms No.893 dated 15.6.1972 inserting a note being Note 2 under Rule 4 of the Andhra Pradesh Engineering Service Rules. Through this Note, a Supervisor was given a weightage of 50% of service rendered by him on his acquiring an engineering degree while in service. The weightage was available as if the service had been rendered by the Supervisor in the post of Junior Engineer. The weightage was, therefore, available for inclusion for appointment to - the post of Assistant Engineer.

Apparently to overcome the anomaly that there was no provision for benefit of weightage relating to those Supervisors who had obtained an engineering degree post 28.2.1972, the State Government issued G.O.Ms No.451 dated 10.6.1976 containing a decision that Supervisors who have acquired a graduate qualification while in service should be appointed temporarily as Junior Engineers (prospectively) with immediate effect. This decision was implemented. The implementation of G.O.Ms No.451 resulted in consequential orders relating to weightage of service rendered and the *inter se* seniority of Supervisors vis-à-vis Junior Engineers as issued through G.O.Ms No.559 dated 18.7.1977.

As mentioned in G.O.Ms No. 559 dated 18.7.1977, necessary amendments in the Sp e

Andhra Pradesh Engineering Service were carried out by issuance on 15.2.1983 of the impugned G.O.Ms No. 54 with effect from 28.2.1972. This G.O.Ms (i) had retrospective operation; (ii) statutorily regularized recruitment by transfer "of Supervisors of the Andhra Pradesh Engineering Subordinate Service who had acquired the B.E. or A.M.I.E. (India) qualification and who were approved probationers in that category." and (iii) inserted Note -3 below Rule 4 of the Andhra Pradesh Engineering Service Rules which dealt with issues of weightage given to the service rendered by a Supervisor and his/her entitlement to seniority.

The Tribunal upheld the validity of the impugned G.O.Ms No. 54 dated 15.2.1983 holding that retrospective operation could be given to the G.O.Ms and there was no illegality in this regard; and further that the G.O.Ms merely gave statutory recognition to a situation existing through the executive order contained in G.O.Ms No. 559 dated 18.7.1977. The Junior Engineers then came up before the High Court. The High Court held that the right of seniority of the Junior Engineers could not be taken away by applying the impugned G.O.Ms retrospectively; and that weightage of past service can be given to the Supervisors only from the date of appointment and that the impugned rule violated Article 14 and 16 of the Constitution insofar as it took away the vested right of seniority of Junior Engineers vis-à-vis Supervisors. Hence the present appeals by the Supervisors.

Answering the Reference and dismissing the appeals, the Court

HELD:1. There is a clear distinction between weightage given for years of service rendered by an employee for purposes of promotion and weightage given for years of service rendered by an employee for purposes of seniority in a grade. While the first concerns eligibility for promotion to a higher post, the other

concerns seniority for being considered for promotion to a higher post. [Para 1] [547-E]

P. Sudhakar Rao v. U. Govinda Rao **(2007) 12 SCC 148;** *Devi Prasad* v. *Govt. of A.P.* **[1980 (Supp) SCC 206];** *State of A.P.* v. *K.S. Muralidhar* **[(1992) 2 SCC 241;** *G.S. Venkat Reddy* v. *Govt. of A.P.***[1993 Supp (3) SCC 425];** *K. Narayanan v. State of Karnataka* **[1994 Supp (1) SCC 44];** *State of Gujarat* v. *C.G. Desai* **[(1974) 1 SCC 188];** *B.S. Yadav v. State of Haryana* **1980 Supp SCC 524: 1981 SCR 1024;** *U. Govinda Rao v. Government of Andhra Pradesh* **2002 (1) ALD 347 = 2002 (1) ALT 713;** *K.C. Arora v. State of Haryana* **(1984) 3 SCC 281: 1984 (3) SCR 623;** *P.D. Agarwal v. State of U.P.* **(1987) 3 SCC 622: 1987 (3) SCR 427 and** *K.V. Subba Rao v. Government of A.P.* **(1988) 2 SCC 201: 1988 (2) SCR 1118 – referred to.**

2.1. There is no doubt that retrospective operation can be given to statutory rules such as the Andhra Pradesh Engineering Service Rules. But, the retroactivity must still meet the test of Article 14 and Article 16 of the Constitution and must not adversely trench upon the entitlement of seniority of others. [Para 57] [569-D]

2.2. Retrospective seniority cannot be given to an employee from a date when he was not even born in the cadre. So also, seniority cannot be given with retrospective effect so as to adversely affect others. Seniority amongst members of the same grade must be counted from the date of their initial entry into the grade. When a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in his/her quota and not from any anterior date of promotion or subsequent date of confirmation. Injustice ought not to be done to one set of employees in order to do justice to another set. However, the mere existence of a vacancy is not enough to enable an employee to claim seniority. The date of actual appointment in accordance with the [illegible]

becomes important in such a case. [Paras 58, 59 and 60] [569-F; 570-E-F; 571-D]

State of Bihar v. Akhouri Sachindra Nath **1991 Supp (1) SCC 334: 1991 (2) SCR 410;** *Keshav Chandra Joshi v. Union of India* **1992 Supp (1) SCC 272: 1990 (2) Suppl. SCR 573;** *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.* **(2006) 10 SCC 346: 2006 (6) Suppl. SCR 609;** *State of Uttaranchal v. Dinesh Kumar Sharma* **(2007) 1 SCC 683: 2006 (10) Suppl. SCR 1;** *Nani Sha v. State of Arunachal Pradesh* **(2007) 15 SCC 406: 2007 (6) SCR 1027;** *Pawan Pratap Singh v. Reevan Singh* **(2011) 3 SCC 267; 2011 (2) SCR 831 and** *Direct Recruit Class II Engg. Officers' Assn.* v. *State of Maharashtra, **(1990) 2 SCC 715:*: 1990 (2) SCR 900 – relied on.**

Asis Kumar Samanta v. State of West Bengal **(2007) 5 SCC 800: 2007 (8) SCR 329 – referred to.**

3.1. The facts of the present appeals show that at least some of the Supervisors were given retrospective seniority on the date when they were not even eligible for appointment as Junior Engineers. This is impermissible. In addition as pointed out by the High Court, there is no indication of the vacancy position, that is, whether the Supervisors could be adjusted in the grade of Junior Engineers from the date on which they were given notional retrospective seniority. There is also no indication whether the quota of vacancies for Supervisors was adhered to as on the date on which they were given notional retrospective seniority. This is an - important factor to be considered. Finally, it is quite clear that the grant of retrospective seniority to Supervisors has adversely impacted on the promotion chances of Junior Engineers by bringing them down in seniority. This too is impermissible. [Para 63] [574-F-H; 575-A]

3.2. To pass the scrutiny of Article 14 of the Constitution, the seniority of Supervisors should be

reckoned only from the date on which they satisfied all the real and objective procedural requirements of the Andhra Pradesh Engineering Service Rules and the law laid down by this Court. This has not happened in the present appeals creating a situation of unreasonableness and unfairness. [Para 64] [575-B-C]

3.3. There is no occasion for interfering with the view taken by the High Court to the effect that the grant of retrospective seniority to Supervisors on their appointment as Junior Engineers violates Article 14 of the Constitution. The weightage of service given to the Supervisors can be taken advantage of only for the purpose of eligibility for promotion to the post of Assistant Engineer. The weightage cannot be utilized for obtaining retrospective seniority over and above the existing Junior Engineers. [Para 66] [575-E-F]

Case Law Reference:

(2007) 12 SCC 148	referred to	Para 2
1980 (Supp) SCC 206]	referred to	Para 2
(1992) 2 SCC 241	referred to	Para 2
1993 Supp (3) SCC 425	referred to	Para 2
1994 Supp (1) SCC 44	referred to	Para 2
(1974) 1 SCC 188]	referred to	Para 2
1981 SCR 1024	referred to	Para 20
2002 (1) ALT 713	referred to	Para 24
1984 (3) SCR 623	referred to	Para 27
1987 (3) SCR 427	referred to	Para 27
1988 (2) SCR 1118	referred to	Para 27
1991 (2) SCR 410	relied on	Para 58
1990 (2) Suppl. SCR 573	relied on	Para 59
2006 (6) Suppl. SCR 609	relied on	

2006 (10) Suppl. SCR 1	**relied on**	**Para 60**
2007 (6) SCR 1027	**relied on**	**Para 60**
2011 (2) SCR 831	**relied on**	**Para 61**
1990 (2) SCR 900	**relied on**	**Para 62**
2007 (8) SCR 329	**referred to**	**Para 67**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1712-1713 of 2002.

From the Judgment & Order dated 23.11.2001 of the High Court of Andhra Pradesh at Hyderabad in Writ Petition Nos. 5922 & 6360 of 1999.

H.S. Gururaja Rao, Koka Raghav Rao, Y. Raja Gopala Rao, Y. Vismai Rao, Hitendera Nath Rath, G.N. Reddy, Debojit Bonkakati, J.R. Manohar Rao, Praveen Kumar Pandey, R.S. Krishnan, Aditya Kumar, D. Mahesh Babu for the appearing parties.

The Judgment of the Court was delivered by

MADAN B. LOKUR, J. 1. There is a clear distinction between weightage given for years of service rendered by an employee for purposes of promotion and weightage given for years of service rendered by an employee for purposes of seniority in a grade. While the first concerns eligibility for promotion to a higher post, the other concerns seniority for being considered for promotion to a higher post.

2. To consider the validity of weightage for seniority purposes and its impact on the seniority of other employees, the following question has been referred to a larger Bench in these appeals. The reference order is reported as *P. Sudhakar Rao v. U. Govinda Rao,* (2007) 12 SCC 148.

> "Whether the decision given in *Devi Prasad v. Govt. of A.P.* [1980 (Supp) SCC 206] and *State of A.P. v. K.S. Muralidhar* [(1992) 2 SCC 241] laid down the correct law or the decision given in *G.S. Venkat Reddy v. Govt. of A.P.* [1993 Supp (3) SCC 425], *K. Narayanan v. State of Karnataka* [1994 Supp (1) SCC 44] and *State of Gujarat v. C.G. Desai* [(1974) 1 SCC 188] laid down the correct proposition of law?"

3. It appears to us that this question ought not to be answered in the narrow confines in which it is framed, nor should it be answered on the basis of the limited submission noted in the reference order relating to "the validity of the rule by which retrospective seniority benefit was given to the Junior Engineers by G.O.Ms No. 54 Irrigation (Service IV-2) dated 15.2.1983." The question has larger implications and we propose to answer it keeping the broad canvas in mind. We also propose, in this light, to answer the question on merits of these appeals, namely, whether, on appointment as a Junior Engineer, weightage of service given to a Supervisor can be taken into account for fixing his seniority as a Junior Engineer, thereby effectively refixing the seniority with retrospective effect.

Factual background:

4. Initially, the State of Andhra Pradesh had a single engineering department. This was subsequently broken-up into several departments but we are not concerned with that. What we are concerned with is that at all material times, engineers in Andhra Pradesh were either in the Andhra Pradesh Engineering Subordinate Service or in the Andhra Pradesh Engineering Service.

5. The Andhra Pradesh Engineering Subordinate Service consisted, *inter alia*, of Junior Engineers who possessed a degree in engineering and Supervisors who possessed a diploma in engineering. Upon recruitment, both categories of engineers were placed in the same pay scale but Junior Engineers, by virtue of a better academic qualification, had a higher starting pay while Supervisors were placed in the minimum of the pay scale. Functionally, both had more or less similar duties to perform. A Supervisor could, while in service, obtain an engineering degree and if he did so, he would be designated as a Junior Engineer and gi[illegible]e

same pay scale.

6. A Junior Engineer or a Supervisor was eligible for appointment by transfer as an Assistant Engineer in the Andhra Pradesh Engineering Service as it existed. This continued to be so till the Special Rules for the Andhra Pradesh Engineering Service were promulgated by issuance of G.O.Ms. No. 285 PWD dated 22.2.1967. -

7. With effect from 22.2.1967 the Andhra Pradesh Engineering Service consisted of five categories of officers, the juniormost being Category 5 - Assistant Engineer. As mentioned above, a Junior Engineer or a Supervisor was eligible for appointment by transfer as an Assistant Engineer in the Andhra Pradesh Engineering Service. The mode of recruitment was:

(a) By direct recruitment (or)

(b) By recruitment by transfer of

(i) Junior Engineers and Supervisors of the Andhra Pradesh Engineering Subordinate Service;

(ii) Draughtsman, Special Grade and Draughtsman Grade-I of the Andhra Pradesh Engineering Subordinate Service.

8. Later, by issuance of G.O.Ms No. 1149 dated 5.11.1973 a sixth category of officers was included in the Andhra Pradesh Engineering Service, namely, Junior Engineer with effect from 28.2.1972. This was declared a gazetted post. The inclusion of the post of Junior Engineer in the Andhra Pradesh Engineering Service resulted in its consequent exclusion from the Andhra Pradesh Engineering Subordinate Service. The effect of this was that a separate cadre of Junior Engineers, distinct from erstwhile Junior Engineers/Supervisors was formed.

9. The mode of recruitment for Junior Engineers in the Andhra Pradesh Engineering Service was now by direct recruitment. This meant that despite having an engineering degree, Supervisors were not eligible for appointment as Junior Engineers on transfer. However, the mode of recruitment for the next higher post of Assistant Engineer was by way of direct recruitment, by promotion of a Junior Engineer having not less than 5 years service in the grade and by transfer of a Supervisor having a minimum service of 10 years in the grade.

10. To remedy this situation in the case of Supervisors who had obtained an engineering degree prior to 28.2.1972 the State Government issued G.O.Ms No. 893 dated 15.6.1972 inserting a note being Note 2 under Rule 4 of the Andhra Pradesh Engineering Service Rules. Through this Note, a Supervisor was given a weightage of 50% of service rendered by him on his acquiring an engineering degree while in service. The weightage was subject to a maximum period of 4 years service rendered prior to acquisition of the degree. The weightage was available as if the service had been rendered by the Supervisor in the post of Junior Engineer. The weightage was, therefore, available for inclusion for appointment to the post of Assistant Engineer. However, the weightage was subject to certain conditions, one of them being that it was available to only those Supervisors who had obtained a degree prior to 28.2.1972.

11. Note 2 below Rule 4 (as inserted) in the Andhra Pradesh Engineering Service Rules reads as follows:

> "Supervisors who acquire, while in service, B.E., A.M.I.E. (India) qualification shall be entitled to count 50% of their service rendered as Supervisor prior to acquisition of such qualification, subject to a maximum limit of 4 years as if it had been in the post of Junior Engineers for the purpose of consideration for appointment by transfer to the post of Assistant Engineer from Junior Engineer and subject to the following conditions:

(1) They should render a minimum service of one year after acquisition of B.E. or A.M.I.E. (India) qualification:

(2) They should be considered to have been placed below the list of the Junior Engineers of the year after giving weightage as indicated above.

(3) They should put in a total service of 5 years as Junior Engineer inclusive of the period given as weightage.

(4) The benefit of weightage given above shall be given effect for the purpose of all selections that are made by Public Service Commission pertaining to the years from 2nd January, 1968 onwards till 28th February, 1972."

[Note: Clause (4) was subsequently amended but we are not concerned with the amendment].

12. The benefit of weightage granted to Supervisors by G.O.Ms No. 893 dated 15.6.1972 was challenged as being arbitrary, unreasonable and violating Article 14 of the Constitution. This Court rejected the challenge in *Devi Prasad* and held that the benefit of weightage was a matter of government policy which needed no interference since it was not unreasonable or arbitrary.

13. In what appears to be an oblique reference to loss of promotional chances that Junior Engineers may have to suffer due to weightage being given to Supervisors this Court observed as follows:

"Perhaps there is force in the submission of Dr. Chitale that the Junior Engineers have to face adversity in the matter of promotions. All that we can do is to emphasise that this being a matter of government policy, the State will receive any representation that may be made for change

of policy from the Junior Engineers and consider whether any such change in the policy is justified in the circumstances of the case. In so doing, there is no doubt that the other affected groups will also be heard because administrative fair play is basic to satisfaction of government servants as a class. We say no more nor do we indicate that in our view there is any hardship. We only mean to say that government will remove hardships if by modification of policy it can achieve this result. Undoubtedly, in this process, both sides will have to be heard not as a rule of law but as a part of administrative fair play."

14. As mentioned above, the benefit of weightage was available to only those Supervisors who had obtained an engineering degree before 28.2.1972. There was no provision relating to those who had obtained a degree post 28.2.1972.

15. Apparently to overcome this anomaly, and as a result of representations made, the State Government issued G.O.Ms No. 451 dated 10.6.1976 containing a decision that Supervisors who have acquired a graduate qualification while in service should be appointed temporarily as Junior Engineers (prospectively) with immediate effect. This decision was implemented.

16. The implementation of G.O.Ms No. 451 resulted in consequential orders relating to weightage of service rendered and the *inter se* seniority of Supervisors vis-à-vis Junior Engineers. The consequential orders were issued through G.O.Ms No. 559 dated 18.7.1977. These orders provided as follows:

"2. Accordingly, matters relating to weightage, seniority, etc., have been examined by the government and the following orders are issued:—

(*i*) Supervisors who acquire n

may be appointed as Junior Engineers on or after February 28, 1972, subject to the availability of vacancies in the cadre of Junior Engineers.

They will not be entitled for appointment as Junior Engineers automatically from the date of acquisition of degree qualification;

(*ii*) A Supervisor, who is appointed as Junior Engineer, shall be entitled to count one-third of the service rendered by him as Supervisor, before his appointment as Junior Engineer, subject to a maximum of four years, for the purpose of computing the service as Junior Engineer, which will render him eligible for consideration for promotion as Assistant Engineer.

(*iii*) The seniority of the Supervisors, who are appointed as Junior Engineers, shall be fixed with reference to the notional date arrived at after giving weightage of service;

(*iv*) A Supervisor, who is appointed as Junior Engineer, shall put in a minimum service of one year as Junior Engineer to become eligible for promotion as Assistant Engineer;

(*v*) No Supervisor shall ordinarily be eligible for appointment as Junior Engineer unless he has not in a minimum service of three years as Supervisors. A Supervisor with less than three years of service, who is appointed as Junior Engineer for any special reason, shall not be entitled to any weightage for his past service.

3. Necessary amendment to the Special Rules for the Andhra Pradesh Engineering Service will be issued separately……."

17. The interpretation of G.O.Ms No. 559 dated 18.7.1977 came up for consideration before this Court (through the State Administrative Tribunal) in *Muralidhar*. This Court dealt with the

issue of seniority and concluded as follows:

"(*i*) The weightage of four years in respect of upgraded Junior Engineers as provided in G.O.Ms. No. 559 has to be reckoned from the date of appointment and not the date of their acquiring the degree qualification;

(*ii*) On the basis of that notional date, their inter se seniority has to be fixed;

(*iii*) The regularisation of the degree holders Junior Engineers who passed the SQT by giving retrospective effect cannot be held to be illegal, and their seniority among themselves shall be subject to the order of ranking given by the Public Service Commission on the basis of the SQT;

(*iv*) The government shall prepare a common seniority list of the degree holders Junior Engineers and the upgraded Junior Engineers on the above lines and that list shall be the basis for all the subsequent promotions. Promotions, if any, already given shall be reviewed and readjusted in accordance with the said seniority list; and

(*v*) The approval of the Public Service Commission in respect of these appointments and their seniority thus fixed need not be sought at this distance of time."

Impugned G.O.Ms No. 54 dated 15.2.1983:

18. As mentioned in G.O.Ms No. 559 dated 18.7.1977 necessary amendments in the Special Rules for the Andhra Pradesh Engineering Service were carried out by issuance on 15.2.1983 of the impugned G.O.Ms No. 54 with effect from 28.2.1972. This G.O.Ms is significant for three reasons: (i) it had retrospective operation; (ii) it statutorily regularized recruitment by transfer "of Supervisors of the Andhra Pradesh Engineering Subordinate Service who have acquired the B.E. or A.M.I.E. (India) qualification and

probationers in that category." and (iii) it inserted Note 3 below Rule 4 of the Andhra Pradesh Engineering Service Rules. This Note dealt with issues of weightage given to the service rendered by a Supervisor and his/her entitlement to seniority. The Note reads as follows:

> "(3) A Supervisor who is appointed by transfer as Junior Engineer on or after 28.2.1972 shall be entitled to count l/3rd of the service rendered as Supervisor before appointment as Junior Engineer subject to a maximum of 4 years weightage for the purpose of computing the service as Junior Engineer, which will render eligible for consideration for promotion as Assistant Engineer, and subject to the following conditions:-
>
> (i) The seniority of a Supervisor, who is appointed as Junior Engineer shall be fixed in the category of Junior Engineers with reference to the notional date arrived at after giving weightage of service aforesaid;
>
> (ii) A Supervisor who is appointed as Junior Engineer shall put in a minimum service of one year on duty as Junior Engineer, after such appointment, and a total service of five years as Junior Engineer, inclusive of the period given as weightage to become eligible for promotion as Assistant Engineer;
>
> (iii) No Supervisor shall ordinarily be eligible for appointment as Junior Engineer, unless he has put in a minimum service of three years as Supervisor;
>
> (iv) A Supervisor with less than three years of service, who is appointed as Junior Engineer for any special reasons, shall not be entitled to any weightage of his past service as Supervisor."

19. Aggrieved by the issuance of G.O.Ms No. 54 dated 15.2.1983 petitions were filed by aggrieved Junior Engineers in the State Administrative Tribunal questioning its validity. The

Tribunal rendered its decision, which was then challenged in this Court. This Court remanded the matter for fresh consideration by the State Administrative Tribunal which then upheld the validity of the G.O.Ms.

Decision of the Tribunal:

20. In its decision regarding retrospective operation given to the G.O.Ms the Tribunal held, relying upon a Constitution Bench decision in *B.S. Yadav v. State of Haryana,* 1980 Supp SCC 524 that retrospective operation could be given to the G.O.Ms and that there was no illegality in this regard. It was further held that the impugned G.O.Ms merely gave statutory recognition to a situation existing through the executive order contained in G.O.Ms No. 559 dated 18.7.1977.

21. The Tribunal also upheld the grant of weightage given to Supervisors who obtained a graduate degree. For arriving at this conclusion, the Tribunal referred to *Devi Prasad* which had found the benefit of weightage to be neither arbitrary nor unreasonable. A reference was also made to *Muralidhar* in this regard. The Tribunal rejected the contention that because the post of Junior Engineer had become a gazetted post in a different cadre, a Supervisor who subsequently became a Junior Engineer was not entitled to weightage. It was held that Supervisors and Junior Engineers continued to perform substantially the same functions and hold the same responsibilities. Therefore, the mere gazetting of a post and change of cadre would not make any material difference to the principle laid down by this Court.

22. On the issue of impacting and disturbing the seniority of directly recruited Junior Engineers by Supervisors, the Tribunal initially dealt with the issue rather cursorily and held that the seniority would get altered and that there would be a certain amount of fluidity in the seniority of Junior Engineers but that was no reason to strike down G.O.Ms. However, later in its judgment, the Tribunal explained that w g

being given to Supervisors and it is this that caused the fluidity in the seniority list of Junior Engineers.

23. The Tribunal then upheld the validity of the impugned G.O.Ms and disposed of the petitions pending before it by recording the following observations:

> "(1) The Junior Engineers on acquisition of Degree qualification in Engineering would be entitled for weightage of those appointments are made or deemed to have been made under the Rules providing for such appointments and weightage with reference to their dates of appointment (not with reference to acquisition of degree qualification) against a vacancy in the cadre of Junior Engineer.
>
> (2) The Government is advised to consider fixing a ratio between direct recruits and those appointees by appointment by transfer to the post of Junior Engineer (now Assistant Executive Engineer) to the post of Assistant Engineer (now Deputy Executive Engineer)".

Decision of the High Court:

24. Feeling aggrieved by the decision rendered by the Tribunal, Junior Engineers challenged it in the Andhra Pradesh High Court. However, the petitioners in the High Court did not challenge the validity of the entire G.O.Ms No. 54 dated 15.2.1983 but contended that "the weightage rule should be confined to the eligibility and the same should not be considered for the purpose of seniority." The decision of the High Court is reported as *U. Govinda Rao v. Government of Andhra Pradesh,* 2002 (1) ALD 347 = 2002 (1) ALT 713.

25. While adverting to the impact of the benefit of weightage on the seniority of Junior Engineers, the High Court drew attention to the averment in one of the cases wherein a chart was drawn of the notional seniority given to Supervisors. This chart is as follows:

Sl. No.	Name of the respondent	Year of passing Degree	Appointment asAssistant Executive Engineer (Supervisor) by transfer	Notional date as Assistant Executive Executive Engineer (Supervisor)
1.	Md.Sirajuddin	1986	7.5.1986	6.5.1982
2.	B. Seva	1986	6.5.1986	6.5.1982
3.	Ms. Zinullabuddin	1986	31.7.1986	31.7.1982
4.	G.Uppalaiah V.T.	1987	4.10.1987	19.11.1983
5.	Venkateshwarlu	1987	4.10.1987	26.2.1984
6.	K. Bhaskar	1988	8.9.1988	2.6.1985
7.	P. Maheedar Raj	1988	3.3.1989	30.10.1985
8.	A. Gopal	1988	31.3.1989	26.10.1985

26. The High Court noted that: (i) the notional date of seniority of Supervisors was given without any reference to any existing vacancy; (ii) seniority was given to the Supervisors from a date when they did not even possess the qualification to hold the post of Junior Engineer, and (iii) regularly appointed Junior Engineers were being subjected to a loss of seniority at the instance of those Supervisors who had been regularized subsequently.

27. The High Court then relied upon *B.S. Yadav*, *K.C. Arora v. State of Haryana,* (1984) 3 SCC 281, *P.D. Agarwal v. State of U.P.,* (1987) 3 SCC 622 and *K.V. Subba Rao v. Government of A.P.,* (1988) 2 SCC 201 to conclude that the civil right of seniority of the Junior Engine n

away by applying the impugned G.O.Ms retrospectively. Relying upon *Devi Prasad* and *Muralidhar* it was held that weightage of past service can be given to the Supervisors only from the date of appointment.

28. In conclusion, it was held that the impugned rule violates Article 14 and 16 of the Constitution in so far as it takes away the vested right of seniority of Junior Engineers vis-à-vis Supervisors.

Discussion on the judgments:

29. Feeling aggrieved, Supervisors before the High Court preferred these appeals. Since the issue of weightage of service for eligibility purposes was decided in their favour, the principal grievance (if not the only grievance) raised by them, as noted by the Bench that earlier heard these appeals is "the validity of the rule by which retrospective seniority benefit was given to the Junior Engineers by G.O.Ms No. 54 Irrigation (Service IV-2) dated 15.2.1983." Indeed, before us also, the only contention related to the issue of striking down the benefit of retrospective seniority given to the Supervisors.

30. The question referred to the larger Bench arises in this context, but as noted above, it has wider implications.

31. **Desai** is the earliest case mentioned in the reference order and this concerned the [Gujarat] Engineering Service Rules, 1960. This case dealt with two classes of employees: (a) those who had rendered service as officiating or temporary Deputy Engineers prior to their direct recruitment as Deputy Engineers, and (b) those promotee Deputy Engineers who had rendered service as officiating or temporary Deputy Engineers prior to their promotion.

32. The case of the category (a) employees was that their 'pre direct recruitment' services should be counted as 'eligibility service' for purposes of their next promotion as Executive Engineers since the 'pre-promotion' services of category (b)

was being so counted. In other words, without the word 'weightage' having actually been used, the category (a) employees wanted some weightage to be given to their 'pre direct recruitment' services. This Court found no basis for such an interpretation of the relevant recruitment rules. This Court also found that the directly recruited Deputy Engineers were not discriminated against vis-à-vis promotee Deputy Engineers in this regard since they fell in two distinct groups or classes having a rational basis. Consequently, there was no violation of Article 14 or Article 16 of the Constitution.

33. The following two paragraphs from the judgment of this Court give the essence of the view of this Court:

> "If a person, like any of the respondents, to avoid the long tortuous wait leaves his position in the "never-ending" queue of temporary/ officiating Deputy Engineers etc. looking for promotion, and takes a short cut through the direct channel, to Class II Service, he gives up once for all, the advantages and disadvantages that go with the channel of promotion and accepts all the handicaps and benefits which attach to the group of direct recruits. He cannot, after his direct recruitment claim the benefit of his pre-selection service and thus have the best of both the worlds. It is well-settled that so long as the classification is reasonable and the persons falling in the same class are treated alike, there can be no question of violation of the constitutional guarantee of equal treatment.
>
> "As pointed out by this Court in *Ganga Ram case* [(1970 1 SCC 377] in applying the wide language of Articles 14 and 16 to concrete cases, doctrinaire approach should be avoided and the matter considered in a practical way. If the claim of the respondents to the counting of their pre-selection service is conceded, it will create serious complications in running the administration; it will result in inequality of treatment rather than in removing it. If the pre-selection service as officiating Dep[illegible]ct

recruits having such service, is taken into account for the purpose of promotion, it would create two classes amongst, the same group and result in discrimination against those direct recruits who had no such pre-selection service to their credit."

34. The next decision in line is *Devi Prasad* which relates to the Andhra Pradesh Engineering Subordinate Service Rules and is, therefore, important for our purposes. This decision came to be rendered as a result of the issuance of G.O.Ms. No. 893 dated 15.6.1972 relating to Supervisors in the Andhra Pradesh Engineering Subordinate Service. By the said G.O.Ms. a note being Note 2 was inserted under Rule 4 of the Andhra Pradesh Engineering Service Rules.

35. Thereby a Supervisor working as a Junior Engineer was given a weightage of 50% of service rendered by him. This was treated as if the said Supervisor/Junior Engineer had rendered service in the post of Junior Engineer for the purpose of consideration for appointment to the post of Assistant Engineer from Junior Engineer. This G.O.Ms was challenged as being arbitrary, unreasonable and in violation of Article 14 of the Constitution.

36. As is evident, the effect of weightage was limited to eligibility for appointment to the post of Assistant Engineer from Junior Engineer – it had no reference to seniority. This Court found that there was nothing capricious in the "limited benefit of weightage" being given to Supervisors. This Court also concluded that the grant of weightage was a matter of government policy which needed no interference since it was not unreasonable or arbitrary.

37. Considered from this point of view, there is essentially no conflict between *Desai* and *Devi Prasad*. Both cases dealt with weightage for eligibility purposes and not with any reference to seniority based on the weightage given. It is true that in *Devi Prasad* it is mentioned that *Desai* was

distinguishable. However, the distinguishing feature did not relate to the rules – both were statutory – but related to the reasonableness thereof. In *Desai* the employees took a short cut to the Class II service via direct recruitment and thereby gave up "the advantages and disadvantages that go with the channel of promotion" and accepted "all the handicaps and benefits which attach to the group of direct recruits." This was not so in *Devi Prasad* where there was functional parity between Junior Engineers and Supervisors and the only real difference between the two categories was the academic superiority of the Junior Engineers.

38. The benefit of G.O.Ms No. 893 dated 15.6.1972 was available to only a limited category of Supervisors, namely those who had obtained an engineering degree prior to 28.2.1972. Consequently, in response to representations made, the Andhra Pradesh Government issued G.O.Ms No. 451 dated 10.6.1976 containing a decision that Supervisors acquiring a graduate qualification even after 28.2.1972 should be appointed temporarily as Junior Engineers (prospectively) with immediate effect.

39. This resulted in consequential orders being G.O.Ms No. 559 dated 18.7.1977 relating to weightage of service rendered and the *inter se* seniority of Supervisors vis-à-vis Junior Engineers.

40. The interpretation of G.O.Ms No. 559 dated 18.7.1977 was considered in *Muralidhar*. This Court noted in the opening paragraph of its decision that "The dispute is regarding the inter se seniority between the Supervisors who are upgraded as Junior Engineers and the degree holders who are directly appointed as Junior Engineers."

41. This Court endorsed the terms of the G.O.Ms without actually going into the legality thereof. This was apparently because the issue of seniority had been burning for two decades and this Court wanted to bring

clear from the fact that in its conclusion, this Court bypassed the statutory rules which required the imprimatur of the Public Service Commission for the appointments made. While recording its conclusions, this Court said:

> "Having given our careful consideration particularly to the fact that this litigation has been pending for the last so many years, about two decades, we feel that it is high time a finality has to be reached by resolving the controversies and in this context we are of the view that the approval of the Public Service Commission in respect of these appointments need not be sought, if the government has not already obtained the approval of the Public Service Commission. To sum up, our conclusions are as under:
>
> (*i*) The weightage of four years in respect of upgraded Junior Engineers as provided in G.O.Ms. No. 559 has to be reckoned from the date of appointment and not the date of their acquiring the degree qualification;
>
> (*ii*) On the basis of that notional date, their inter se seniority has to be fixed;
>
> (*iii*) The regularisation of the degree holders Junior Engineers who passed the SQT by giving retrospective effect cannot be held to be illegal, and their seniority among themselves shall be subject to the order of ranking given by the Public Service Commission on the basis of the SQT;
>
> (*iv*) The government shall prepare a common seniority list of the degree holders Junior Engineers and the upgraded Junior Engineers on the above lines and that list shall be the basis for all the subsequent promotions. Promotions, if any, already given shall be reviewed and readjusted in accordance with the said seniority list; and

> (*v*) The approval of the Public Service Commission in respect of these appointments and their seniority thus fixed need not be sought at this distance of time."

42. Effectively, therefore, this Court not only accepted weightage of service for the benefit of Supervisors for eligibility purposes, but also for purposes of seniority by accepting the concept of a notional date for such a determination. As mentioned above, this Court did not consider the legality of the seniority of Supervisors based on weightage vis-à-vis Junior Engineers.

43. ***Venkat Reddy*** was decided on its own peculiar facts and to deal with a specific situation. As mentioned in the beginning of the judgment, the controversy " relates to the determination of seniority between the appellants who entered service in the various engineering departments of the State initially as Supervisors and who on acquiring a degree in engineering were redesignated Junior Engineers and those graduate Junior Engineers who were temporarily appointed on ad hoc basis under Rule 10(*a*)(*i*)(1) of the Andhra Pradesh State and Subordinate Service Rules and whose services were later regularised under GOMs No. 647 dated September 14, 1979."

44. ***Venkat Reddy*** concerned itself with the seniority of a limited class of Junior Engineers who were appointed temporarily on an ad hoc basis and subsequently regularized. The case centred round the interpretation of the latter part of clause (ii)(a) of G.O.Ms No. 647 dated 14.9.1979 containing the words "should be regularised from the next date following the date on which the last regular appointment in that category was made in the unit concerned". The relevant portion of the G.O.Ms reads as follows:

> "(*i*) the services of all temporary Government employees who were appointed by direct recruitment to any category or post and are continuing in servic 9

should be regularised without subjecting them to any test written or oral;

(*ii*)(*a*) the services of all temporary employees in all categories, other than LDCs, Typists and Steno-typists, in the Offices of the Heads of Departments and Junior Assistants, Typists and Steno-typists in the Secretariat, should be regularised from the next date following the date on which the last regular appointment in that category was made in the unit concerned or from the date of temporary appointment whichever is later;"

45. The controversy arose due to a ban on the recruitment of Junior Engineers through the Public Service Commission in Andhra Pradesh. To sidestep the ban, Junior Engineers were recruited on a temporary and ad hoc basis under Rule 10(*a*)(*i*)(1) of the Andhra Pradesh State and Subordinate Service Rules (paragraph 2 of the Report). This rule provides that where it is necessary in the public interest to emergently fill a vacancy in the post borne on the cadre of a service, class or category and if the filling of such vacancy in accordance with the rules is likely to result in undue delay, the appointing authority may appoint a person temporarily otherwise than in accordance with the said rules (paragraph 10 of the Report).

46. In due course of time, the question of the regularization of these Junior Engineers came up for consideration. The State Government then lifted the ban on recruitment and decided to regularize the services of the temporary and ad hoc Junior Engineers after subjecting them to a Special Qualifying Test (SQT) conducted by the Public Service Commission.

47. Some temporary and ad hoc Junior Engineers were ineligible to take the SQT while others were eligible and they did take the test but did not qualify. It was to accommodate these Junior Engineers (and others similarly placed) that G.O.Ms No.647 dated 14.9.1979 was issued and it is under these atypical circumstances that *Venkat Reddy* was decided and the

expression relating to regularization "from the next date following the date on which the last regular appointment in that category was made" occurring in the said G.O.Ms interpreted. Given these facts, this decision does not impact on the question that we are concerned with in these appeals.

48. *Narayanan* concerned itself with the validity of the Karnataka Public Works Engineering Department Service (Recruitment) (Amendment) Rules, 1985. These were challenged by directly recruited Assistant Engineers, *inter alia*, for giving retrospective appointment to diploma holders and seniority even prior to the date of their eligibility. More specifically, this Court considered the impact of retrospective operation of an amendment to the rules made in 1985 with effect from 1976 and finding no nexus between the appointment and giving retrospective effect to the appointment, struck down its retrospective operation. In this context, it was observed:

"The retrospective operation of the impugned rule attempts to disturb a system which has been existing for more than twenty years. And that too without any rationale. Absence of nexus apart no rule can be made retrospectively to operate unjustly and unfairly against other (*sic*). In our opinion the retrospective operation of the rule with effect from January 1, 1976 is discriminatory and violative of Articles 14 and 16."

49. This Court quoted Note (2) relating to the appointment by transfer of a Junior Engineer to the post of Assistant Engineer, as introduced by the impugned amendment. However, it did not deal with the issue of seniority, apparently since the retrospective operation of the impugned rule was struck down, which had its consequential effect. Note (2) as per the impugned amendment reads as follows:

"2. *Amendment of the Schedule:* In the Schedule to the Karnataka Public Works Engineering Department Services (Recruitment) Rules, 196[illegible]g

to the category of posts of 'Assistant Engineer' for columns (2) and (3) the following shall be substituted, namely:

By direct recruitment or by transfer of a Junior Engineer.

For Direct recruitment:

Should be a holder of a degree in Civil Engineering or Mechanical Engineering depending upon the requirements, as the case may be or of a Diploma certificate from a recognised Institute of Engineers that he has passed parts A and B of the Associate Membership Examination of the Institute of Engineers or equivalent qualification. Age: Must not have attained the age of thirty-five years.

For transfer:

Must possess B.E., or AMIE (India) qualification in Civil Engineering, or Mechanical Engineering.

Note (1) The option of the Junior Engineer shall be obtained before such transfer within the time stipulated by the Government.

Note (2) The transfer shall be effective from the date of graduation subject to the availability of vacancies without ignoring the inter se seniority among those eligible for such transfer."

50. Without discussion, this Court restricted the applicability of Note (2) and held that it shall be read as providing eligibility only.

51. To sum up, therefore, *Desai* and *Devi Prasad* dealt with issues of granting weightage to a section of employees for the purposes of eligibility for appointment or promotion. In principle, this Court did not object to the grant of weightage, provided that

it did not violate Article 14 or Article 16 of the Constitution. The principle having been settled by this Court, the validity of a statutory rule or executive order would have to be tested on that touchstone.

52. *Muralidhar* endorsed *Desai* and *Devi Prasad* on the principle relating to the grant of weightage for eligibility purposes. This issue, therefore, is no longer *res integra*. However, *Muralidhar* extended the weightage, *sub silentio*, to the issue of seniority as well without examining the legality or validity thereof. The issue of weightage for seniority was not specifically raised before this Court and it also appears, as mentioned above, that this Court wanted to bring a quietus to litigation pending for about two decades on the issue. That the expectation of this Court was belied is clear from the fact that another two decades have gone by and we are still grappling with this issue.

53. *Venkat Reddy* was decided in the context of a specific situation and did not lay down any general principle for application either confirming or contradicting the principles laid down in *Desai*, *Devi Prasad* or *Muralidhar*.

54. *Narayanan* also did not concern itself with the validity of weightage of service for appointment or promotion nor did it concern itself with any issue of seniority. It was confined merely to the retrospective operation of a statutory rule, which it struck down with consequential effect.

55. Where does this leave us in so far as the decisions mentioned in the reference order are concerned? On the question of weightage of service for appointment or promotion the issue is now well settled. However, on the question of weightage of service for seniority, the issue is still open since the judgments in the reference deal with different and, in some cases, specific or limited issues. Hence this reference.

56. The problem as we see it is tha e

line, the issue came to be limited to the Andhra Pradesh Engineering Service. In our opinion, the reference concerns a much larger audience and we propose to answer it in that light and not in the limited context of the submission made relating to the validity of the rule by which retrospective seniority benefit was given to the Junior Engineers by G.O.Ms No. 54 dated 15.2.1983.

Answering the questions:

57. As far as the impact of the retrospective operation of the executive instructions or statutory rules on the seniority of employees is concerned (including the Junior Engineers before us), this issue is now settled by a few recent decisions of this Court. There is no doubt that retrospective operation can be given to statutory rules such as the Andhra Pradesh Engineering Service Rules. But, the retroactivity must still meet the test of Article 14 and Article 16 of the Constitution and must not adversely trench upon the entitlement of seniority of others.

58. Without intending to multiply precedents on this subject, reference may be made to a decision rendered by this Court more than two decades ago. In *State of Bihar v. Akhouri Sachindra Nath,* 1991 Supp (1) SCC 334 it was held that retrospective seniority cannot be given to an employee from a date when he was not even born in the cadre. So also, seniority cannot be given with retrospective effect so as to adversely affect others. Seniority amongst members of the same grade must be counted from the date of their initial entry into the grade. It was held:

> "In the instant case, the promotee respondents 6 to 23 were not born in the cadre of Assistant Engineer in the Bihar Engineering Service, Class II at the time when respondents 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given seniority in the service of Assistant Engineers over respondents 1 to 5. It is well settled that no person can be

> promoted with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service. In other words, seniority inter se amongst the Assistant Engineers in Bihar Engineering Service, Class II will be considered from the date of the length of service rendered as Assistant Engineers. This being the position in law respondents 6 to 23 cannot be made senior to respondents 1 to 5 by the impugned government orders as they entered into the said service by promotion after respondents 1 to 5 were directly recruited in the quota of direct recruits. The judgment of the High Court quashing the impugned government orders made in Annexures 8, 9 and 10 is unexceptionable."

59. This decision was cited with approval, a few years ago, along with the decision rendered in *Keshav Chandra Joshi v. Union of India,* 1992 Supp (1) SCC 272. This Court held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in his/her quota and not from any anterior date of promotion or subsequent date of confirmation. It was observed that injustice ought not to be done to one set of employees in order to do justice to another set. It was said in *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P.,* (2006) 10 SCC 346, on referring to these judgments that:

> "We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in *Keshav Chandra Joshi* v. *Union of India* [1992 Supp (1) SCC 272] held that when promotion is outside the quota, seniority would be reckoned from the date of the va[illegible]a

rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits……

"This Court has consistently held that no retrospective promotion can be granted nor any seniority can be given on retrospective basis from a date when an employee has not even borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime."

60. However, the mere existence of a vacancy is not enough to enable an employee to claim seniority. The date of actual appointment in accordance with the required procedure becomes important in such a case. This was so held in *State of Uttaranchal v. Dinesh Kumar Sharma,* (2007) 1 SCC 683 [followed in *Nani Sha v. State of Arunachal Pradesh,* (2007) 15 SCC 406] where it was said:

"Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-96 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in *Jagdish Ch. Patnaik* v. *State of Orissa* [(1998) 4 SCC 456]."

61. More recently, and finally, in *Pawan Pratap Singh v.*

Reevan Singh, (2011) 3 SCC 267 all relevant precedents on the subject were considered, including the Constitution Bench decision in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra,* (1990) 2 SCC 715 and the legal position summarized (by Lodha, J.) as follows:

"(*i*) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(*ii*) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(*iii*) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(*iv*) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime."

62. In a separate but concurring o J.

reiterated the position but referred to some more precedents on the subject. It was then said:

> "To the decisions referred to on this point in the main judgment I may add just one more in *Suraj Parkash Gupta* v. *State of J&K* [(2000) 7 SCC 561]. The decision relates to a dispute of seniority between direct recruits and promotees but in that case the Court considered the question of antedating the date of recruitment on the ground that the vacancy against which the appointment was made had arisen long ago. In SCC para 18 of the decision the Court framed one of the points arising for consideration in the case as follows: (SCC p. 578)
>
> > "*18*. … (*4*) Whether the direct recruits could claim a retrospective date of recruitment from the date on which the post in direct recruitment was available, even though the direct recruit was not appointed by that date and was appointed long thereafter?"
>
> This Court answered the question in the following terms: (*Suraj Parkash Gupta case* SCC p. 599, paras 80-81)
>
> > "*Point 4*
> >
> > Direct recruits cannot claim appointment from the date of vacancy in quota before their selection
>
> *80*. We have next to refer to one other contention raised by the respondent direct recruits. They claimed that the direct recruitment appointment can be antedated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such a slot was available under the direct recruitment quota.
>
> *81*. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not borne in the service. -
>
> This principle is well settled. In *N.K. Chauhan v. State of Gujarat* [(1977) 1 SCC 308], Krishna Iyer, J. stated: (SCC p. 325, para 32)
>
> Later direct recruit cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service.
>
> Again, in *A. Janardhana* v. *Union of India* [*(1983) 3 SCC 601*] it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly it was pointed out in *A.N. Pathak* v. *Secy. to the Govt*. [(1983) 3 SCC 601] that slots cannot be kept reserved for [the] direct recruits for retrospective appointments."

63. The facts of the appeals before us show that at least some of the Supervisors were given retrospective seniority on the date when they were not even eligible for appointment as Junior Engineers. The precedents referred to above show that this is impermissible. In addition as pointed out by the High Court, there is no indication of the vacancy position, that is, whether the Supervisors could be adjusted in the grade of Junior Engineers from the date on which they were given notional retrospective seniority. There is also no indication whether the quota of vacancies for Supervisors was adhered to as on the date on which they were given notional retrospective seniority. The case law s n

important factor to be considered. Finally, it is quite clear that the grant of retrospective seniority to Supervisors has adversely impacted on the promotion chances of Junior Engineers by bringing them down in seniority. This too is impermissible.

64. From the various decisions referred to and from the facts of the case, it is clear that to pass the scrutiny of Article 14 of the Constitution, the seniority of Supervisors should be reckoned only from the date on which they satisfied all the real and objective procedural requirements of the Andhra Pradesh Engineering Service Rules and the law laid down by this Court. This has not happened in the present appeals creating a situation of unreasonableness and unfairness.

65. It may be mentioned that by the time *Muralidhar* came to be decided, the impugned G.O.Ms No. 54 dated 15.2.1983 had already come into existence. Though this was brought to the notice of this Court, its validity was neither examined nor determined. This is the first occasion when the constitutional validity of the said G.O.Ms has been considered.

Conclusion:

66. For the reasons aforesaid, we see no occasion for interfering with the view taken by the High Court to the effect that the grant of retrospective seniority to Supervisors on their appointment as Junior Engineers violates Article 14 of the Constitution. The weightage of service given to the Supervisors can be taken advantage of only for the purpose of eligibility for promotion to the post of Assistant Engineer. The weightage cannot be utilized for obtaining retrospective seniority over and above the existing Junior Engineers.

67. We may mention that in *Asis Kumar Samanta v. State of West Bengal,* (2007) 5 SCC 800, the question whether retrospective promotion or seniority can be granted or not has been referred by a Bench of two learned Judges to a larger Bench. It has been noted therein that the grant of retrospective

promotions and seniority was accepted by this Court in four decisions while grant of retrospective seniority was held to be *ultra vires* in five decisions. When these appeals came up for hearing on 02.5.2013, learned counsel for *Asis Kumar Samanta* sought an adjournment to make alternative arrangements since he could not appear against the State of West Bengal. Accordingly, that matter was adjourned beyond the ensuing summer vacations.

68. Be that as it may, the pendency of a similar matter before a larger Bench has not prevented this Court from dealing with the issue on merits. Even on earlier occasions, the pendency of the matter before the larger Bench did not prevent this Court from dealing with the issue on merits. Indeed, a few cases including *Pawan Pratap Singh* were decided even after the issue raised in *Asis Kumar Samanta* was referred to a larger Bench. We, therefore, do not feel constrained or precluded from taking a view in the matter.

69. The question referred to us is answered accordingly and the appeals are dismissed, but with no order as to costs.

Bibhuti Bhushan Bose Reference answered & Appeal dimissed.