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$~43, 44 & 59 to 117

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

% ***Judgment dated 11th December, 2015***

\+ W.P.(C)NOS. 9353/2015, 9951/2015, 6269/2015, 1434/2015, 1436/2015, 1452/2015, 6424/2015, 6425/2015, 6426/2015, 6427/2015, 2275/2015, 2688/2015 & 2753/2015, 3099/2015, 2665/2015, 2668/2015, 2670/2015, 6767/2015, 6781/2015, 6814/2015, 6951/2015, 6643/2015, 4757/2015, 7726/2015, 8020/2015, 8035/2015, 11375/2015, 11376/2015 & 10960/2015

KISHORI LAL SAINI AND ANR	..... Petitioners
JOGINDER AND ANR	..... Petitioners
SURINDER SINGH & ANR	..... Petitioners
MEWA LAL PAL & ANR	..... Petitioners
BHARAT RAM & ANR	..... Petitioners
SHIV PRASAD & ANR	..... Petitioners
RAFIQ & ORS	..... Petitioners
DHOOM SINGH & ANR	..... Petitioners
ALI NOOR AND ORS.	..... Petitioners
GHANSHYAM SINGH	..... Petitioner
BHAGWAN DEEN AND ANR.	..... Petitioners
RAMESH KUMAR AND ANR	..... Petitioner
OM PRAKASH AND ANR	..... Petitioners
RAKESH KUMAR	..... Petitioner
DIGPAL SINGH CHAUHAN AND ANR.	..... Petitioners
ASHOK KUMAR AND ANR	..... Petitioners
JAYANTI PRASAD AND ANR	..... Petitioners
ASHOK KUMAR AND ORS.	..... Petitioners
RAM SARAN & ORS.	..... Petitioners
GULJARI & ORS.	..... Petitioners
MANOHAR LAL AND ORS.	..... Petitioners
INDER SINGH	..... Petitioner
RAJENDER SINGH & ANR	..... Petitioners
DESH RAJ	..... Petitioner
DURYODHAN	..... Petitioner
DAMAN	..... Petitioner
SHET BAHADUR AND ANR.	..... Petitioners
MUNA LAL AND ANR.	..... Petitioners
SHYAM PYARE YADAV	..... Petitioner

versus

UNION OF INDIA & ANR. ..... Respondents

\+ W.P.(C)NOS.4422/2015, 4796/2015, 6210/2015, 6662/2015, 6691/2015, 4593/2015, 4768/2015, 4891/2015, 6219/2015, 4418/2015, 4932/2015, 6667/2015, 6692/2015, 3679/2015, 6715/2015, 6716/2015, 6718/2015, 6828/2015, 6836/2015, 6838/2015, 6870/2015, 6871/2015, 6873/2015, 7222/2015 & CM APPL.13253/2015, W.P.(C)7258/2015 & CM APPL.13320/2015, W.P.(C)7281/2015 & CM APPL.13357/2015, W.P.(C)9155/2015 & CM APPL.20860/2015, W.P.(C)9805/2015 & CM APPL.23581/2015, W.P.(C)9831/2015 & CM APPL.23703/2015,

Signature Not Verified
Digitally Signed
By:AMULYA

W.P.(C)9886/2015 & CM APPL.23923/2015, W.P.(C)9895/2015 & CM APPL.23938/2015 AND W.P.(C)10685/2015 & CM.APPL 27432/2015.

UNION OF INDIA AND ANR	..... Petitioners
versus	
MEWA LAL PAL AND ANR.	..... Respondents
KHUSHI RAM	..... Respondent
KANCHAN YADAV AND ORS.	..... Respondents
NAND RAM	..... Respondent
HARI OM	..... Respondent
BHARAT RAM AND ANR.	..... Respondents
RAMJI LAL	..... Respondent
SATYA PARKASH	..... Respondent
LALLU RAM	..... Respondent
SHIV PRASAD AND ANR.	..... Respondents
HARI SINGH	..... Respondent
BIR SINGH	..... Respondent
ALI NOOR & ORS.	..... Respondents
RAM SARAN & ORS.	..... Respondents
MAHINDER SINGH	..... Respondents
GULJARI & ORS	..... Respondents
LOKI	..... Respondent
RANJIT SINGH AND ANR.	..... Respondents
YAD RAM AND ORS.	..... Respondents
ROHTAS	..... Respondent
RASID	..... Respondent
DIWAN SINGH & ANR	..... Respondents
SAGAR SINGH	..... Respondent
AMAR SINGH AND OTHERS	..... Respondents
MUNNA LAL AND ANR	..... Respondents
NAKU AND ORS	..... Respondents
RAFIQ AND ORS	..... Respondents
SATRHON	..... Respondent
ARUN KUMAR AND ANR	..... Respondents
ABDUL HASSAN AND ANR	..... Respondents
MOHD. SAMI	..... Respondent
ANAND SINGH	..... Respondent
SATYA PRAKASH	.....Respondent
JAGPAL SINGH	.....Respondent

APPEARANCE

Mr.J.K. Singh, Advocate for the **petitioner**/UOI, in W.P.(C)Nos.4422/2015,10585/2016, 4796/2015, 6210/2015, 6662/2015, 6691/2015, 4593/2015, 4768/2015, 4891/2015, 4418/2015, 4932/2015, 6667/2015, 6692/2015, 3679/2015, 6715/2015, 6716/2015, 6718/2015, 6828/2015, 6836/2015, 6838/2015, 6870/2015, 6871/2015, 6873/2015, 7222/2015, 7258/2015, 7281/2015, 9951/2015, 9155/2015, 9805/2015, 9831/2015, 9886/2015 & 9895/2015.

Ms.Punam Singh, Adv. for the petitioner in W.P.(C)Nos. 9353/2015 & 4757/2015.

Mr.A.K. Trivedi, Advocate for the **petitioner**, in W.P.(C) 11375-76/2015, 1434-36/2015, 1452/2015, 6424/2015, 6425/2015, 6426/2015, 6427/2015 & 6814/2015.

Mr.R.V. Sinha, Adv. for the **petitioner**, in W.P.(C) Nos. 6781/2015.

Mr.V.S.R Krishna, Adv. for the **petitioner** in W.P.(C)No.6219/2015.

Mr.H.P. Chakravorti, Advs. for the **petitioner**, in W.P.(C)Nos. 2665/2015, 2668/2015, 2688/2015, 2670/2015, 2753/2015, 3099/2015 & 6269/2015.

Mr.Tapas Tyagi and Mr.Rahul Chaudhary, Advs. for the **petitioner** in W.P.(C)Nos.6767/2015 & 6781/2015.
Mr.Gaya Prasad, Adv. for the **petitioner** in W.P.(C) 6643/2015.
Mr.R.K. Shukla, Adv. for the **petitioner** in W.P.(C) Nos.10960/2015, 2275/2015, 6951/2015, 8020/2015 & 8035/2015.

Mr.Tapas Tyagi, Adv. for the **respondent** in W.P.(C)Nos.3679/2015 & 7258/2015.

Mr.A.K. Trivedi, Vaibhav Trivedi, Rohit Dadwal, Adv. for **respondents**, in W.P.(C)Nos.4418/2015, 4422/2015, 4593/2015, 4796/2015, 6667/2015, 6692/2015, 6716/2015 & 7281/2015 & 7222/2015.

Ms.Meenu Maini, Adv. for **respondents** in W.P.(C) 10685/2015, 9886/2015 & 9895/2015.

Mr.J.K. Singh, Advocate for the **respondents** in W.P.(C) Nos.11375/2015, 11376/2015, 10960/2015, 1434/2015, 1436/2015, 1452/2015, 2275/2015, 2688/2015, 2668/2015, 2670/2015, 2753/2015, 3099/2015, 4757/2015, 6269/2015, 6424/2015, 6425/2015, 6426/2015, 6427/2015, 6767/2015, 6781/2015, 6814/2015, 6951/2015, 7726/2015, 8020/2015, 8035/2015, 9353/2015, 9951/2015, 6643/2015 & 2665/2015.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

For judgment, see W.P.(C) 11155/2015.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 11, 2015 gr

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$~41, 43, 44 & 59 to 117

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SURAJ PRAKASH AND ANR.	..... Petitioners
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UNION OF INDIA AND ANR ..... Petitioners

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ARUN KUMAR AND ANR	..... Respondents
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APPEARANCE

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Mr. Tarun Kumar Bhardwaj, Advocate for the **Petitioner** in WP(C).11155/2015.

Ms.Meenu Maini, Adv. for **respondents** in W.P.(C) 10685/2015, 9886/2015 & 9895/2015.

Mr.J.K. Singh, Advocate for the **respondents** in W.P.(C) 11155/2015, 11375/2015, 11376/2015, 10960/2015, 1434/2015, 1436/2015, 1452/2015, 2275/2015, 2688/2015, 2668/2015, 2670/2015, 2753/2015, 3099/2015, 4757/2015, 6269/2015, 6424/2015, 6425/2015, 6426/2015, 6427/2015, 6767/2015, 6781/2015, 6814/2015, 6951/2015, 7726/2015, 8020/2015, 8035/2015, 9353/2015, 9951/2015, 6643/2015 & 2665/2015.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. With the consent of the parties, all the writ petitions are taken up for final hearing and disposal.
2. These batch of writ petitions can be divided into two sections, i) writ petitions filed by the petitioners before the Central Administrative Tribunal wherein the OAs filed by them stand dismissed; ii) writ petitions filed by the Union of India, General Manager, Northern Railway, who were arrayed as respondents before the Tribunal and who are also aggrieved by the orders passed by the Tribunal. For the sake of convenience, first category of the batch of writ petitions would be referred to as Category-I and the writ petitions filed by the Government would be referred to as Category-II.
3. The petitioners in Category-I approached the Central Administrative Tribunal as applications filed by them pursuant to the Liberalized Active Retirement Scheme for Guaranteed Employment for Safety

Staff(LARSGESS) were rejected. It is not necessary for this Court to detail the reasons as to why the OAs were dismissed individually as the Central Administrative Tribunal dismissed all the OAs. as the Tribunal returned a finding that the (LARSGESS) Scheme was *ultra vires* of Articles 14 and 16 of the Constitution of India and the OAs filed by the petitioners(Category-I) seeking employment under the said Scheme would not be entitled to the reliefs sought as the Scheme itself has been held to be *ultra vires* of the Constitution and not sustainable in law.

4. The petitioners of Category-I are aggrieved by this order for the reason that in case the Scheme is declared to be *ultra vires*, their rights which arise out of this Scheme would not be enforceable. Category-II petitioners have assailed this order on the ground that the Tribunal was not competent to quash, amend or alter any statutory rule or Scheme of the Government. A common argument has been raised by the counsel for the petitioners in Category I and II that in the absence of pleadings, opportunity of hearing being granted, the Tribunal could not have declared the Scheme to be *ultra vires*. Counsel further submit that no opportunity was granted to the petitioners in either of the two categories, *i.e.*, the Railways and the Workmen to explain the aim and objective of the scheme, which in a nutshell is as under:

5. The LARSGESS Scheme was taken up out of the deliberations in the workshop on safety on Indian Railways, conducted on 12th and 13th July, 2003, a Safety Related Retirement Scheme(SRRS) was introduced in January, 2004, exclusively, for two frontline safety categories *viz*, Drivers and Gangmen with the approval of the Ministry of Railways. The working of Drivers and Gangmen have a critical bearing on safety of train operations and track maintenance. The scheme is framed on the consideration that given their unique nature of duties with advancing age,

the physical fitness and reflexes of staff of these categories get impaired thereby causing a safety hazard. The scheme provided that these two categories of staff can seek retirement with full pensionary benefit and also appoint a ward in the same category, *i.e.,* driver's ward as driver and gangmen's subject to the condition that the ward must possess the requisite qualification and also has to pass the requisite selection by the Railways. The sole objective of the scheme is to improve safety in train operations and track maintenance.

6. Counsel also submit that the employees covered under the safety related retirement scheme, developed in house by the Ministry of Railways, belong to critical safety categories and the unique nature of duties performed by them has a direct bearing on the safety of train operations. These specified safety category staff, not common to other Ministries/Department, due to the strenuous nature of their duties performed in adverse weather conditions in the outdoors, are likely to suffer from impaired physical abilities and poor reflexes, thereby causing a possible safety hazard. Under the extant rules, the administration also reserved the right to compulsorily retire such staff whose performance is not satisfactory. However, as far as safety is concerned, the need is more for prevention and a situation where it would take occurrence of an accident to bring to light the unsatisfactory performance of an employee should best be avoided. In the above backdrop, the need to put in place a scheme of voluntary retirement which would carry adequate incentive for safety staff to quit after a prescribed age was acknowledged and formed the basis of SRRS.

7. The scheme was subsequently renamed as Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff(LARSGESS) in the year 2010 and was extended to certain other specified safety categories with grade pay of Rs.1800/- and, further to those with grade pay of

(31)

Rs.1900/-, consequent to the announcements made by the Minister of Railways, in the budget speech of 2010 and 2011 respectively.

8. Further in the year 2014, the following five more categories in Grade Pay of Rs.1800/- were covered under LARSGESS with the approval of Ministry of Railways:-

   i. Electrical power staff working on track.
   ii. Track machine staff working on track.
   iii. Bride staff working on track.
   iv. TRD staff working on track.
   v. PWI Khalasis working on track.

9. Counsel have urged before this Court that it was not open to the Tribunal to examine the wisdom of the LARSGESS Scheme being a matter of policy and the same could not be a subject matter before a judicial forum.

10. Additionally, it is contended that the Tribunal has placed reliance on the orders passed by the Jaipur Bench where an identical question was decided despite being conscious of the fact that the aforesaid orders passed by the Jaipur Bench were subject matter of a writ petition and the orders so passed by the Jaipur Bench were set aside by the Rajasthan High Court and the matters were remanded back to the Jaipur Bench for fresh hearing. Another common ground raised is that once the Tribunal had the benefit of the observations of the Rajasthan High Court wherein it was observed that no opportunity was given to the respondents writ petitioners before observations were made and taking note of the fact that procedure followed by the Tribunal was not approved, the Tribunal passed identical orders which was disapproved by the Rajasthan High Court.

11. Learned counsel for the parties have drawn the attention of this Court to paragraph 13 of the impugned order to show that at the time of passing the

impugned order, the Tribunal was aware that the order passed by the Jaipur Bench had been assailed before a Division Bench of High Court at Rajashtan being W. P. (C) 2452/2014. Paragraph 13 of the order passed by the Tribunal reflects that the Rajasthan High Court had stayed the order passed by the Jaipur Bench on the ground that no opportunity of hearing was granted to the respondents/writ petitioners before the Tribunal. Paragraph 13 further reflects that subsequently on 16.04.2014, two writ petitions were disposed of wherein it was held that the procedure followed by the Tribunal in recording the findings in respect of the prepentional scheme introduced by the Railway seeking employment without forcing reasonable opportunity to the UOI could not have been approved by the High Court as the same was not in conformity with the basic tenets of law where parties are granted reasonable opportunity of hearing before an adverse order is passed. Learned Tribunal has thereafter extracted the relevant part of the judgment of the Jaipur Bench of the Rajasthan High Court, which reads as under:

> "These cross petitions by both the parties have been filed being aggrieved by order of the Tribunal impugned in the instant proceedings dt.24.09.2013.
>
> It reveals from the record that the original application no.654/2013 was filed by the petitioner applicant Ganni & another seeking preferential employment under the scheme introduced by the respondent Railways in replacement of employee who took voluntary retirement for his personal reasons and the learned Tribunal after hearing counsel for petitioners-applicant took note of scheme of preferential employment introduced by the Railways and had not confined to the rights of the petitioner applicant as to whether it is valid & justified and he is entitled to claim preferential employment under the scheme introduced but the tribunal has exceeded in its jurisdiction in examining validity of the scheme and finally held that the scheme is invalid & unconstitutional in law.

Counsel submits that it was never prayed and his grievance was to seek preferential employment under the scheme and not beyond it. According to him rejection of OA on the ground which was never prayed for and that too without affording notice to the respondent was not valid in the eye of law and requires interference by this Court.

Apart from the petition filed by the petitioners-applicant, there is another petition filed by Union of India also being aggrieved by the order of the tribunal & rightly so since without affording opportunity of hearing and calling upon respondent Union of India for the object for which the scheme was introduced and the reason behind it to provide such preferential employment the tribunal interfered in the same and held to be unconstitutional certainly Union of India was required to be heard and the finding which has been recorded regarding preferential employment introduced by the Union of India by the Tribunal certainly cannot be upheld by this Court.

We have heard counsel for the parties. As both the parties are aggrieved by the order of the tribunal, in our considered view the procedure followed by the tribunal in recording the finding in respect of the preferential scheme introduced by the Railways seeking employment without affording reasonable opportunity to the UOI cannot be approved by this Court and that is also not in conformity with the basic tenets of law where the parties to be afforded with the reasonable opportunity of hearing before any adverse order being passed, indisputably in the instant case the finding which has been recorded by the tribunal certainly adversely affects rights of Union of India to whom opportunity was not afforded to comply with basic requirement of law.

Before parting with the order we may clarify that what has been observed by us is only for disposal of the writ petitions and the Tribunal may not be influenced/inhibited by the observations made and decide the O.A. afresh in accordance with law.

The order of the tribunal impugned in the petitions dt.24.09.2013 is not legally sustainable and accordingly quashed & set aside. The Original Application stands restored and the parties are directed to appear before the tribunal on 12.05.2014 and it is expected from the

tribunal to decide the OA after the reply being filed expeditiously in accordance with law.

Both the petitions stands disposed of. No costs."

12. Learned counsel for the parties submit that after noticing the observations of the Division Bench of Jaipur High Court, the Tribunal has failed to comply with the observations and to the contrary failed to give any reason why the same would not be binding on the Tribunal and simply observed that "We do not find any reason to disagree of the finding of the Jaipur Bench of this Tribunal that LARSGESS is unconstitutional and *ultra vires*. Learned counsel further submit that reading of the order of the Central Administrative Tribunal, would give an impression as if a scheme for back door entry of the employees, has been created. Learned counsel contends that this scheme was in fact launched as far as back in the year 2004 and has been strictly implemented. Counsel further contends that Tribunal has failed to appreciate the aim, objective and purpose of the scheme and in the absence of any opportunity to the parties of hearing, it could not be brought to the notice of the Tribunal, the purpose why the scheme was formulated.

13. Learned counsel for the parties contend that firstly it was not in the domain of the Tribunal to opine whether the scheme was *ultra vires* or not and secondly, in the absence of any pleading, the Tribunal could not have returned such a finding. Reliance has been placed on ***Mallikarjuna Rao and Ors. Vs. State of Andhra Pradesh and Ors. : (1990) 2 SCC 707,*** wherein it has been held :

> 11. The observations of the High Court which have been made as the basis for its judgment by the Tribunal were only of advisory nature. The High Court was aware of its limitations under Article 226 of the Constitution of India and as such the learned Judge deliberately used the word "advisable" while making the observations. It is neither legal nor proper for the High Courts or

the Administrative Tribunals to issue directions or advisory-sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the constitution. Imagine the execu- tive advising the judiciary in respect of its power of judicial review under the constitution. We are bound to react scowlingly to any such advice.

12. xxxxxxxxxx

13. The Special Rules have been framed under Article 309 of the Constitution of India. The power under Article 309 of the Constitution of India to frame rules is the legislative power. This power under the constitution has to be exercised by the President or the Governor of a State as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The Courts cannot usurp the functions assigned to the executive under the constitution and cannot even indirectly require the executive to exercise its rule making power in any manner. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India."

14. Reliance is also placed upon ***Bharat Amratlal Kothari Vs. Dosukhan Samadkhan Sindhi : AIR (2010) SC 47***, wherein it has been held that:

"14. The approach of the High Court in granting relief not prayed for cannot be approved by this Court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished. Though the provisions of the Code are not made applicable to the proceedings under Article 226 of the Constitution, the general principles made in the Civil Procedure Code will apply even to writ petitions. It is, therefore, incumbent on the petitioner to claim all reliefs he seeks from the court. Normally, the court will grant only those reliefs specifically prayed by the petitioner. Though the court has very vide discretion in granting

relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner. In Krishna Priya vs. University of Lucknow [(1984) 1 SCC 307], overlooking the rule relating to grant of admission to Postgraduate course in medical college, the High Court in the exercise of powers under Article 226 of the Constitution directed the Medical Council to grant provisional admission to the petitioner. This Court set aside the order passed by the High Court observing that "in his own petition in the High Court, the respondent has merely prayed for a writ directing the State or the College to consider his case for admission yet the High Court went a step further and straightway issued a writ of mandamus directing the College to admit him to M.S. course and thus granted relief to the respondent which he himself never prayed for and could not have been prayed for". Again, in Om Prakash vs. Ram Kumar [(1991) 1 SCC 441], this Court observed, "A party cannot be granted a relief which is not claimed, if the circumstances of the case are such that the granting of such relief would result in serious prejudice to the interested party and deprive him of the valuable rights under the statute". Though a High Court has power to mould reliefs to meet the requirements of each case, that does not mean that the draftsman of a writ petition should not apply his mind to the proper relief which should be asked for and throw the entire burden of it upon the court. It is relevant to notice that the High Court was not exercising powers under Article 226 of the Constitution suo motu but was examining the validity of order passed by the Additional Chief Judicial Magistrate refusing to grant custody of goats and sheep to the respondent Nos. 1 to 6, in the Special Criminal Application, which was filed by them under Article 226 of the Constitution through a were represented by a senior counsel practicing in the Gujarat High Court and having regard to the facts of the case, the learned lawyer was justified only in claiming those reliefs to which reference is made earlier. The respondent Nos. 1 to 6 were seeking a writ of certiorari or mandamus to declare that order dated July 5, 2009, passed by the learned Chief Judicial Magistrate, Deesa, refusing to hand over custody of the goats and sheep seized to them, was illegal and were also seeking quashing of the said order. At no point of time, the learned advocate for the respondent Nos. 1 to 6 had moved any application seeking permission of the Court to amend the prayer clause contained in the petition so as to enable the respondent Nos. 1 to 6 to claim compensation from the appellant No. 1. A fair

reading of the petition makes it more than clear that no factual data whatsoever was laid by the respondent Nos. 1 to 6 for claiming compensation from the appellant No. 1. No facts were mentioned as to in which manner they or any of them had suffered damage or loss because of the handing over of custody of goats and sheep to the appellant No. 1 and ultimately to the respondent No. 8 Panjarapole situated at Patan nor the appellant No. 1 was permitted to controvert that in fact no damage or loss was suffered by the respondent Nos. 1 to 6 or any of them. There is no manner of doubt that the High Court was too indulgent in this matter. After all, it was not a petition from a person languishing in jail or from a bonded labourer or a party in person or public spirited citizen seeking to bring a gross injustice to the notice of the court. Here, the High Court had before it the respondent Nos. 1 to 6 as petitioners. The question whether the respondent Nos. 1 to 6 suffered damage or loss because of handing over of goats and sheep to the appellant No. 1 and/or to the respondent No. 8, depends upon facts to be proved. Normally, such an exercise cannot be undertaken in a writ filed under Article 226 of the Constitution. This Court further finds that the appellant No. 1 is not only directed to pay, by way of compensation and cost, to each of the respondent Nos. 1 to 6 a sum of Rs.75,000/- but is further directed to pay on behalf of respondent Nos. 1 to 6 the cost of maintenance and treatment of the animals in question to respondent No. 8 in accordance with the provisions of sub-Section (4) of Section 35 of the Act. To mention the least, it is evident that the respondent Nos. 1 to 6 are not parties to Criminal Inquiry Case No. 237 of 2008, which is pending before the learned Chief Judicial Magistrate, Palanpur. As observed earlier, the said inquiry has been initiated at the instance of one of the aides of the accused. In the said inquiry the question posed for determination of the learned Chief Judicial Magistrate, Palanpur, would be whether the appellant No. 1 and others with police personnel had committed loot of trucks with goats and sheep and also cash amount of Rs.1,11,000. The said inquiry is not concluded as on today nor any finding is rendered that the appellant No. 1 and others with the aid of police personnel had committed loot of the articles mentioned in the complaint of that case. Therefore, the appellant No. 1 could not have been directed to pay compensation and cost to 6 without prejudice to their rights and contentions in the criminal proceedings initiated by way of Criminal Inquiry Case No. 237 of 2008. Moreover, no claim was advanced by the respondent No. 8 herein that the appellant No.

1 should be directed to pay, on behalf of the owners, i.e., the respondent Nos. 1 to 6, the cost of maintenance and treatment of the animals in question in accordance with the provisions of sub-Section (4) of Section 35 of the Act. Normally, cost of maintenance and treatment of the animals in such cases would be payable by one who claims custody or who are the owners of the live stock but not by the complainant. In the instant case the assertion made by the appellant No. 1 is that he was handed over custody of goats and sheep by the police after registration of FIR seems to be that the appellant No. 1 had taken possession of the live stock and trucks illegally before the FIR was lodged and had acted in a high handed manner. The dispute whether appellant No. 1 was handed over custody of goats and sheep after filing of the complaint or whether he had obtained custody of goats and sheep illegally before the complaint was lodged, will have to be adjudicated upon evidence to be lead by the parties. Such a highly contentious dispute cannot and could not be resolved in a petition under Article 226 of the Constitution. Having regard to the totality of the facts and circumstances emerging from the record of the case, this Court is of the firm opinion that there was no justification at all in directing the appellant No. 1 to pay a sum of Rs.75,000/- towards compensation and cost to each of the respondent Nos. 1 to 6 and to pay to the respondent No. 8 herein the cost of maintenance and treatment of the animals in question on behalf of the respondent Nos. 1 to 6. Therefore, this direction is also liable to be set aside."

15. In the case of ***Sumangala Naganath Vs. Union of India and Ors. : 1999 SCC (L&S) 1318***, it has been held that:

5. This Rule clearly sets out that 50% of the vacancies in the Senior Scale will have to be filled by transfer of officers belonging to Class I services under the Ministry of Railways. However, it excludes the Indian Railway Medical Service. The class of the services which are intended to be excluded are clearly spelt out and it is the Indian Railway Medical Service and not any other service under the control of Ministry of Railway, when the fact that the appellant was serving in the Ministry of Railways is not in dispute. It is hardly open to anyone to state that she is not eligible to be considered for appointment to IRPS under the Rule referred to above. It was not open to the Tribunal to examine the wisdom of making such a Rule which enables them to make such lateral

induction into IRPS. Such a question is a matter of policy and not debatable in a judicial forum. When appointment of the appellant is in terms of that Rule and fulfils all conditions of eligibility, the Tribunal could not state whether she is suitable to be appointed or not. What baffles us most is that in spite of the Rule clearly enabling appointment of the appellant, the Tribunal should have been persuaded by the view of the UPSC expressed earlier. When UPSC accepted recommendation on the present occasion, it is not known as to whether the Tribunal could imagine that the opinion expressed earlier was not known to it. The assumption appears to be wholly incorrect.

16. Also in the case of ***State of Punjab and Ors. Vs. Ram Lubhaya Bagga : AIR 1998 SC 1703***, it has been held that :

> 29. No State of any country can have unlimited resources to spend on any of its project. That is why it only approves its projects to the extent it is feasible. The same holds good for providing medical facilities to its citizen including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finance permit. If no scale or rate is fixed then in case private clinics or hospitals increase their rate to exorbitant scales, the State would be bound to reimburse the same. Hence we come to the conclusion that principle of fixation of rate and scale under this new policy is justified and cannot be held to be violative of Article 21 or Article 47 of the Constitution of India.
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> 35. Learned Counsel for the appellant submits that in the Writ petition filed, the respondent did not specifically challenge the new policy of 1995. If that was done the State would have placed all such material in detail to show the financial strain. We having considered the submission of both the parties, on the aforesaid facts and circumstances, hold that the appellant's decision to exclude the designated hospital cannot be said be such as to be violative of Article 21 of the Constitution. No right could be absolute in a welfare State. A man is a social animal. He cannot live without the cooperation of large number of persons. Every article one uses is the contribution of many. Hence every individual right has to give way to the right of public at large. Not every fundamental right under Part III of the Constitution is not absolute and it is o be within permissible reasonable restriction. This principle equally

applies when there is any constraint on the health budget on account of financial stringencies. But we do hope that government will give due consideration and priority to the health budget in future and render what is best possible.

17. We have heard counsel for the parties and considered their rival contentions.

18. Counsel for all parties pray that the order passed by the Tribunal by which it has been held that the LARSGESS Scheme is *ultra vires* of the Constitution be set aside. Common submissions have been made by the counsel for all the parties that parties were not granted opportunity to address arguments with respect to the *vires* of the scheme. Counsel also uniformly submit that no pleading exists on the record of the Tribunal with respect to the *vires* of the Scheme. Counsel further submitted that both the Categories I & II support the scheme and submits that it is for the safety of the passengers and also for the staff of the Railway. Counsel for the parties strongly urged before the Court that the scheme was formulated having regard to the working of Driver and Gangmen, who play a crucial role with regard to the safe running of the train and maintenance of the tracks. The scheme was thereafter extended to three categories all of which are concerned with the safety of the run of the train. Counsel further submitted that a complete reading of the scheme would show that stringent safeguards have been worked out and only thereafter the scheme would be implemented.

19. In the case of ***Mallikarjuna Rao and Ors.***(supra), the Apex Court has frowned upon the observations of the High Court and observed that it is neither legal nor proper for the High Courts or the Administrative Tribunals to issue directions or advisory-sermons to the executive in respect of the sphere which is exclusively within their domain. Similar

view has been expressed in the case of ***Sumangala Naganath***(supra), wherein it was held that a matter of policy is not debatable in judicial forum. In the case of ***Bharat Amratlal Kotyhari***(supra), the Supreme Court of India after observing that although the provisions of the Code of Civil Procedure are not applicable to proceedings under Article 226 of the Constitution of India but the general principles of the Code would apply. The Apex Court also observed that the Court would also grant those reliefs specifically prayed by the petitioner, although the High Court had wide powers under Article 226 of the Constitution of India and would be empowered to mould relief to meet the ends of justice but granting a relief not prayed for would result in serious prejudice to the rights of interested party.

20. Having regard to the submission made and the settled position of the law, we find that the Tribunal has exceeded its jurisdiction and decided an issue which was neither urged before the Tribunal nor the parties were heard on this issue. We are rather surprised that once the observations of the Division Bench of Jaipur High Court was available with the Tribunal and reproduced by the Tribunal in para 13 of the impugned order, there was no reason as to why the Tribunal decided to ignore those directions, even otherwise, in the absence of the observations in our view the Tribunal could not have decided an issue on which there were no pleadings and no opportunity of hearing granted. Resultantly, we allow these writ petitions and remand the matters back for fresh hearing. Impugned orders in all the writ petitions are set aside. All writ petitions and pending applications are disposed of.

21. These matters will be taken up before the Joint Registrar, Central Administrative Tribunal on 12th January, 2016 to fix a date before the appropriate Bench of Central Administrative Tribunal.

W. P. (C) Nos. 1434/2015, 1436/2015 and 1452/2015

22. It is agreed that the interim order will continue till the hearing of the OAs.

W. P. (C) 7222/2015

23. Petitioners are permitted to file amended memo of parties. Amended memo of parties with correct OA number has been filed. Same be taken on record.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

DECEMBER 11, 2015
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