

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-10-2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.2762 of 2014

N.Srinivasan

... Petitioner

Vs.

- 1.The Government of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Environment and Forest Department,
Secretariat,
Chennai - 600 009.
- 2.The Principal Chief Conservator of Forest
and Head of Forest Force,
Chennai - 15.
- 3.The Conservator of Forest (Research),
State Forestry Research Institute,
Kolapakkam,
Chennai - 48.
- 4.The Deputy Conservator of Forest,
Forest Genetic Division,
Coimbatore - 43.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent herein to consider the claim of the petitioner in the light of the Judgment dated 01.08.2012 in P.Ravikumar Vs. The Government of Tamil Nadu, rendered by Madurai Bench of this Hon'ble High Court and the consequential order of the first respondent issued in implementation of the above Judgment in G.O.(D)No.93, Environment and Forest (FR-2) Department, dated 04.04.2013, issued by the first respondent and to pass appropriate orders by invoking Rule 48 of the General Rules for Tamil Nadu State and Subordinate Service, enabling the regularization of the service of the petitioner in the post of Research Assistant with effect from 28.08.1989 and to grant him all consequential benefits.

For Petitioner : Mr.M.Ravi
For Respondents: Mr.M.Santhana Raman
Additional Government Pleader

O R D E R

The relief sought for in this writ petition is for a direction to consider the claim of the petitioner in the light of the Judgment dated 01.08.2012 in P.Ravikumar Vs. The Government of Tamil Nadu, rendered by Madurai Bench of this Hon'ble High Court and the consequential order of the first respondent issued in implementation of the above Judgment in G.O.(D)No.93, Environment and Forest (FR-2) Department, dated 04.04.2013, issued by the first respondent and to pass appropriate orders by invoking Rule 48 of the General Rules for Tamil Nadu State and Subordinate Service, enabling the regularization of the service of the petitioner in the post of Research Assistant with effect from 28.08.1989 and to grant him all consequential benefits.

2. The facts in nutshell to be considered in this writ petition are that the writ petitioner has completed B.Sc., (Botany) and accordingly appointed to the post of Supernumerary Plot Watcher in the daily wages in the Forest Department. The writ petitioner continued as a daily wages employee in the Forest Department from 1989 to 1997 and thereafter his services in the post of Supernumerary Plot Watcher was regularized with effect from 10.09.1997. Accordingly, the writ petitioner is continuing in service as a regular employee in the cadre of Plot Watcher in the Forest Department.

3. The learned counsel appearing for the writ petitioner made a submission that the writ petitioner has completed B.Sc., (Botany) and therefore, he should be regularized in the post of Research Assistant with effect from 28.08.1989. Further, it is contended that the Madurai Bench of this Court passed an Order in the case of P.RaviKumar Vs. The Government of Tamil Nadu dated 01.08.2012 and the same was implemented by the first respondent in G.O.(D)No.93, Environment and Forest (FR-2) Department, dated 04.04.2013. In view of the said Judgment the case of the writ petitioner also considered to be for regular appointment with effect from 28.08.1989 and he should be observed in the post of Research Assistant retrospectively from the year 1989, by relaxing the service Rules in favour of the writ petitioner. The learned counsel for the writ petitioner further contended that the first respondent should invoke the Rule 48 of Tamil Nadu State and Subordinate Service Rules and relax the necessary qualification in favour of the writ

petitioner.

4. The learned Additional Government Pleader appearing on behalf of the respondent contended that the prayer as such sought for cannot be granted because an appointment can never be claimed as a matter of right. Further, the writ petitioner is not qualified for appointment to the post of Research Assistant as per the service rules. The petitioner was initially appointed on daily wages basis and he was not appointed in accordance with the recruitment rules in force. The writ petitioner continued as a daily wages employee and his services were regularized only in the post of Plot watcher and continuing in service. Thus, the retrospective regularization sought for by the writ petitioner cannot be granted in view of the fact that the writ petitioner was not qualified and not possessed the educational qualification for the post of Research Assistant and his initial recruitment on daily wages was not in accordance with the recruitment rules in force. In all these respects the claim of the writ petitioner cannot be considered and the same is to be rejected at the outset.

5. The learned counsel for the writ petitioner brought to the notice of this Court that the Madurai Bench of this Court passed an order on 01.08.2012 in W.P.(MD) No.12234 of 2011. The order is enclosed in page no.1 of the typed set of papers filed along with this present writ petition. In the earlier case decided by the Madurai Bench of this Court, the writ petitioner was posted as Research Assistant on daily wages by way of an appointment order dated 09.02.1995. Further, it is stated in the order that the said appointment of the Research Assistant in respect of the writ petitioner Mr.P.Ravikumar was issued after conducting an interview by the Department. The said Ravikumar continued in service for about 17 years and the services were not even regularized by the Department. Further the name of Mr.Ravikumar was sponsored through the Employment Exchange and he had sought for the relief to quash the rejection order and for a direction to regularize his service in the post of Research Assistant.

6. Thus, the fact in the case cited supra is clear that the said Ravikumar was initially appointed through District Employment Exchange, he was in possession of necessary qualification and was appointed as a Research Assistant on daily wages. Thus, there is a factual difference between the case of Ravikumar and the case of the writ petitioner herein. Further in the case of Ravikumar this Court has granted the relief of regularization by issuing a direction to the first respondent to exercise the powers under Rule 48 of the Tamil Nadu State and Subordinate service Rules so as to relax the rules in favour of Ravikumar.

7. In this context, the legal principles in the matter of regularization of service is to be considered by this Court in the light of the Judgments of the Hon'ble Supreme Court of India. Rule 48 of the Tamil Nadu State and Subordinate Service Rules states that

"Notwithstanding anything contained in the Special Rules for various State and Subordinate Services, where the normal method of recruitment to any service, class or category is neither solely by direct recruitment nor solely by recruitment by transfer but is both by direct recruitment and by recruitment by transfer,

(a) the proportion or order in which the special rules concerned may require vacancies to be filled by direct recruitment and by recruitment by transfer shall be applicable only to vacancies in the permanent cadre;

(b) a person shall be recruited direct only against vacancy in such permanent cadre, and only if the vacancy is one which should be filled by a direct recruit under the special rules referred to in clause (a); and

(c) recruitment to all other vacancies shall be made by recruitment by transfer.

Provided that any temporary post, which is in existence for more than five years, shall be treated as a permanent post for the purpose of this section."

8. The power of relaxation is extended to the Government shall be exercised only on exceptional circumstances in order to redress the grievances, where there is an injustice caused to the employees. Rule of relaxation cannot be exercised in a routine manner and so also the regularization cannot be granted in a mechanical manner in all the cases.

9. The object of the power of relaxing the rules is obviously to neutralise an injustice as a result of operation of any rule. It has been described to be the reserve power to deal with the unforeseen situations or circumstances and it is to be exercised in the public interest with a view to maintain integrity and efficiency in service. It is conferred upon the Government to meet any emergent situations where injustice might have been caused to any individual employee or class of employees or where the working of the rule might have become impossible. Where the power of relaxation is conferred upon the Government (or the Governor), the Court cannot usurp the power and directly or indirectly effect a relaxation.

10. In interpreting provisions for relaxation, it has been pointed out that the power of relaxation even if generally included in the Service Rules could either be for the purpose of

mitigating hardship or to meet a special and deserving situation. Any arbitrary exercise of such power must be guarded against and that the rule of relaxation must get pragmatic construction, so as to achieve effective implementation of good policy.

11. The Hon'ble Supreme Court of India, in the case of Suraj Prakash Gupta and Others vs. State of J&K and Others [(2000) 7 SCC 561], reiterated the principles, in paragraph-32, as under:-

"32. On facts, the reasons given in the Cabinet note for granting relaxation are hopelessly insufficient. In fact, the letter of the Commission dated 25-11-1997, shows that the Commission was prepared to give its opinion in regard to regularisation of each promotee but the Government backed out when the Commission called for the records relevant for considering suitability for regular promotion. In our view, there can be no hardship for a person seeking appointment or promotion to go by the procedure prescribed therefor. The relevant Recruitment Rule for promotion cannot itself be treated as one producing hardship. Narender Chadha case [(1986) 2 SCC 157 : 1986 SCC (L&S) 226] must be treated as an exception and not as a rule. In fact, if such relaxation is permitted in favour of the promotees then the same yardstick may have to be applied for direct recruits. In fact the J&K Government has already started to do so and this has not been accepted by this Court in Narinder Mohan case [(1994) 2 SCC 630 : 1994 SCC (L&S) 723 : (1994) 27 ATC 56] and Dr Surinder Singh Jamwal case [(1996) 9 SCC 619 : 1996 SCC (L&S) 1296] referred to above. If it is to be held that direct recruitment can also be permitted without consulting the Service Commission (in case it is required to be consulted there will, in our opinion, be total chaos in the recruitment process and it will lead to backdoor recruitment at the whims and fancies of the Government). Such a blanket power of relaxation of Recruitment Rules cannot be implied in favour of the Government."

12. The Hon'ble Supreme Court of India, in the case of Shri Amrik Singh and Others vs. Union of India and Others [(1980) 3 SCC 393], discussed the principles regarding the rule of relaxation, His Lordship Hon'ble Mr. Justice V.R.Krishna Iyer,

speaking for the Bench, emphatically ruled the legal principles as under:-

"Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes undue hardship, then the iniquitous consequence thereof may be relieved against by relaxation of the concerned Rule or Regulation. There must be undue hardship and, further the relaxation must promote the dealing with the case "in a just and equitable manner". These are perfectly sensible guidelines. What is more, there is implicit in the Rule, the compliance with natural justice so that nobody may be adversely affected even by administrative action without a hearing. We are unable to see anything unreasonable, capricious or deprivatory of the rights of anyone in this residuary power vested in the Central Government. Indeed, the present case is an excellent illustration of the proper exercise of the power. We are, therefore, satisfied that the Central Government was right in invoking its power to relax and regularize the spell of officiation, which was impugned as irregular or illegal. The consequence inevitably follows that the officer Ahluwalia was rightly assigned 1961 as the year of allotment."

13. Thus, this Court is also of the opinion that the power to grant and exemption, cannot be exercised in a manner to destroy the general provision from which the exemption is granted. For example, where the number of exemptees is far in excess of vacancies and render the chances of qualifiers illusory.

14. This Court is of the firm opinion that if a rule of relaxation is invoked in a routine manner it will amount to neutralizing and degrading the recruitment rules in force. A striking balance in between has to be adopted while exercising the powers of relaxation by the Competent Authorities. The process of recruitment and appointment shall be made only by following the recruitment rules in fore. In other words all appointments are to be made strictly by adhering the recruitment rules in force. Thus, the rule of relaxation is an exception and such an exception is to be exercised cautiously and sparingly in order to rectify the injustice caused to a particular case. Thus, the relaxation cannot be claimed as a matter of right by the candidates.

15. Rule of relaxation is a discretion granted to the Government and such a discretionary power has to be exercised judiciously and not in a routine manner. Relaxation being a discretionary power has to be exercised by the competent authorities by applying the facts in a particular case and not in a mechanical way to grant certain service benefits to the similarly placed persons. Granting relaxation in one case by the Government cannot be cited as a precedent in other cases. In view of the fact that the relaxation is an exception and cannot be followed in a routine affair. Thus, this Court is of the firm view that all the appointments and regularizations are to be made only by following the recruitment rules in force strictly and no relaxation can be granted by citing other cases and the Government also to be cautious while exercising the powers of relaxation under Rule 48 in certain cases.

16. The consequences of exercising the power of relaxation under Rule 48 in a routine manner will affect the right of the employees who were appointed regularly in accordance with the recruitment rules in force. In other words, there are large number of employees who are working in the Departments, were fully qualified and who were appointed in accordance with the recruitment and service rules in force. Any relaxation granted under Rule 48 should not have an impact of depriving those candidates, who were appointed regularly in accordance with the rules in force, specifically in the matter of promotions.

17. Thus, the Court has to adopt a balancing approach in this kind of cases, where the relaxation is sought for as a prayer in the writ petition. Now let us look into the case of a regular employee in verge of promotion for a particular cadre after satisfying the regular recruitment rules in force. If a relaxation is granted to an unqualified person, then he will supersede the candidates who were otherwise qualified and it will create a discrimination amongst the employees and it is the constitutional perspective that an equal opportunity in employment as well as in the promotion to be ensured to the qualified persons. The constitutional perspective in this regard is that the equality class provided to all the citizens, who were equally placed and no person can be deprived of his right of promotion to the higher cadre. In the event of granting relaxation under Rule 48, the right of the employees, who were appointed in accordance with the rules will also get affected. Such a regularization granted in a routine manner will affect the equality clause and the constitutional directives in this issue.

18. Considering the prayer as such sought for in the writ petition in relation to the regularization in the post of Research Assistant. Regularization cannot be granted contrary to the service rules in force. The Hon'ble Supreme Court of India in the case of State of Karnataka Vs. Umadevi also stated that the appointment of regularization cannot be granted in violation of the service rules in force and the Constitutional Bench emphasis the principles in this regard to be followed strictly. The following paragraphs are relevant to be cited:

"5. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional limitations and cannot be exercised arbitrarily Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That Article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedure which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognized that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous

inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the Constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

10. In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and Public Service Commissions for the States. Article 320 deals with the functions of Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following

the requirements set down therein.

12. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in *State of Punjab Vs. Jagdip Singh & Ors.* (1964 (4) SCR 964). It was held therein, "In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."

13. During the course of the arguments, various orders of courts either interim or final were brought to our notice. The purport of those orders more or less was the issue of directions for continuation or absorption without referring to the legal position obtaining. Learned counsel for the State of Karnataka submitted that chaos has been created by such orders without reference to legal principles and it is time that this Court settled the law once for all

so that in case the court finds that such orders should not be made, the courts, especially, the High Courts would be precluded from issuing such directions or passing such orders. The submission of learned counsel for the respondents based on the various orders passed by the High Court or by the Government pursuant to the directions of Court also highlights the need for settling the law by this Court. The bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality. While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of public employment. The argument on behalf of some of the respondents is that this Court having once directed regularization in the Dharwad case (supra), all those appointed temporarily at any point of time would be entitled to be regularized since otherwise it would be discrimination between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularized. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of appointment. This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the so-called equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down.

14. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of

permanence in service jurisprudence. In STATE OF MYSORE Vs. S.V. NARAYANAPPA [1967 (1) S.C.R. 128], this Court stated that it was a mis-conception to consider that regularization meant permanence. In R.N. NANJUNDAPPA Vs T. THIMMIAH & ANR. [(1972) 2 S.C.R. 799], this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated:- "Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment, whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

In B.N. Nagarajan & Ors. Vs. State of Karnataka & Ors. [(1979) 3 SCR 937], this court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles

recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

20. We may now consider, State of Haryana Vs. Piara Singh and Others [1992] 3 SCR 826]. There, the court was considering the sustainability of certain directions issued by the High Court in the light of various orders passed by the State for the absorption of its ad hoc or temporary employees and daily wagers or casual labour. This Court started by saying: "Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issued rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any governing the conditions of service" This Court then referred to some of the earlier decisions of this Court while stating: "The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the

case may be. As is often said, the State must be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. It is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularization. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above." This Court then concluded in paragraphs 45 to 50:

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the

employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. An unqualified person ought to be appointed only when qualified persons are not available through the above processes. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State "

With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent -- the distinction between regularization and making permanent, was not emphasized here -- can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of Piara Singh (supra) are to some extent inconsistent with the conclusion in paragraph 45 therein.

With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of

mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

44. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should

further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

45. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

46. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction

of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. No. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them.

47. Coming to Civil Appeal Nos. 1861-2063 of 2001, in view of our conclusion on the questions referred to, no relief can be granted, that too to an indeterminate number of members of the association. These appointments or engagements were also made in the teeth of directions of the Government not to make such appointments and it is impermissible to recognize such appointments made in the teeth of directions issued by the Government in that regard. We have also held that they are not legally entitled to any such relief. Granting of the relief

claimed would mean paying a premium for defiance and insubordination by those concerned who engaged these persons against the interdict in that behalf. Thus, on the whole, the appellants in these appeals are found to be not entitled to any relief. These appeals have, therefore, to be dismissed.

48. C.A. Nos. 3520-24 of 2002 have also to be allowed since the decision of the Zilla Parishads to make permanent the employees cannot be accepted as legal. Nor can the employees be directed to be treated as employees of the Government, in the circumstances. The direction of the High Court is found unsustainable.

49. In the result, Civil Appeal Nos. 3595-3612 of 1999, Civil Appeal No. 3849 of 2001, Civil Appeal Nos. 3520-3524 of 2002 and Civil appeal arising out of Special Leave Petition (Civil) Nos. 9103-9105 of 2001 are allowed subject to the direction issued under Article 142 of the Constitution in paragraph 46 and the general directions contained in paragraph 44 of the judgment and Civil Appeal Nos. 1861-2063 of 2001 are dismissed. There will be no order as to costs."

19. The Hon'ble Apex Court by following the earlier Judgment issued directions to the High Courts in the case of Secretary to Government Vs. R.Govindasamy and others reported in [(2014) 4 SCC 769]. and it is relevant to extract Paragraph No.8 of the same:

"8.this Court in State of Rajasthan & Ors. v. Daya Lal & Ors., AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under:

"(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against

sanctioned vacant post".

20. Considering the above Judgments of the Hon'ble Supreme Court of India and considering the fact that the writ petitioner was initially appointed as Plot watcher on daily wages in the year 1989 and he was regularly appointed as Plot Watcher only with effect from 2009. The rule of relaxation neither be claimed as a matter of right by the writ petitioner nor he can be absorbed in the post of Research Assistant with effect from 1989, as he was not at all qualified as per the rules in force. In any angle, the case of the writ petitioner cannot be considered, in view of the fact that the relaxation cannot be granted in this case by the Government as a routine affair and the writ petitioner is not qualified to the post of Research Assistant. This apart, the initial appointment of the writ petitioner also was not in accordance with the recruitment rules in force at the relevant point of time.

21. This Court is forced to record the displeasure on the part of the Government in exercising the power under Rule 48 in a routine manner. Power of relaxation under Rule 48 is an exemption in law. In other words, the Government cannot exercise the power of relaxation to favour some employees on their own choice. The Rule of regularization is to be exercised only on exceptional circumstances, in a case where an injustice occurred on account of administrative grounds.

22. Relaxation granted cannot be cited as a precedent and each case is to be decided based on its sole merits and in accordance with law. The Hon'ble Supreme Court of India also reiterated that the comparison of the cases are impermissible in normal circumstances and each case has to be decided based on the facts and in accordance with law. Thus, no further adjudication on the grounds raised in this writ petition needs to be under taken.

23. Accordingly, the writ petition stands dismissed. However, there is no order as to costs.

-s/d-

Assistant Registrar(CCC)

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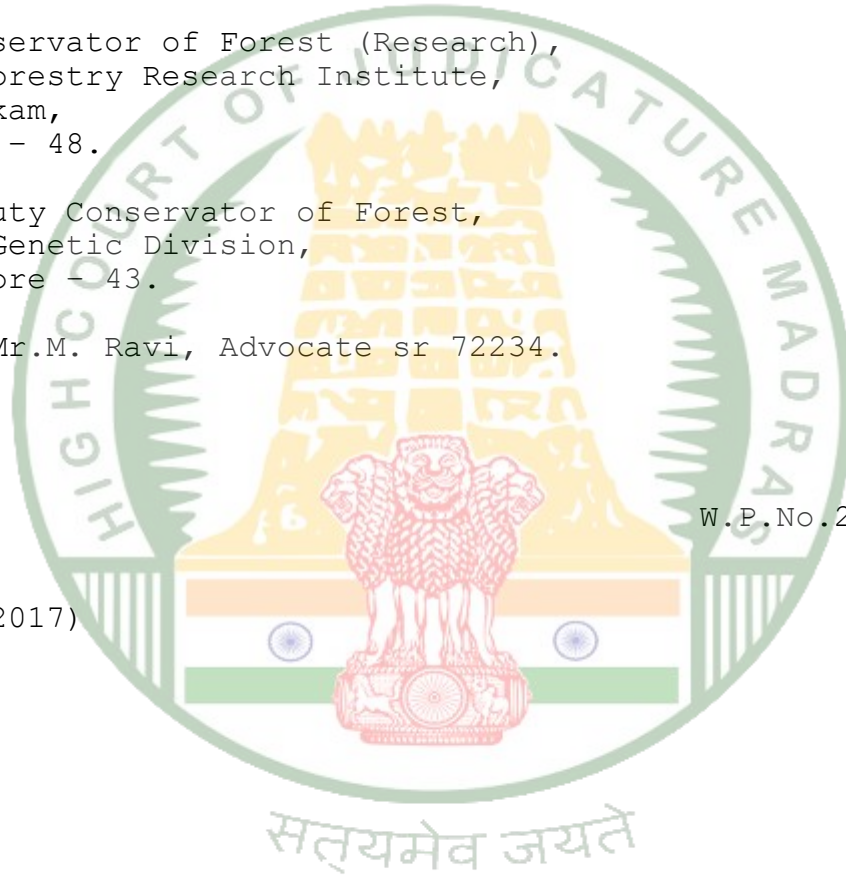
Sub-Assistant Registrar

To

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
Environment and Forest Department,
Secretariat,
Chennai - 600 009.
 - 2.The Principal Chief Conservator of Forest
and Head of Forest Force,
Chennai - 15.
 - 3.The Conservator of Forest (Research),
State Forestry Research Institute,
Kolapakkam,
Chennai - 48.
 - 4.The Deputy Conservator of Forest,
Forest Genetic Division,
Coimbatore - 43.
- +1 CC to Mr.M. Ravi, Advocate sr 72234.

RSY (CO)
SP (24/11/2017)

W.P.No.2762 of 2014



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