

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22/4/2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.11854 of 2019

A. Vijaya Sekaran

...Petitioner

Vs

1. The Secretary to Government
Home (Police III) Dept
Fort St. George
Chennai 9.
2. The Director General of Police
Dr. Radhakrishnan Salai
Mylapore
Chennai 4.
3. The Member Secretary
T.N.Uniformed Services Recruitment Board
Egmore
Chennai 8.
4. The Superintendent of Police
Nagapattinam District
Nagapattinam.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of declaration declaring that Clause No.16 of the Information Brochure of Notification (No.2/2019) dated 8/3/2019 issued by the third respondent debarring the service personnel under 20% Departmental quota under Rule 14 of the Tamil Nadu Police Subordinate Service Rules, who have suffered punishments other than Censure, Reprimand and Black mark from participating in the process for recruitment to the post of Sub-Inspector of Police (Taluk, Armed Reserve (Men & Women/Transgender and Tamil Nadu Special Police (Men) - 2019 as null and void and direct the respondents to permit the petitioner to participate in the process of selection under 20% Departmental quota for recruitment to the post of Sub-Inspector of Police for the year 2019.

For Petitioner ... Mr.M.Muthappan
For respondents ... Mr.Akhil Akbar Ali
Government Advocate

O R D E R

(Order of this Court was made by S.MANIKUMAR, J.)

Instant public interest litigation has been filed for a writ of declaration declaring that Clause No.16 of the Information Brochure of Notification (No.2/2019) dated 8/3/2019 issued by the Member Secretary, T.N.Uniformed Services Recruitment Board, Chennai, the 3rd respondent herein, debarring the service personnel under 20% Departmental quota under Rule 14 of the Tamil Nadu Police Subordinate Service Rules, who have suffered punishments other than Censure, Reprimand and Black mark from participating in the process for recruitment to the post of Sub-Inspector of Police (Taluk, Armed Reserve (Men & Women/Transgender and Tamil Nadu Special Police (Men) - 2019 as null and void and to direct the respondents to permit the petitioner to participate in the process of selection under 20% Departmental quota for recruitment to the post of Sub-Inspector of Police for the year 2019.

2. Case of the petitioner in nutshell is as follows:-

Petitioner entered service as a directly recruited Gr-II Police Constable through a selection conducted by the Member Secretary, Tamil Nadu Uniformed Services Recruitment Board, Chennai, third respondent and appointed to service on 15/12/2008. After serving in the TSP Battalion for more than four years, he was transferred to Armed Reserve and thereafter, transferred to Taluk Police establishment.

3. Tamil Nadu Uniformed Services Recruitment Board, Chennai (in short TNUSRB, Chennai) issued a Notification No.2/2019, dated 8/3/2019, inviting applications from the candidates for appointment to the post of Sub-Inspector, Taluk, AR and TSP, in the scale of pay of Rs.36,900-1,15,600. Notifications speak about the existing vacancy as 969, wherein TNUSRB, Chennai has proposed to recruit as many as 936 candidates for category I and II and 33 candidates for category - III. Out of the total vacancy of 969, 20% has been earmarked for serving police personnel working in the department and should meet the eligibility criteria, under Section 14 of the TNPSS & TNSPSS Rules. Petitioner is a graduate and serving in the department, and is eligible to apply for the post. As per the Information Brochure, Clause 16, eligibility for 20% departmental candidates has been prescribed, if the candidate meets the following eligibility criteria under Rule 14 of the TNPSS Rules, 1953 and

TNPSS Rules, 1978, which reads as follows:-

(i). They should have completed 5 years of service as on the date of notification.

(ii). They should have clean records without any punishment, other than the minor punishments of black mark, reprimand and censure in their entire service.

(iii). The departmental candidates should obtain NOC in the prescribed format from the Head of Unit/Office/competent authority and it should be uploaded while applying on-line application.

(iv). Written examination for departmental candidates will be held separately. A departmental candidate may apply for both open and departmental quota, if he/she satisfies the eligibility criteria.

(v). In case of required number of candidates are not available in the Departmental quota, the vacancies would be transferred to open quota of the same community.

(vi). Communal reservation is followed within the Departmental quota as per the existing Rules."

4. According to the petitioner, he is fully qualified for applying to the post of Sub-Inspector (Men) either in Local, Armed Reserve or TSP Battalion. He satisfies five year of service in the Department, having entered the service in the year 2008 and in all other aspects, except the fact that he has suffered punishment.

5. Petitioner has suffered a punishment of deferred black mark for 6 months u/r 3 (b) of TNPSS (D & A) Rules in PR No.12/2015. Second punishment suffered is a punishment of postponement of increment for two years without cumulative effect, based on a charge memo, issued u/r 3 (a) of TNPSS (D & A) Rules in PR.No.32/2015. The third punishment suffered is a punishment of postponement of increment for one year without cumulative effect, based on a charge memo u/r 3 (a) of TNPSS (D & A) Rules in PR No.110 of 2017.

6. Against the punishment of deferred black mark, there is no appeal provided and hence as per the Information Brochure, the punishment of black mark is not a bar. In so far as the punishments of 2 and 3 is concerned, petitioner has already preferred an appeal/memorial to the DGP and the same is pending. The said aspect is not taken into consideration and the Head of Unit has refused to issue NOC to the petitioner in the prescribed format under whom he is serving.

7. Awarding of punishment is purely based on the discretion of the disciplinary authority under whom the departmental candidate serves. A major punishment can be imposed by the disciplinary authority, even for a trivial delinquency.

Similarly, for high volatile delinquency, the disciplinary authority may take into consideration the circumstances and impose with a lesser punishment of censure, reprimand and black mark, so that, the candidates may participate in the process of selection. All the individuals who have suffered the punishment should be allowed to participate in the process of selection, after the currency of the punishment is over. Moreover, charge memos are issued either for major or minor delinquencies. A person who has issued with a charge memo, under rule 3(a) of Tamil Nadu Police Subordinate Service Rules, is imposed with a punishment of stoppage of increment, postponement of increment, reduction in time scale of pay, etc., but at the same time, a person who is issued with a charge memo u/r 3 (b) of TNPSS (D & A) Rules, can also be imposed with a lesser punishment of censure, black mark and reprimand and other minor punishments, namely, stoppage of increment, postponement of increment, reduction in time scale of pay, removal from service, dismissal from service and compulsory retirement from service. Hence in the absence of any specific criteria for awarding punishment, merely because a person has suffered a punishment, other than the punishment of censure, blackmark and reprimand, he cannot be denied to participate in the process of selection under 20% quota, which accordingly to the petitioner, amounts to invidious discrimination violating Article 14 & 16 of the Constitution of India. Since the petitioner has been denied NOC on the ground that he has suffered a punishment of postponement of increment, etc., he has filed the instant writ petition praying for the relief as stated supra.

8. On the above averments, Mr.M.Muthappan, learned counsel for the petitioner submitted that classification mentioned in Clause 16 of the Information Brochure namely, persons who have suffered a punishment of censure, reprimand and black mark are eligible to participate in the process of selection is highly arbitrary and discriminatory in nature.

9. Learned counsel for the petitioner further submitted that there is absolutely no reason, for depriving the right of promotion to the petitioner, on the ground that he has suffered a punishment other than the punishment of censure, reprimand and black mark in his entire service to participate in the process of selection. Hence imposing a condition that the candidate who has applied under 20% departmental quota should not suffer any punishment other than the censure, reprimand and black mark, is highly arbitrary, besides it is a colourable exercise preventing those who have suffered punishments other than the punishments, as stated above. Hence, condition in Clause 16 of the Information Brochure is a colourable classification and the same is against the principles of natural justice, equity, unlawful and unconstitutional and hence liable to be set aside.

10. Learned counsel for the petitioner submitted that there is no currency of punishment as on the date of Notification and in some of the punishments, appeals are pending and there is every chance to set aside the punishments.

11. Heard the learned counsel for the parties and perused the material available on record.

12. Before advertng to the submissions of the learned counsel for the petitioner, let us consider few provisions in the Police Standing Orders, which deals with penalties.

. Police Standing Orders 91 reads as follows:-

Reprimands - (1). Under the Discipline and Appeal Rules a reprimand can be imposed as a penalty on Subordinate Police Officers of and above the rank of Sub-Inspector. The lowest authority which can award the penalty is the Deputy or Assistant Superintendent of Police or an Officer of corresponding rank.

(2). It is a lesser penalty than censure and shall, therefore, be given when the offence is such as not to merit a censure.

(3). In every case where it is proposed to award a reprimand the officer concerned should be given a reasonable opportunity of showing cause against the imposition of the penalty. No oral enquiry is necessary it is an appealable punishment.

(4). When an officer has a previous good record a reprimand may be held in abeyance for a stated period ranging from three to six months at the end of which the order of punishment will be cancelled, if the officers conduct while on duty during the period of post paramount has been good. If the officer's conduct is found to be unsatisfactory at any time during the period of post paramount the reprimand may at once be confirmed. If the reprimand is subsequently confirmed, it will take effect from the date of the offence to which it relates.

(5). A reprimand will be entered in the defaulter sheet and service book.

. Police Standing Orders 92 reads as follows:-

Censure - A censure may be awarded for serious acts of omission or commission, for which a reprimand or warning would be inadequate and postponement of increment or reduction would be excessive. In every case where it is proposed to award a censure the officer concerned should be given a reasonable opportunity of showing cause against the imposition of the penalty. No oral enquiry is necessary.

. Police Standing Order 93 reads thus:-

Blackmark to whom applicable - The Black Mark system is applicable to all Police Officers of and below the rank of Head Constables in the Local Police, Armed Reserve and the Armed Police.

. Police Standing Order 94 reads thus:-

Blackmark - Rules - The following rules regulate the system of punishment by blackmarks:-

(1). An offence shall not be punished by the award both of a specific punishment and of a blackmark.

(2). An blackmark should not be awarded for petty offences for which punishment like drill, extra guard duty, extra work, or fatigue duty, or a warning might be sufficient.

(3). Not more than one blackmark shall be awarded for any one offence.

(4). Blackmarks shall take effect from the date of the offence, unless otherwise stated.

(5). The above rules must be strictly enforced, provided that in any case in which the officer awarding the black mark considers that the application of the rules will result in hardship to the offender, he shall refer the case for the orders of the Deputy Inspector - General concerned.

13. Let us also consider what the statutory rules state about penalties. Rule 2 of the Tamilnadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, deals with penalties and the same is extracted, hereunder:-

"Rule 2 (1) The following penalties may, for good and sufficient reason, be imposed upon members of the service, namely:

(a) Reprimand in the case of the subordinates specified in items 1 to 4 under the heading "Tamil Nadu Police Subordinate Service" and in item 1 and 2 under the heading "Tamil Nadu Special Police Subordinate Service" in the Schedule.

(b) Censure or blackmark in the case of Reserve Assistant Sub-Inspectors, Head Constables and Constables and others of corresponding rank.

(c) Withholding of increments or promotion, including stoppage at an efficiency bar.

(d) Reduction to a lower rank in the Seniority List or a lower grade, post or time scale or to a lower stage in the same time scale.

(e) (1) Recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders.

(2) Recovery from pay to the extent necessary of

the monetary value equivalent to the amount of increments ordered to be withheld where such an order cannot be given effect to.

Explanation : In cases of stoppage of increment with cumulative effect the monetary value equivalent to three times the amount of increments ordered to be withheld may be recovered.

(3) Recovery from pay to the extent necessary of the monetary value of the reduction to a lower stage in a time scale where such an order cannot be given effect to.

(f) Suspension for a period not exceeding 15 days in the case of Sub-Inspectors and Constables if the penalty to reduction to a lower grade, post or time scale or to a lower stage in the same time scale cannot be imposed.

(g) Suspension, where a person has already been suspended under rule 3(e) to the extent considered necessary by the authority imposing the penalty.

(h) Compulsory retirement otherwise than under Article 465(2) or under Note I to Article 365-A of the Civil Service Regulations.

(i) Removal from the Civil Service of the State Government which disqualifies from future employment.

Explanation : (i) The discharge of a person appointed on probation during the period of probation or of a person engaged under contract in accordance with the terms of his contract not amount to removal or dismissal within the meaning of this rules.

(ii) The penalty of "recovery from pay of the whole or part of any pecuniary loss caused to Government by negligence or breach of orders" may be imposed in addition to any other penalty which may be inflicted in respect of the same negligence or breach of orders.

2. The penalties mentioned in clauses (H) (I) and (J) as the case may be shall be imposed on a member of the service for violation of Rule No.23 of the T.N. Subordinate Police Officers Conduct Rules 1964."

14. Going through the facts stated in the supporting affidavit to the instant writ petition, we could see that the petitioner, has averred his own case, than espousing the cause of similarly placed persons. With this preliminary note, we shall now deal with cases relating to public interest litigations and public interest litigations in service matters:-

Public Interest Litigation:

(i) In S.P.Anand v. H.D.Deve Gowda reported in 1996 (6) SCC 734, the Hon'ble Supreme Court, at Paragraph 18, held as follows:

"It is of utmost importance that those who invoke this Court's jurisdiction seeking a waiver of the locus standi rule must exercise restraint in moving

the Court by not plunging in areas wherein they are not well-versed. Such a litigant must not succumb to spasmodic sentiments and behave like a knight-errant roaming at will in pursuit of issues providing publicity. He must remember that as a person seeking to espouse a public cause, he owes it to the public as well as to the court that he does not rush to court without undertaking a research, even if he is qualified or competent to raise the issue. Besides, it must be remembered that a good cause can be lost if petitions are filed on half-baked information without proper research or by persons who are not qualified and competent to raise such issues as the rejection of such a petition may affect third party rights. Lastly, it must also be borne in mind that no one has a right to the waiver of the locus standi rule and the court should permit it only when it is satisfied that the carriage of proceedings is in the competent hands of a person who is genuinely concerned in public interest and is not moved by other extraneous considerations. So also the court must be careful to ensure that the process of the Court is not sought to be abused by a person who desires to persist with his point of view, almost carrying it to the point of obstinacy, by filling a series of petitions refusing to accept the Court's earlier decisions as concluding the point. We say this because when we drew the attention of the petitioner to earlier decisions of this Court, he brushed them aside, without so much as showing willingness to deal with them and without giving them a second look, as having become stale and irrelevant by passage of time and challenged their correctness on the specious plea that they needed reconsideration. Except for saying that they needed reconsideration he had no answer to the correctness of the decisions. Such a casual approach to considered decisions of this Court even by a person well-versed in law would not be countenanced. Instead, as pointed out earlier, he referred to decisions having no bearing on the question, like the decisions on cow slaughter cases, freedom of speech and expression, uniform civil code, etc., we need say no more except to point out that indiscriminate of this important lever of public interest litigation would blunt the lever itself."

(ii) In *Balco Employees' Union (Regd.) v. Union of India* reported in 2002 (2) SCC 333, the Hon'ble Supreme Court, held that,

"Public interest litigation, or PIL as it is more commonly known, entered the Indian judicial process in 1970. It will not be incorrect to say that it is

primarily the judges who have innovated this type of litigation as there was a dire need for it. At that stage, it was intended to vindicate public interest where fundamental and other rights of the people who were poor, ignorant or in socially or economically disadvantageous position and were unable to seek legal redress were required to be espoused. PIL was not meant to be adversarial in nature and was to be a cooperative and collaborative effort of the parties and the court so as to secure justice for the poor and the weaker sections of the community who were not in a position to protect their own interests. Public interest litigation was intended to mean nothing more than what words themselves said viz. "litigation in the interest of the public."

(iii) In *Ashok Kumar Pandey v. State of W.B.*, reported in 2004 (3) SCC 349, the Hon'ble Apex Court, after considering few decisions, on the aspect of public interest litigation, observed as follows:

"4. When there is material to show that a petition styled as a public interest litigation is nothing but a camouflage to foster personal disputes, said petition is to be thrown out. Before we grapple with the issue involved in the present case, we feel it necessary to consider the issue regarding public interest aspect. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be "publicity interest litigation" or "private interest litigation" or "politics interest litigation" or the latest trend "paise income litigation". If not properly regulated and abuse averted it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or poke ones into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have a locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration. These aspects were highlighted by this Court in *The Janta Dal v. H.S. Chowdhary* [1992 (4) SCC

305] and Kazi Lhendup Dorji vs. Central Bureau of Investigation (1994 Supp (2) SCC 116). A writ petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ petitioner but also with a clean heart, clean mind and clean objective. See Ramjas Foundation v. Union of India (AIR 1993 SC 852) and K.R.Srinivas v. R.M.Premchand (1994 (6) SCC 620).

5. It is necessary to take note of the meaning of expression 'public interest litigation'. In Strouds Judicial Dictionary, Volume 4 (IV Edition), 'Public Interest' is defined thus:

"Public Interest (1) a matter of public or general interest does not mean that which is interesting as gratifying curiosity or a love of information or amusement but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected."

6. In Black's Law Dictionary (Sixth Edition), "public interest" is defined as follows :

"Public Interest something in which the public, or some interest by which their legal rights or liabilities are affected. It does not mean anything the particular localities, which may be affected by the matters in question. Interest shared by national government...."

7. In Janata Dal case (supra) this Court considered the scope of public interest litigation. In para 52 of the said judgment, after considering what is public interest, has laid down as follows :

"The expression 'litigation' means a legal action including all proceedings therein initiated in a Court of law for the enforcement of right or seeking a remedy. Therefore, lexically the expression "PIL" means the legal action initiated in a Court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

8. In paras 60, 61 and 62 of the said judgment, it was pointed out as follows:

"Be that as it may, it is needless to emphasis that the requirement of locus standi of a party to a litigation is mandatory, because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

9. In para 96 of the said judgment, it has further been pointed out as follows:

"While this Court has laid down a chain of notable

decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that Courts should not allow its process to be abused by a mere busy body or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

10. In subsequent paras of the said judgment, it was observed as follows:

"109. It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have as locus standi and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL, brought before the Court for vindicating any personal grievance, deserves rejection at the threshold".

11. It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of

themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined the "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

"Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

14. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of Maharashtra v. Prabhu [(1994) (2) SCC 481]) and Andhra Pradesh State Financial Corporation v. M/s.GAR Re-Rolling Mills and Another [AIR 1994 SC 2151]. No litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See Buddhi Kota Subbarao (Dr.) v. K.Parasaran, (1996) 7 JT 265]. Today people rush to Courts to file cases in profusion under this attractive name of public interest. They must inspire confidence in Courts and among the public.

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, Courts are

entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr.Duryodhan Sahu and Ors., v. Jitendra Kumar Mishra and Ors.*, (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so- called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

17.

18. In *S.P.Gupta v. Union of India* [1981 Supp. SCC 87], it was emphatically pointed out that the relaxation of the rule of locus standi in the field of PIL does not give any right to a busybody or meddlesome interloper to approach the Court under the guise of a public interest litigant. He has also left the following note of caution: (SCC p.219, para 24)

"But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective."

19. In *State of H.P. vs. A Parent of a Student of Medical College, Simla and Ors.* (1985 (3) SCC 169), it has been said that public interest litigation is a weapon which has to be used with great care and circumspection.

20. Khalid, J. in his separate supplementing judgment in *Sachidanand Pandey vs. State of W.B.*, (1987 (2) SCC 295, 331) said:

"Today public spirited litigants rush to courts to file cases in profusion under this attractive name. They must inspire confidence in courts and among the public. They must be above suspicion. (SCC p. 331, para 46)

* * *

Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions. (SCC p.334, para 59)

* * *

I will be second to none in extending help when such help is required. But this does not mean that the doors of this Court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants." (SCC p.335, para 61)

21. Sabyasachi Mukharji, J. (as he then was) speaking for the Bench in *ramsharan Autyanuprasi v. Union of India* (1989 Supp (1) SCC 251), was in full agreement with the view expressed by Khalid, J. in *Sachidanand Pandey's case* (supra) and added that 'public interest litigation' is an instrument of the administration of justice to be used properly in proper cases. [See also separate judgment by Pathak, J. (as he then was) in *Bandhua Mukti Morcha v. Union of India* (1984 (3) SCC 161).

22. Sarkaria, J. in *Jasbhai Motibhai Desai v. Roshan Kumar* (1976 (1) SCC 671) expressed his view that the application of the busybody should be rejected at the threshold in the following terms: (SCC p. 683, para 37)

"It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories : (i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect. They

indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold."

23. Krishna Iyer, J. in *Fertilizer Corpn. Kamgar Union (Regd.) v. Union of India* (1981 (1) SCC 568) in stronger terms stated: (SCC p.589, para 48)

"48. If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him."

24. In *Chhetriya Pardushan Mukti Sangharash Samiti v. State of U.P.*, (1990 (4) SCC 449), Sabyasachi Mukharji, C.J. observed: (SCC p.452, para 8)

"While it is the duty of this Court to enforce fundamental rights, it is also the duty of this Court to ensure that this weapon under Article 32 should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights being considered by the court."

25. In *Union Carbide Corporation v. Union of India* (1991 (4) SCC 584, 610), Ranganath Mishra, C.J. in his separate judgment while concurring with the conclusions of the majority judgment has said thus: (SCC p.610, para 21)

"I am prepared to assume, nay, concede, that public activists should also be permitted to espouse the cause of the poor citizens but there must be a limit set to such activity and nothing perhaps should be done which would affect the dignity of the Court and bring down the serviceability of the institution to the people at large. Those who are acquainted with jurisprudence and enjoy social privilege as men educated in law owe an obligation to the community of educating it properly and allowing the judicial process to continue unsoiled."

26. In *Subhash Kumar v. State of Bihar*, (1991 (1) SCC 598) it was observed as follows:

"Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. If such petitions under Article 32, are entertained it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners from this Court. Personal

interest cannot be enforced through the process of this Court under Article 32 of the Constitution in the garb of a public interest litigation. Public interest litigation contemplates legal proceeding for vindication or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law. A person invoking the jurisdiction of this Court under Article 32 must approach this Court for the vindication of the fundamental rights of affected persons and not for the purpose of vindication of his personal grudge or enmity. It is the duty of this Court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of this Court for personal matters under the garb of the public interest litigation".

27. In the words of Bhagwati, J. (as he then was) "the courts must be careful in entertaining public interest litigations" or in the words of Sarkaria, J. "the applications of the busybodies should be rejected at the threshold itself" and as Krishna Iyer, J. has pointed out, "the doors of the courts should not be ajar for such vexatious litigants".

(iv) In *Vikas Vashishth v. Allahabad High Court* reported in 2004 (13) SCC 485, the Hon'ble Supreme Court held as follows:

"At the very outset, we put it to the petitioner that a bare perusal of the petition shows that it is based entirely on newspaper reports and asked him whether before filing the petition he has taken care to verify the facts personally. His answer is in the negative. In the writ petition all the 21 High Courts have been included as respondents and Union of India has also been impleaded as the 22nd respondent. We asked the petitioner what has provoked him to implead all the High Courts as respondents and he states that it is his apprehension that similar incidents may occur in other High Courts though there is no factual foundation for such appreciation.

5. After affording the full opportunity of hearing, we are satisfied that what purports to have been filed as a public interest litigation is nothing more than a "publicity interest litigation". It is writ large that it has been filed without any effort at verifying the facts by the petitioner personally."

(v) In *R & M.Trust v. Koramangala Residents Vigilance Group* reported in 2005 (3) SCC 91, the Hon'ble Supreme Court, at Paragraphs 23 and 24, observed as follows:

"23. Next question is whether such Public Interest Litigation should at all be entertained & laches

thereon. This sacrosanct jurisdiction of Public Interest Litigation should be invoked very sparingly and in favour of vigilant litigant and not for the persons who invoke this jurisdiction for the sake of publicity or for the purpose of serving their private ends.

24. Public Interest Litigation is no doubt a very useful handle for redressing the grievances of the people but unfortunately lately it has been abused by some interested persons and it has brought very bad name. Courts should be very very slow in entertaining petitions involving public interest in a very rare cases where public at large stand to suffer. This jurisdiction is meant for the purpose of coming to the rescue of the down trodden and not for the purpose of serving private ends. It has now become common for unscrupulous people to serve their private ends and jeopardize the rights of innocent people so as to wreak vengeance for their personal ends. This has become very handy to the developers and in matters of public contracts. In order to serve their professional rivalry they utilize the service of the innocent people or organization in filing public interest litigation. The Courts are sometimes persuaded to issue certain directions without understanding implication and giving a handle in the hands of the authorities to misuse it. Therefore, the courts should not exercise this jurisdiction lightly but should exercise in a very rare and few cases involving public interest of large number of people who cannot afford litigation and are made to suffer at the hands of the authorities."

(vi) In *Gurpal Singh v. State of Punjab* reported in 2005 (5) SCC 136, the Hon'ble Supreme Court, while considering the scope of a petition styled as a public interest litigation, held as follows:

"5. The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases. The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive

actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect.

6.

7. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that Courts are flooded with large number of so-called public interest litigations where even a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in large number of cases, yet unmindful of the real intentions and objectives, High Courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Dr. Duryodhan Sahu and Ors. v. Jitendra Kumar Mishra and Ors.* (AIR 1999 SC 114), this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the Courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the Court should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the Courts to filter out the frivolous petitions and dismiss them with costs as afore-stated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the Courts.

8.

9. It is depressing to note that on account of such trumpety proceedings initiated before the Courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievance go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters - government or private, persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busy bodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to loose but trying to gain for nothing and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the court never moves, which piquant situation creates frustration in the minds of the genuine litigants.

10. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of

mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs."

(vii) In Common Cause (A Regd. Society) v. Union of India reported in 2008 (5) SCC 511, Hon'ble Mr. Justice Markandey Katju (as he then was), held as follows:

"59. Unfortunately, the truth is that PILs are being entertained by many courts as a routine and the result is that the dockets of most of the superior courts are flooded with PILs, most of which are frivolous or for which the judiciary has no remedy. As stated in Dattaraj Nathuji Thaware v. State of Maharashtra reported in AIR 2005 SC 540, public interest litigation has nowadays largely become 'publicity interest litigation', 'private interest litigation', or 'politics interest litigation' or the latest trend 'paise income litigation'. Much of P.I.L. is really blackmail.

60. Thus, Public Interest Litigation which was initially created as a useful judicial tool to help the poor and weaker section of society who could not afford to come to courts, has, in course of time, largely developed into an uncontrollable Frankenstein and a nuisance which is threatening to choke the dockets of the superior courts obstructing the hearing of the genuine and regular cases which have been waiting to be taken up for years together."

In the same judgment, concurring with the view of his Brother Judge, Hon'ble Mr. Justice H.K.Sema (as he then was), further added, as follows:

"69. Therefore, whether to entertain the petition in the form of Public Interest Litigation either represented by public-spirited person; or private interest litigation in the guise of public interest litigation; or publicity interest litigation; or political interest litigation is to be examined in the

facts and circumstances recited in the petition itself. I am also of the view that if there is a buffer zone unoccupied by the legislature or executive which is detrimental to the public interest, judiciary must occupy the field to subserve public interest. Therefore, each case has to be examined on its own facts."

(viii) In *Adarsh Shiksha Mahavidyalaya v. Subhash Rahangdale* reported in 2012 (2) SCC 425, the Hon'ble Supreme Court observed as follows:

"57. In the light of the above, we shall first consider whether the High Court committed an error by entertaining the writ petition filed by Subhash Rahangdale as public interest litigation. This Court has, time and again, laid down guiding principles for entertaining petitions filed in public interest. However, for the purpose of deciding the appellants' objection it is not necessary to advert to the plethora of precedents on the subject because in *State of Uttaranchal v. Balwant Singh Chaufal* (2010) 3 SCC 402, a two-Judge Bench discussed the development of law relating to public interest litigation and reiterated that before entertaining such petitions, the Court must feel satisfied that the petitioner has genuinely come forward to espouse public cause and his litigious venture is not guided by any ulterior motive or is not a publicity gimmick.

58. In paragraphs 96 to 104, the Bench discussed Phase-III of the public interest litigation in the context of transparency and probity in governance, referred to the judgments in *Vineet Narain v. Union of India* (1998) 1 SCC 226, *Centre for Public Interest Litigation v. Union of India* (2003) 7 SCC 532, *Rajiv Ranjan Singh "Lalan" (VIII) v. Union of India* (2006) 6 SCC 613, *M.C. Mehta v. Union of India* (2007) 1 SCC 110, *M.C. Mehta v. Union of India* (2008) 1 SCC 407 and observed:

"These are some of the cases where the Supreme Court and the High Courts broadened the scope of public interest litigation and also entertained petitions to ensure that in governance of the State, there is transparency and no extraneous considerations are taken into consideration except the public interest. These cases regarding probity in governance or corruption in public life dealt with by the courts can be placed in the third phase of public interest litigation."

59. Reference also deserves to be made to the judgment of the three-Judge Bench in Shivajirao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi (1987) 1 SCC 227 in which a new dimension was given to the power of the Superior Courts to make investigation into the issues of public importance even though the petitioner may have moved the Court for vindication of a private interest. In that case the High Court had entertained a writ petition filed by Assistant Medical Officer of K.E.M. Hospital, Bombay questioning the assessment of answer sheets of the Post Graduate Medical Examinations held by the Bombay University in October 1985. He alleged malpractices in the evaluation of the answer sheets of the daughter of the appellant who, at the relevant time, was Chief Minister of the State. The learned Single Judge held that altering and tampering of the grade sheets was done by Dr. Rawal at the behest of the Chief Minister. The Division Bench affirmed the order of the learned Single Judge with some modification.

60. While rejecting the objection raised on behalf of the appellant that the writ petition filed by the respondent cannot be treated as a petition filed in public interest, this Court observed:

"The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the Court, it was the duty of the Court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice."

(emphasis supplied)

19. Worthwhile to extract few decisions, when a policy decision can be interfered with.

(i) In Narmada Bachao Andolan Vs. Union of India and Others, reported in {2000 (10) SCC - 664}, the Hon'ble Supreme Court observed as follows:-

"232. While protecting the rights of the people from being violated in any manner utmost care has to be taken that the Court does not transgress its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever the executive has sought to impinge upon the Court's jurisdiction.

233. At the same time, in exercise of its enormous power, the Court should not be called upon to or undertake governmental duties or functions. The Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under values of the Constitution and the rights of Indians. The Courts must therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere. When there is a valid law requiring the Government to act in a particular manner the Court ought not to, without striking down the law, give any direction which is not in accordance with law. In other words, the Court itself is not above the law.

234. In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the Court to go into and investigate those areas which are the function of the executive. For any project which is approved after due deliberation, the Court should not refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government is possible. When two or more options or views are possible and after considering them the Government takes a policy decision it is then not the function of the Court to go into the matter afresh and, in a way, sit in appeal over such a policy decision."

The above mentioned observations have been quoted with approval by the Hon'ble Supreme Court in BALCO EMPLOYEES' UNION (REGD) Vs. UNION OF INDIA AND OTHERS {2002 (2) SCC - 333}.

(ii) In DIVISIONAL MANAGER, ARAVALI GOLF CLUB AND ANOTHER {2008 (1) SCC - 683}, in paragraphs Nos.17, 19, 20 and 22, the Hon'ble Supreme Court held thus:-

"17. Before parting with this case, we would like to make some observations about the limits of the powers of the judiciary. We are compelled to make these observations because we are repeatedly coming across cases where judges are unjustifiably trying to perform executive or legislative functions. In our opinion this is clearly unconstitutional. In the name of judicial activism judges cannot cross their limits and try to take over functions which belong to another organ of the State.

19. Under our Constitution, the legislature, the executive and the judiciary all have their own broad spheres of operation. Ordinarily, it is not proper for any of these three organs of the State to encroach upon the domain of another, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

20. Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like emperors. There is broad separation of powers under the Constitution and each organ of the State - the legislature, the executive and the judiciary - must have respect for the other and must not encroach into each other's domains.

22. In Tata Cellular Vs. Union of India (vide AIR para 113 : SCC para 94), this Court observed that the modern trend points to judicial restraint in administrative action. The same view has been taken in a large number of other decisions also, but it is unfortunate that many Courts are not following these decisions and are trying to perform legislative or executive functions. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimisation of the Judges' preferences. The Court must not embarrass the administrative authorities and must realise that administrative authorities have expertise in the field of administration while the Court does not. In the words of Neely VJ (Scc p.681, para 82).

"82.... I have very few illusions about my own limitations as a Judge ... I am not an accountant, electrical engineer, financier, banker, expect Judges intelligently to review a 5000 page record addressing

the intricacies of a public utility operation."

It is not the function of a Judge to act as a superboard, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator."

(iii) In COMMON CAUSE (A REGD. SOCIETY) VS. UNION OF INDIA AND OTHERS, {2008 (5) SCC - 511}, wherein at paragraph No.40, the Hon'ble Supreme Court, held thus:-

"The justification given for judicial activism is that the executive and legislature have failed in performing their functions. Even if this allegations is true, does it justify the judiciary in taking over the functions of the legislature or executive? In our opinion it does not: firstly, because that would be in violation of the high constitutional principle of separation of powers between the three organs of the State, and secondly, because the judiciary has neither the expertise nor the resources for this. If the legislature or executive are not functioning properly it is for the people to correct the defects by exercising their franchise properly in the next elections and voting for candidates who will fulfil their expectations, or by other lawful means e.g., peaceful demonstrations and agitations, but the remedy is surely not by the judiciary in taking over the functions of the other organs."

Public Interest Litigation in Service Matter:

"4. When maintainability of the public interest writ petition, in service matters, was raised by us, Mr.J.Pooventhera Rajan, learned counsel for the petitioner, relied on, a Full Bench judgment of the Punjab and Haryana High Court, in Jaskaran Singh Brar vs State Of Punjab And Ors., (2005 (3) SLJ 354 P & H). At that juncture, we pointed out to the learned counsel for the petitioner that judgments of other High Courts, do not have any binding effect, more particularly, when the law declared by the Hon'ble Supreme Court, under Article 141 of the Constitution of India, is to the effect that, a public interest writ petition is not maintainable in service matters, he sought for an adjournment.

5. Way back in 1998, in Dr.Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others, reported in 1998 (7) SCC 273, the Hon'ble Supreme Court dealt with an issue, as to whether a Public Interest Writ Petition, at the instance of a stranger, could be entertained, by the Administrative Tribunal. After considering the decisions in Jasbhai Motibhai Desai vs. Roshan Kumar Haji Bashir Ahmed and others (1976) 1.S.C.C. 671, the law declared in Chandra Kumar vs. Union of India (1997) 3 SCC 261, and the provisions of

the Administrative Tribunals Act, 1985, the Hon'ble Supreme Court held as follows:-

"18..... Section 3 (b) defines the word 'application' as an application made under Section 19. The latter Section refers to 'person aggrieved'. In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the word 'order' has been defined in the explanation to sub-s. (1) of Section 19 so that all matters referred to in Section 3 (q) as service matters could be brought before the Tribunal. It in that context, Sections 14 and 15 are read, there is no doubt that a total stranger to the concerned service cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal the very object of speedy disposal of service matters would get defeated.

19. Our attention has been drawn to a judgement of the Orissa Administrative Tribunal in Smt. Amitarani Khuntia Versus State of Orissa 1996. (1) OLR (CSR)-2. The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgement is relevant:

"....A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a 'person aggrieved' within the meaning of the Act.

Tribunals are constituted under Article 323 A of the Constitution of India. The above Article empowers the Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public

services and posts. Its jurisdiction and powers have been well-defined in the Act. It does not enjoy any plenary power."

We agree with the above reasoning.

21. In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger."

6. In *Ashok Kumar Pandey vs. State of W.B.*, reported in (2004) 3 SCC 349, the Apex Court at paragraphs 5 to 16, held as follows:-

"5. It is necessary to take note of the meaning of the expression "public interest litigation". In Stroud's Judicial Dictionary, Vol. 4 (4th Edn.), "public interest" is defined thus:

"Public interest.—(1) A matter of public or general interest 'does not mean that which is interesting as gratifying curiosity or a love of information or amusement; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected'."

6. In Black's Law Dictionary (6th Edn.), "public interest" is defined as follows:

"Public interest.—Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."

7. In *Janata Dal case* (1992 (4) SCC 305 = 1993 SCC (Cri) 36) this Court considered the scope of public interest litigation. In para 53 of the said judgment, after considering what is public interest, this Court has laid down as follows: (SCC p. 331, para 53)

"The expression 'litigation' means a legal action including all proceedings therein initiated in a court of law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected."

8. In para 62 of the said judgment, it was pointed out as follows: (SCC p. 334)

"Be that as it may, it is needless to emphasise that the requirement of locus standi of a party to a litigation is mandatory; because the legal capacity of the party to any litigation whether in private or public action in relation to any specific remedy sought for has to be primarily ascertained at the threshold."

9. In para 98 of the said judgment, it has further been pointed out as follows: (SCC pp. 345-46)

"While this Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow its process to be abused by a mere busybody or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

10. In subsequent paras of the said judgment, it was observed as follows: (SCC p. 348, para 109)

"It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have a locus standi and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold."

11. It is depressing to note that on account of such trumpety proceedings initiated before the courts, innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and substantial rights and criminal cases in which persons sentenced to death facing the gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters – government or private, persons awaiting the disposal

of tax cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenus expecting their release from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no real public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity, break the queue muffling their faces by wearing the mask of public interest litigation and get into the courts by filing vexatious and frivolous petitions of luxury litigants who have nothing to lose but trying to gain for nothing and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the courts never moves, which piquant situation creates frustration in the minds of the genuine litigants.

12. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity-seeking is not lurking. It is to be used as an effective weapon in the armoury of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be allowed to be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta. As indicated above, courts must be careful to see that a body of persons or member of public, who approaches the court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives and try to bargain for a good deal as well to enrich themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserve to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

13. The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its Report of Public Interest Law, USA,

1976 as follows:

"Public interest law is the name that has recently been given to efforts which provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others."

14. The court has to be satisfied about: (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; and (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interests: (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the executive and the legislature. The court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono publico, though they have no interest of the public or even of their own to protect.

15. Courts must do justice by promotion of good faith, and prevent law from crafty invasions. Courts must maintain the social balance by interfering where necessary for the sake of justice and refuse to interfere where it is against the social interest and public good. (See State of Maharashtra v. Prabhu (1994 (2) SCC 481 = 1994 SCC (L&S) 676) and A.P. State Financial Corpn. v. Gar Re-Rolling Mills (1994 (2) SCC 647 = AIR 1994 SC 2151. No litigant has a right to unlimited draught on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions. [See Buddhi Kota Subbarao (Dr) v. K. Parasaran (1996 (5) SCC 530 = 1996 SCC (Cri) 1038 = JT 1996 (7) SC 265] Today people rush to courts to file cases in profusion under this attractive name of

public interest. Self-styled saviours who have no face or ground in the midst of public at large, of late, try to use such litigations to keep themselves busy and their names in circulation, despite having really become defunct in actual public life and try to smear and smirch the solemnity of court proceedings. They must really inspire confidence in courts and among the public, failing which such litigation should be axed with a heavy hand and dire consequences.

16. As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations, whereas only a minuscule percentage can legitimately be called as public interest litigations. Though the parameters of public interest litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts at times are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. Though in *Duryodhan Sahu (Dr) v. Jitendra Kumar Mishra* (1998) 7 SCC 273, this Court held that in service matters PILs should not be entertained, the inflow of the so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision. This tendency is being slowly permitted to percolate for setting in motion criminal law jurisdiction, often unjustifiably just for gaining publicity and giving adverse publicity to their opponents. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Apart from the sinister manner, if any, of getting such copies, the real brain or force behind such cases would get exposed to find out whether it was a bona fide venture. Whenever such frivolous pleas are taken to explain possession, the court should do well not only to dismiss the petitions but also to impose exemplary costs, as it prima facie gives impression about oblique motives involved, and in most cases shows proxy litigation. Where the petitioner has not even a remote link with the issues involved, it becomes imperative for the court to lift

the veil and uncover the real purpose of the petition and the real person behind it. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforesaid so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts."

7. In *Dr.B.Singh (Dr.) v. Union of India*, reported in (2004) 3 SCC 363, the Hon'ble Supreme Court decided the case on the same lines and held that PIL is not maintainable in service matters.

8. In *Gurpal Singh vs. State of Punjab*, reported in JT 2005 (5) SC 389, the Hon'ble Apex Court held that PIL is not maintainable in service matters.

9. In *Indian Consumers Welfare Council vs. Union of India and another*, reported in 2005 (3) L.W. 522, the abovesaid Council, filed a public interest writ petition, challenging a notification, issued by the 2nd respondent therein, by which, applications were invited, from degree holders, with degree in education, and consequently, prayed for a direction to the respondent therein, to appoint only those teachers, who were trained in teaching primary sections, for handling classes from 1st to 7th standards, to the post of Secondary Grade Teachers. Following the decision in *Gopal Singh vs. State of Punjab*, reported in 2005 J.T. [5] SC 389, the Hon'ble Apex Court ordered as follows:-

"This is a public interest litigation in respect of a service matter. It has been repeatedly held by the Supreme Court that no public interest litigation lies in service matters, the last decision being *Gopal Singh vs. State of Punjab* (2005 J.T. [5] SC 389. Accordingly, this writ petition is dismissed."

10. In *N.Veerasingh vs. Union of India*, reported in (2005) 2 MLJ 564, while considering a public interest litigation filed by a treasurer of a political party, praying to take action against Mrs.Lakshmi Pranesh, IAS, the fifth respondent therein, under the All India Services (Discipline and Appeal) Rules, 1969, for allegedly making allegations against a leader of a political party, following the above judgments of the Honourable Apex Court, a Hon'ble Division Bench of this Court held as follows:-

"It is settled law that no writ in the form of public interest litigation will lie under Article 226 of the Constitution in service matters. The petitioner has no locus standi to file the public interest litigation. The extraordinary powers of the High Court

under Art.226 of the Constitution in matters of this kind is required to be used sparingly and only in extraordinary cases." "The service matters are essentially between the employer and the employee and it would be for the State to take action under the Service Rules and there is no question of any public interest involved in such matters."

"The petition is not only not maintainable either in law of facts but also would amount to abuse of the process of Court."

11. In B.Srinivasa Reddy vs. Karnataka Urban Water Supply and Drainage Board Employees Association and others, reported in 2006 (11) SCC 731, at paragraph 61, the Apex Court held that in service matters only the non appointees can assail the legality of the appointment procedure.

12. In Neetu vs. State of Punjab, reported in 2007 (10) SCC 614, the Hon'ble Apex Court held as follows:-

"The scope of entertaining a petition styled as a public interest litigation, locus standi of the petitioner particularly in matters involving service of an employee has been examined by this court in various cases."

Referring to the decisions in Dr.Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others, reported in 1998 (7) SCC 273 and Ashok Kumar Pandey v. State of W.B reported in (2004 (3) SCC 349), cited supra, the Apex Court held that PIL in service matters has been held as not maintainable.

13. In Seema Dharmdhare, Secretary, Maharashtra Public Service Commission vs. State of Maharashtra, reported in 2008 (2) SCC 290, the Apex Court restated that PIL is not maintainable in service matters.

14. In Hari Bansh Lal vs. Sahodar Prasad Mahto and others, reported in 2010 (9) SCC 655, claiming himself as Vidyut Shramik Leader, a writ petition was filed before the High Court, challenging the appointment of Mr.Hari Bansh Lal, who was appointed, as the Chairman of Jharkhand State Electricity Board. The High Court declared that his appointment was not only arbitrary, but also, contemptuous, and ultimately, quashed his appointment, which gave rise to an appeal, before the Apex Court. Addressing the issue, as to whether a public interest writ petition, is maintainable in service matters, following the earlier decisions in Dr.Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others, reported in 1998 (7)

SCC 273 and Ashok Kumar Pandey v. State of W.B reported in (2004 (3) SCC 349) and other decisions, the Hon'ble Supreme Court held as follows:-

PIL in service matters:

11) About maintainability of the Public Interest Litigation in service matters except for a writ of quo warranto, there are series of decisions of this Court laying down the principles to be followed. It is not seriously contended that the matter in issue is not a service matter. In fact, such objection was not raised and agitated before the High Court. Even otherwise, in view of the fact that the appellant herein was initially appointed and served in the State Electricity Board as a Member in terms of Section 5(4) and from among the Members of the Board, considering the qualifications specified in sub-section (4), the State Government, after getting a report from the vigilance department, appointed him as Chairman of the Board, it is impermissible to claim that the issue cannot be agitated under service jurisprudence.

12) We have already pointed out that the person who approached the High Court by way of a Public Interest Litigation is not a competitor or eligible to be considered as a Member or Chairman of the Board but according to him, he is a Vidyut Shramik Leader. Either before the High Court or in this Court, he has not placed any material or highlighted on what way he is suitable and eligible for that post.

.....

The same principles have been reiterated in the subsequent decisions, namely, Dr. B. Singh vs. Union of India and Others, (2004) 3 SCC 363, Dattaraj Nathuji Thaware vs. State of Maharashtra and Others, (2005) 1 SCC 590 and Gural Singh vs. State of Punjab and Others, (2005) 5 SCC 136.

15) The above principles make it clear that except for a writ of quo warranto, Public Interest Litigation is not maintainable in service matters.

15. In Girjesh Shrivastava and others vs. State of Madhya Pradesh and others, reported in 2010 (10) SCC 707, appointments were challenged in PIL, on the grounds of contravention of rules, regarding reservation of ex-servicemen. The High Court allowed the writ petition and ordered cancellation of appointments, and dismissed the review petitions also. While considering the issue, as to whether the matter ought to have been taken, as service dispute and not PIL, the Hon'ble Supreme Court, after considering a

catena of decisions, at paragraphs 14 to 19 has held as follows:-

14. However, the main argument by the appellants against entertaining WP (C) 1520/2001 and WP (C) 63/2002 is on the ground that a PIL in a service matter is not maintainable. This Court is of the opinion that there is considerable merit in that contention.

15. It is common ground that dispute in this case is over selection and appointment which is a service matter.

16. In the case of Dr. Duryodhan Sahu and others vs. Jitendra Kumar Mishra and others (1998) 7 SCC 273, a three judge Bench of this Court held a PIL is not maintainable in service matters. This Court, speaking through Srinivasan, J. explained the purpose of administrative tribunals created under Article 323-A in the backdrop of extraordinary jurisdiction of the High Courts under Articles 226 and 227. This Court held "if public interest litigations at the instance of strangers are allowed to be entertained by the (Administrative) Tribunal, the very object of speedy disposal of service matters would get defeated" (para 18). Same reasoning applies here as a Public Interest Litigation has been filed when the entire dispute relates to selection and appointment.

17. In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association and others, reported in (2006) 11 SCC 731 (II), this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (See para 61, page 755 of the report).

18. This view was very strongly expressed by this Court in Dattaraj Nathuji Thaware v. State of Maharashtra and others, reported in (2005) 1 SCC 590, by pointing out that despite the decision in Duryodhan Sahu (supra), PILs in service matters 'continue unabated'. This Court opined that High Courts should 'throw out' such petitions in view of the decision in Duryodhan Sahu (supra) (Para 16, page 596).

19. Same principles have been reiterated in Ashok Kumar Pandey v. State of W.B., reported in (2004) 3 SCC 349, at page 358 (Para 16).

16. In Soma Velandi vs. Dr. Anthony Elangovan, reported in 2010 (4) CTC 8, following Gurbal Singh vs. State of Punjab, reported in JT 2005 (5) SC 389, a Hon'ble Division Bench held that PIL is not maintainable in service matters.

17. In Bholanath Mukherjee and others vs. Ramakrishna Mission Vivekananda Centenary College and others, reported in 2011 (5) SCC 464, before the Hon'ble Supreme Court, a direction to set aside the appointment of the 3rd respondent therein, as Principal, was sought for, as the 3rd respondent was junior, to them, and did not have the requisite qualification. Reiterating the legal position that PIL is not maintainable in service matters, the Hon'ble Apex Court declined to entertain the challenge to the notices issued to Ramakrishna Mission to reconstitute the committees.

18. Though the present writ petition has been filed by a practicing advocate, we wish to incorporate the views of the Hon'ble Apex Court, while entertaining Public Interest Writ Petition, in Ayaubkhan Noorkhan Pathan vs. State of Maharashtra and others, reported in 2013 (4) SCC 465. At paragraphs 14 and 15, the Apex Court, observed as follows:-

14. This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of the court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, "ordinarily meddlesome bystanders are not granted a Visa. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide: P.S.R. Sadhanantham v. Arunachalam & Anr., AIR 1980 SC 856; Dalip Singh v. State of U.P. & Ors., (2010) 2 SCC 114; State of Uttaranchal v. Balwant Singh Chaufal & Ors., (2010) 3 SCC 402; and Amar Singh v. Union of India & Ors., (2011) 7 SCC 69)

15. Even as regards the filing of a Public Interest Litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide: Dr. Duryodhan Sahu & Ors. v. Jitendra Kumar Mishra & Ors., AIR 1999 SC 114; Dattaraj Natthuji Thaware v. State of

Maharashtra, AIR 2005 SC 540; and Neetu v. State of Punjab & Ors., AIR 2007 SC 758)

19. In Tmt.Sumathi and four others vs. State, rep. by the Chief Secretary to the Government of Tamil Nadu, Chennai and 15 others (W.P.No.25704/2013, Decided on 13.03.2014), a Hon'ble Division Bench of this Court, held that PIL is not maintainable in service matters.

20. In a latest decision in Tmt.P.Lakshmi vs. State, rep. by the Chief Secretary, (W.P.No.25704/2013 Decided on 13.03.2014), the Hon'ble First Bench of this Court, held that writ petition is not maintainable in service matters.

21. Learned counsel for the petitioner has relied on a Full Bench decision of the Punjab and Haryana High Court, reported in 2005 (3) SLJ 354. As observed earlier, when there is clear pronouncement of law declared by the Supreme Court, on the issue as to whether a public interest litigation is maintainable in service matters, under Article 141 of the Constitution of India, the decision is binding on all courts.

22. At this juncture, we deem it is necessary to extract Article 141 of the Constitution of India, which reads as follows:-

141. Law declared by Supreme Court to be binding on all courts.-- The law declared by the Supreme Court shall be binding on all courts within the territory of India.

23. When PIL is not maintainable in service matters, and time and again been reiterated, by the Hon'ble Supreme Court, in a series of decisions, extracted supra, with due respect, the decision rendered by the Punjab and Haryana High Court in Jaskaran Singh Brar vs State Of Punjab And Ors., (2005 (3) SLJ 354 P & H), has no binding effect."

15. Let us also consider what reprimand and censure means,

18. On the submission that censure is a minor penalty and therefore, the respondents ought not to have denied promotion to the appellant as Inspector of Police, this Court deems it to consider the meaning of the word, "Censure". In Chamber's Dictionary, the word 'Censure' is defined to mean, 'an unfavourable opinion or judgment; blame; to form or give an opinion or judgment of; to blame: to condemn as wrong: to sentence'. In the New Lexicon Webster's Dictionary (Deluxe Encyclopedic Edition), 'Censure' means,

'adverse criticism, blame'. WHARTON'S Law Lexicon defines 'Censure' as 'a Judgment which condemns some book, person or action; more particularly a reprimand from a superior'.

19. Ministry of Home Affairs, Government of India, has issued Official Memorandum, vide OM.No.39/21/56-Estt(A), dated 13.12.56, explaining the distinction between Censure and Warning and the same is extracted hereunder:

"An order of "Censure" is formal and public act intended to convey that the person concerned has been guilty of some blame-worthy act or commission for which it has been found necessary to award him a formal punishment, and nothing can amount to a "censure" unless it is intended to be such a formal punishment and imposed for "good and sufficient reason" after following the prescribed procedure. A record of the punishment so imposed is kept on the officer's confidential roll and the fact that he has been 'censured' will have its bearing on the assessment of his merit or suitability for promotion of higher posts.

There may be occasions on the other hand when a superior officer may find it necessary to criticise adversely the work of an officer working under him (e.g., point out negligence, carelessness, lack of thoroughness, delay etc.) or he may call for an explanation for some act or omission and taking all circumstances into consideration, it may be felt that while the matter is not serious enough to justify the imposition of the formal punishment of 'censure', it calls for some informal action such as the communication of a written warning, admonition or reprimand. If the circumstances justify it, a mention may also be made of such a warning, etc. in the officer's confidential roll. However, the mere fact that it is so mentioned in the character roll does not convert the warning etc. into 'censure'. Although such comments, remarks, warning etc., also would have the effect of making it apparent or known to the person concerned that he has done something blame-worthy and, to some extent, may also effect the assessment of his merit and suitability for promotion, they do not amount to the imposition of the penalty of 'censure' because it was not intended that any formal punishment should be inflicted.

The fact that a mere informal 'warning' cannot be equated to a formal 'censure', should not, however, be taken as tantamount to suggesting that a 'written warning may be freely given without caring whether or not it is really justified. It is a matter of simple

natural justice that written warnings, reprimands etc. should not be administered or placed on an officer's confidential records unless the authority doing so is satisfied that there is good and sufficient reason to do so. Paragraph 6 of the Home Ministry's Office Memorandum No.51/5/54/Ests.(A), dated the 27th January, 1955 provides detailed guidance in the matter of recording adverse remarks in confidential reports. It may be reiterated here that in the discharge of the responsible task of recording the confidential reports, every reporting officer should be conscious of the fact that it is his duty not only to make an objective assessment of his subordinate's work and qualities but also to see that he gives to his subordinates at all times the advice, guidance and assistance to correct their faults and deficiencies. If this part of the reporting officer's duty has been properly performed there should be no difficulty about recording adverse entries because they would only refer to the defects which have persisted in spite of reporting officer's efforts to have them corrected. If after having taken such care, the reporting officer finds that for the purpose of truly objective assessment mention should be made of any warning, admonition etc., issued, especially those which have not produced the desired improvement, it is his right and duty to so mention them. In the process of bringing the defects to the notice of person concerned where an explanation is possible an opportunity to do so should be given. This cannot, however, be equated to the formal proceedings required to be taken under Rule 55-A (now Rule 16) of Central Civil Services (Classification Control and Appeal) Rules nor the warning given amounts to the imposition of a formal penalty."

20. The Department of Personnel and Administrative Reforms, vide O.M.No.22011/2/78-Estt. (A), dated 16.02.1979, has stated as follows:

"(ii) Where a departmental proceeding has been completed and it is considered that the officer concerned deserves to be penalised, he should be awarded one of the recognised statutory penalties as given in Rule 11 of the CCS (CCA) Rules, 1965. In such a situation, a recordable warning should not be issued as it would for all practical purposes, amount to a "censure" which is a formal punishment and which can only be awarded by a competent disciplinary authority after following the procedure prescribed in the relevant disciplinary rules. The Delhi High Court has, in the case of Nadhan Singh Vs. Union of India also expressed the view that warning kept in the CR dossier

has all the attributes of "censure". In the circumstances, as already stated, where it is considered after the conclusion of disciplinary proceedings that some blame attached to the officer concerned which necessitates cognizance of such fact the disciplinary authority should award the penalty of "censure" at least. If the intention of the disciplinary authority is not to award a penalty of "censure", then no recordable warning should be awarded. There is no restriction on the right of the disciplinary authority to administer oral warnings or even warnings in writing which do not form part of the character roll.

(iii) Where the departmental proceedings have ended with the imposition of a minor penalty, viz, censure, recovery of pecuniary loss to the Government, withholding of increments of pay and withholding of promotion, the recommendation of the DPC in favour of the employee, kept in the sealed cover, will not be given effect to. But the case of the employee concerned for promotion/confirmation may be considered by the next DPC when it meets after the conclusion of the departmental proceedings. If the findings of the DPC are in favour of the employee, he may be promoted in his turn if the penalty is that of "censure" or "recovery of pecuniary loss caused to the Government by negligence or breach of orders". In the case of employees who have been awarded the minor penalty of "withholding of increments" or "withholding of promotion" promotion can be made only after the expiry of the penalty.

(iv) If a recordable warning has been issued to an officer as a result of disciplinary proceedings before the issue of this Office Memorandum and the case of the officer concerned for promotion is still under consideration, he should be treated as having been "censured". The officer will also have the right of representation against such warning and such representation shall be dealt with by the competent authority as if it were an appeal under the relevant disciplinary rules."

16. Reading of the rules makes it clear that censure is one of the minor penalties under Rule 14 of the Tamil Nadu Police Subordinate Services Rules, 1953. Issue remains to be considered is whether black marks and reprimand imposed, would also be taken note of, for depriving a candidate to be considered for promotion, as against 20% reservations or not? Yet another question requires to be considered by this Court is, why the Government have imposed a condition in Clause No.16 of notification dated 08.03.2019 issued by the Tamil Nadu Uniformed

Services Recruitment Board, Chennai, as a pre-requisite, for eligibility. Whether the instant writ petition styled as a public interest litigation, in relation to service matter, is maintainable or not.

17. Giving our anxious consideration to the decisions of the Hon'ble Supreme Court, extracted supra, to the facts of this case, we have no hesitation to hold that the instant writ petition is not a public interest litigation, but a personal interest litigation.

18. Again in the light of decisions relating to public interest litigations in service matters, we hold that the instant writ petition, is not maintainable.

19. Having said so, can we still entertain the writ petition, on the prayer for declaration as stated supra? A person aggrieved by an order of the Government is entitled to challenge the same, by a writ of certiorari, or he can question the same, and seek for a declaration, on the grounds of violation of Constitutional or Statutory Provisions, which the petitioner in the case on hand, has decided to do so. Therefore, while holding that the challenge, by way of public interest litigation as not maintainable, we do not want to scuttle the rights of a person aggrieved to challenge the G.O., in his individual capacity. Thus, we deem it fit to consider the merits of the case. Challenge is on classification, violating Article 14 of the Constitution of India, as arbitrary and discriminatory. Let us see the classification made by Rule 14 of the Tamil Nadu Police Subordinate Services Rules, 1953 and Tamil Nadu Special Police Subordinate Service Rules, 1978.

20. Rule 14 of the Tamil Nadu Police Subordinate Service Rules, 1953, reads thus:-

(i) They should have completed 5 years of service as on the date of notification.

(ii) They should have been records without any punishment, other than the minor punishments of black mark, reprimand and Censure in their entire service.

(iii) The departmental candidates should obtain NOC in the prescribed format from the Head of Unit/Office/competent authority and it should be uploaded while applying on-line application. (Specimen NOC is available in Annexure VI).

(iv) Written examination for departmental candidates will be held separately. A departmental candidate may apply for both open and departmental quota, if he/she satisfies the eligibility criteria.

(v) In case of required number of candidates are not available in the Departmental Quota, the vacancies would be transferred to open quota of the same

community.

vi) Communal reservation is followed within the Departmental quota as per the existing rules."

21. Now, let us consider as to how the notification has been issued fixing the eligibility of in-service candidates, so as to enable them to be considered for promotion, as against the 20% Quota. He has only challenged one of the entries i.e. Rule 14 (ii) of the Tamil Nadu Police Subordinate Services Rules, 1953 and Tamil Nadu Special Police Subordinate Service Rules, 1978 which states that they should have clean record without any punishment, other than the minor punishments of black mark, reprimand and censure in their entire service.

22. According to the petitioner, the said clause is violative of Article 14 of the Constitution of India, as it makes those who have imposed with a penalty other than black mark, reprimand and censure, ineligible to be considered for promotion, as against 20% Quota.

23. Bare reading of the Rule 14(ii) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, makes it clear that, minor penalties, such as black mark, reprimand and censure, have been grouped together and a distinction has been made in the rules, for the purpose of fixing eligibility for considering in-service candidates, for applying to the post of Sub Inspector of Police, as against 20% quota. Those who have been imposed with minor punishments such as, black mark, reprimand and censure, are in one group, and those who are imposed with punishments other than black mark, reprimand and censure, form another group. Obviously, the purpose is fixing eligibility and thus the distinction between two groups. Firstly, it is for the department, to fix the eligibility criteria for recruitment or promotion, as the case may be and Courts cannot interfere with the same, unless shown to be a prima facie illegal. Reference can be made to few decisions, P.U. Joshi & Ors., vs. The Accountant General, reported in (2003) 2 SCC 632, the Hon'ble Supreme Court, at paragraph No.10, held thus:-

"10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility

criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the Rules relating to a service and alter or amend and vary by addition /subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate Rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/ categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that Rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new Rules relating to even an existing service."

24. On the aspect of equality under Article 14 of the Constitution of India, and discrimination alleged, let us consider few decision as to what the Hon'ble Supreme Court said,

(i) Article 14 does not prohibit reasonable classification but for passing test of permissible classification there are two conditions which have been time and again laid down and reiterated. It is useful to refer to the Constitutional Bench judgment of the Hon'ble Supreme Court, reported in AIR 1955 SC 191, Budhan Choudhary v. State of Bihar. In paragraph 5, following has been laid down:-

"5....It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of

classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure..."

(ii) In *Probhudas Morarjee Rajkotia v. Union of India*, reported in AIR 1966 SC 1044, a Constitutional Bench of the Supreme Court, while interpreting Article 14 of the Constitution of India, held as follows:

"8. It cannot be too strongly emphasized that to make out a case of denial of the equal protection of the laws under Art.14 of the Constitution, a plea of differential treatment is by itself not sufficient. An applicant pleading that Article 14 has been violated must make out that not only he had been treated differently from other but he has been so treated from persons similarly circumstanced without any reasonable basis, and such differential treatment is unjustifiably made."

(iii) In *Harakchand Ratanchand Banthia v. Union of India*, reported in (1969) 2 SCC 166 : AIR 1970 SC 1453, at paragraph No.23, the Hon'ble Supreme Court, held thus:-

"23...When a law is challenged as violative of Article 14 of the Constitution it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the policy and object of the Act the Court has to apply a dual test in examining its validity (1) whether the classification is rational and based upon an intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of the group and (2) whether the basis of differentiation has any rational nexus or relation with its avowed policy and object..."

(iv) In *Western M.P. Electric Power & Supply Co. Ltd. v. State of U.P.*, reported in AIR 1970 SC 21, the Hon'ble Supreme Court held that Article 14 of the Constitution of India does not operate against rational classification. The relevant portion is as under:

"7. Article 14 of the Constitution ensures equality among equals; its aim is to protect persons similarly placed against discriminatory treatment. It does not, however, operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential

treatment had no reasonable relation to the object sought to be achieved by the law."

16. In Mohd. Shujat Ali vs. Union of India [1975 (3) SCC 76], the Hon'ble Supreme Court observed that Article 14 ensures to every person equality before law and equal protection of the laws. However, the constitutional code of equality and equal opportunity does not mean that the same laws must be applicable to all persons. It does not compel the State to run "all its laws in the channels of general legislation". It recognises that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. "To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." The Legislature must necessarily, if it is to be effective at all in solving the manifold problems which continually come before it, enact special legislation directed towards specific ends limited in its application to special classes of persons or things. "Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be attained by it." At the same time, the Court cautioned against the readymade invoking of the doctrine of classification to ward off every challenge to the legislative instruments on the ground of violation of equality clause and observed:

"The equal protection of the laws is a "pledge of the protection of equal laws". But laws may classify. And, as pointed out by Justice Brawer, "the very idea of classification is that of inequality". The Court has tackled this paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated."

"A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no

discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the Legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things similarly situated are treated alike by law. The test which has been evolved for this purpose is - and this test has been consistently applied by this Court in all decided cases since the commencement of the Constitution - that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation."

"We have to be constantly on our guard to see that this test which has been evolved as a matter of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the Legislature, does not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., in *State of Jammu & Kashmir v. Triloki Nath Khosa* the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments". Overemphasis on the doctrine of classification or an anxious and

sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by Krishna Iyer, J. in *State of Jammu & Kashmir v. Triloki Nath Khosa*: (at SCC p.42)

"Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

[Emphasis added]

- (v) In *Mohd. Shujat Ali vs. Union of India*, reported in 1975 (3) SCC 76, the Hon'ble Supreme Court observed that,

Article 14 ensures to every person equality before law and equal protection of the laws. However, the constitutional code of equality and equal opportunity does not mean that the same laws must be applicable to all persons. It does not compel the State to run "all its laws in the channels of general legislation". It recognises that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. "To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." The Legislature must necessarily, if it is to be effective at all in solving the manifold problems which continually come before it, enact special legislation directed towards specific ends limited in its application to special classes of persons or things. "Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be attained by it." At the same time, the Court cautioned against the readymade invoking of the doctrine of classification to ward off every challenge to the legislative instruments on the ground of violation of equality clause and observed:

"The equal protection of the laws is a "pledge of the protection of equal laws". But laws may classify. And, as pointed out by Justice Brawer, "the very idea

of classification is that of inequality". The Court has tackled this paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated."

"A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the Legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things similarly situated are treated alike by law. The test which has been evolved for this purpose is - and this test has been consistently applied by this Court in all decided cases since the commencement of the Constitution - that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation."

"We have to be constantly on our guard to see that this test which has been evolved as a matter of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the Legislature, does

not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., in *State of Jammu & Kashmir v. Triloki Nath Khosa* the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments". Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by Krishna Iyer, J. in *State of Jammu & Kashmir v. Triloki Nath Khosa*: (at SCC p.42)

"Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

(vi) A Constitutional Bench of the Hon'ble Supreme Court in *D.S. Nakara v. Union of India*, (1983) 1 SCC 305, explained the said concept of Article 14 of the Constitution of India, as follows:

"11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled viz. (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group;

and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question (see *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538). The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e. causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

12. After an exhaustive review of almost all decisions bearing on the question of Article 14, this Court speaking through Chandrachud, C.J. in *In re Special Courts Bill, 1978*, AIR 1979 SC 478, restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are:

"***

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(6) The law can make and set apart the classes according to the needs and exigencies of the society

and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act."

(vii) In *Prem Chand Somchand Shah and another vs. Union of India* reported in 1991 (2) SCC 48, the Hon'ble Supreme Court at paragraph Nos.9, 12 and 16, held thus:-

9. The petitioners, in order to successfully invoke the right guaranteed under Article 14 of the Constitution, will have to establish that they and the Export Houses which were issued Additional Licences under the Import Policy 1988-91 are similarly situate. A close examination of the Import and Export Policy 1978-79 under which the petitioners have been granted the Additional Licences and the Import and Export Policy 1988-91 shows that there is material difference between the conditions for grant of Additional Licences under Import Policy 1978-79 and the conditions for grant of such licences under the Import Policy 1988-91 and it cannot be said that the petitioners who have been granted Additional Licences under the Import and Export Policy 1978-79 and the Export Houses who are granted Additional Licences under the Import and Export Policy 1988-91 are persons similarly circumstanced.

12. The aforesaid examination of the provisions contained in the Import and Export Policy 1978-79 and the Import and Export Policy 1988-91 shows that while in the Import and Export Policy 1978-79 the emphasis was only on the f.o.b. value of exports without taking into account the outgo of foreign exchange in importing the goods required for achieving the exports by an Export House and Additional Licences were granted for a much larger amount at a higher percentage on the basis of the f.o.b. value of the exports, in the Import and Export Policy 1988-91 there is a more realistic appraisal of actual benefit to the

country's economy by the exports by taking into account the net foreign exchange earnings after deducting the value of the imports and Additional Licences are issued on the basis of the net foreign exchange earnings for a much lesser value on a smaller percentage. The petitioners who were granted Additional Licences to the extent of 33.33 per cent of the f.o.b. value of the exports made by them during the year 1977-78 cannot, therefore, be said to be persons similarly circumstanced as Export Houses who exported goods in the year 1987-88 and in subsequent years and obtain Additional Licences for a much lesser value under the Import Policy 1988-91 on the basis of the net foreign exchange earnings. The provisions conferring flexibility in the matter of imports contained in sub-para (4) of para 215 of the Import and Export Policy 1988-91 are intended to give an incentive to Export Houses to increase the exports in a way as to enhance the net foreign exchange earnings of the country. The petitioners were not granted Additional Licences on the basis of net foreign exchange earnings and they have secured the Additional Licences on the basis of the f.o.b. value of the exports, without taking into account the value of the goods imported by them for achieving the exports. They cannot claim to be entitled to the same facilities that have been provided to Export Houses who are granted Additional Licences under the Import and Export Policy 1988-91.

16. Here we find that in the Import and Export Policy 1988-91 there has been relaxation to a limited extent in respect of imports by Export Houses who are granted Additional Licences under the said Policy on the basis of their exports during that period 1987-88 and subsequent periods. Since the basis for the grant of Additional Licences which are entitled to this relaxation is different from the basis on which Additional Licences were granted to the petitioners, the petitioners cannot claim the benefit of the same relaxation and assail the validity of sub-para (10) of para 218 of the Import and Export Policy 1988-91.

(viii) In *Sri Srinivasa Theatre and others vs. Government of Tamil Nadu and others*, reported in (1992) 2 SCC 643, while explaining the scope of Article 14, the Hon'ble Supreme Court at paragraph Nos.9 and 10, held thus:-

"9. Article 14 of the Constitution enjoin upon the State not to deny to any person 'Equality before law' or 'the equal protection of laws' within the territory of India. The two expressions do not mean the same

thing even if there may be much in common. Section 1 of the XIV Amendment to U.S. Constitution uses only the latter expression whereas the Irish Constitution (1937) and the West German Constitution (1949) use the expression "equal before law" alone. Both these expressions are used together in the Universal Declaration of Human Rights, 1948, Article 7 whereof says "All are equal before the law and are entitled without any discrimination to equal protection of the law." While ascertaining the meaning and content of these expression, however, we need not be constrained by the interpretation placed upon them in those countries though their relevance is undoubtedly great. It has to be found and determined having regard to the context and scheme of our Constitution. It appears to us that the word "law" in the former expression is used in a generic sense-a philosophical sense-whereas the word "law" in the latter expression denotes specific laws in force.

10. Equality before law is a dynamic concept having many facets. One facet-the most commonly acknowledged-is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the State to bring about, through the machinery of law, a more equal society envisaged by the preamble and part IV of our Constitution."

(ix) In *Venkateshwara Theatre vs. State of andhra Pradesh and Others*, reported in (1993) 3 SCC 677, at paragraph Nos.20 and 23, the Hon'ble Supreme Court, held thus:-

"20. Article 14 enjoins the State not to deny to any person equality before the law or the equal protection of the laws. The phrase "equality before the law" contains the declaration of equality of the civil rights of all persons within the territories of India. It is a basic principle of republicanism. The phrase "equal protection of laws" is adopted from the Fourteenth Amendment to U.S. Constitution. The right conferred by Article 14 postulates that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Since the State, in exercise of its governmental power, has, of necessity, to make laws operating differently on different groups of persons within its territory to attain particular ends in giving effect to its policies, it is recognised that the State must possess the power of distinguishing and classifying persons or things to be subjected to such laws. It is, however, required that the classification must satisfy two conditions namely, (i) it is founded on an

intelligible differentia which distinguishes those that are grouped together from others; and (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. It is not the requirement that the classification should be scientifically perfect or logically complete. Classification would be justified if it is not palpably arbitrary. [See: Re Special Courts Bill, [1979] 2 SCR 476 at pp. 534-5361. It there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. [See: Khandige Sham Bhat v. Agricultural Income-Tax Officer, [1963] 3 SCR 809 at p. 8 171.

23. Just a difference in treatment of persons similarly situate leads to discrimination, so also discrimination can arise if persons who are unequals, i.e. differently placed, are treated similarly. In such a case failure on the part of the legislature to classify the persons who are dissimilar in separate categories and applying the same law, irrespective of the differences, brings about the same consequence as in a case where the law makes a distinction between persons who are similarly placed. A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law."

In K. Thimmappa v. Chairman, Central Board of Directors, SBI, (2001) 2 SCC 259 that the classification under Article 14 of the Constitution of India need not be a scientifically perfect one and it is sufficient if the distinction is on just and reasonable relation to the object of the legislation. The relevant portion is as under:

"3. Before we deal with the respective contentions of the parties it would be appropriate for us to notice that what Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. If the rule-making authority takes care to reasonably classify persons for a particular purpose and if it deals equally with all persons belonging to a well-defined class then it would not be open to the charge of discrimination. But to pass the test of permissible classification two conditions must be fulfilled:

(a) that the classification must be founded on an intelligible differentia which distinguishes persons or things which are grouped together from others left out of the group; and

(b) that the differentia must have a rational relation to the object sought to be achieved by the statute in question.

The classification may be founded on different basis and what is necessary is that there must be a nexus between the basis of classification and the object under consideration. Article 14 of the Constitution does not insist that the classification should be scientifically perfect and a court would not interfere unless the alleged classification results in apparent inequality. When a law is challenged to be discriminatory essentially on the ground that it denies equal treatment or protection, the question for determination by court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has in view. If a law deals with members of a well-defined class then it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. It is for the rule-making authority to determine what categories of persons would embrace within the scope of the rule and merely because some categories which would stand on the same footing as those which are covered by the rule are left out would not render the rule or the law enacted in any manner discriminatory and violative of Article 14. It is not possible to exhaust the circumstances or criteria which may afford a reasonable basis for classification in all cases. It depends on the object of the legislation, and what it really seeks to achieve."

(x) In *L.I.C. of India and Another vs. Consumer Education & Research Centre and Others*, reported in (1995) 5 SCC 482, the Hon'ble Apex Court reiterated the above noted principal in the following words:-

"The doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality,

overemphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. The overemphasis on classification would inevitably result in substitution of the doctrine of classification to the doctrine of equality and the Preamble of the Constitution which is an integral part and scheme of the Constitution. *Maneka Gandhi v. Union of India* [1978 (1) SCC 248] ratio extricated it from this moribund and put its elasticity for egalitarian path finder lest the classification would deny equality to the larger segments of the society. The classification based on employment in Government, semi-Government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganized or self-employed sectors to have life insurance offending Article 14 of the Constitution and socio-economic justice."

(xi). In *Prafulla Kumar Das v. State of Orissa*, reported in (2003) 11 SCC 614, the Hon'ble Supreme Court, deciding about the validity of a legislation, held thus it would be impossible to declare a law ultra vires merely because it would cause hardship, unless a case for discrimination or unreasonableness has been made out.

"45. In this case, the petitioners seek benefit to which they are not otherwise entitled. The legislature, in our opinion, has the requisite jurisdiction to pass an appropriate legislation which would do justice to its employees. Even otherwise a presumption to that effect has to be drawn. If a balance is sought to be struck by reason of the impugned legislation, it would not be permissible for this Court to declare it ultra vires only because it may cause some hardship to the petitioners. A mere hardship cannot be a ground for striking down a valid legislation unless it is held to be suffering from the vice of discrimination or unreasonableness. A valid piece of legislation, thus, can be struck down only if it is found to be ultra vires Article 14 of the Constitution of India and not otherwise. We do not think that in this case, Article 14 of the Constitution is attracted."

(xii) In *M.P.Rural Agriculture Extension Officers Association vs. State of M.P.* And another, reported in (2004) 4 SCC 646, the Hon'ble Supreme Court, at paragraph Nos.14 to 16 and 21, ordered as hereunder:-

"14. Article 14, it is trite, does not forbid a reasonable classification.

15. Article 14 forbids class legislation but permits reasonable classification subject to the conditions that it is based on an intelligible differentia and that the differentia must have a rational relation to the object sought to be achieved. (See *Saurabh Chaudri v. Union of India* [(2003) 11 SCC 146 : (2003) 9 Scale 272] .)

16. Constitutional interpretation is a difficult task. Its concept varies from statute to statute, fact to fact, situation to situation and subject-matter to subject-matter. A classification based on educational qualification has been applied by a Constitution Bench of this Court as far back as in 1968 in *P. Narasinga Rao* [AIR 1968 SC 349 : (1968) 1 SCR 407] wherein it was observed: (AIR p. 351, para 4)

"It is well settled that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. When any impugned rule or statutory provision is assailed on the ground that it contravenes Article 14, its validity can be sustained if two tests are satisfied. The first test is that the classification on which it is founded must be based on an intelligible differentia which distinguishes persons or things grouped together from others left out of the group, and the second test is that the differentia in question must have a reasonable relation to the object sought to be achieved by the rule or statutory provision in question. In other words, there must be some rational nexus between the basis of classification and the object intended to be achieved by the statute or the rule. As we have already stated, Articles 14 and 16 form part of the same constitutional code of guarantees and supplement each other. In other words, Article 16 is only an instance of the application of the general rule of equality laid down in Article 14 and it should be construed as such. Hence, there is no denial of equality of opportunity unless the person who complains of discrimination is equally situated with the person or persons who are alleged to have been favoured; Article 16(1) does not bar a reasonable classification of employees or reasonable tests for their selection."

21. The view of Subba Rao, J. in *Lachhman Dass v. State of Punjab* [AIR 1963 SC 222] was a minority view. Venkatarama Aiyar, J. therein speaking for the majority held: (AIR pp. 232-33, para 22)

"The law is now well settled that while Article 14 prohibits discriminatory legislation directed against

one individual or class of individuals, it does not forbid reasonable classification, and that for this purpose even one person or group of persons can be a class. Professor Willis says in his Constitutional Law, p. 580 'a law applying to one person or one class of persons is constitutional if there is sufficient basis or reason for it'. This statement of the law was approved by this Court in Charanjit Lal Chowdhury v. Union of India [AIR 1951 SC 41 : 1950 SCR 869] . There the question was whether a law providing for the management and control by the Government, of a named company, the Sholapur Spinning & Weaving Company Ltd. was bad as offending Article 14. It was held that even a single company might, having regard to its features, be a category in itself and that unless it was shown that there were other companies similarly circumstanced, the legislation must be presumed to be constitutional and the attack under Article 14 must fail. In Ram Krishna Dalmia v. Justice S.R. Tendolkar [AIR 1958 SC 538 : 1959 SCR 279] (SCR at p. 297 : AIR at p. 547) this Court again examined in great detail the scope of Article 14, and in enunciating the principles applicable in deciding whether a law is in contravention of that article observed 'that a law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others that single individual may be treated as a class by himself'."

(xiii) In Amita vs. Union of India, reported in (2005) 13 SCC 721, at paragraph No.11, the Hon'ble Supreme Court, held thus:-

"11.Article 14 of the Constitution of India guarantees to every citizen of India the right to equality before the law or the equal protection of law. The first expression "equality before the law" which is taken from the English common law, is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. It also means that amongst the equals the law should be equal and should be equally administered and that likes should be treated alike. Thus, what forbids is discrimination between persons who are substantially in similar circumstances or conditions. It does not forbid different treatment of unequal. Article 14 of the Constitution of India is both negative and positive right. Negative in the sense that no one can be discriminated against anybody and everyone should be treated as equals. The latter is the core and essence of right to equality and state has obligation

to take necessary steps so that every individual is given equal respect and concern which he is entitled as a human being. Therefore, Art.14 contemplates reasonableness in the state action, the absence of which would entail the violation of Art.14 of the Constitution."

(xiv) In Confederation of Ex-Servicemen Association vs. Union of India, reported in AIR 2006 SC 2945, at paragraph No.27, the Hon'ble Supreme Court, held thus:-

"27. Before more than five decades, a Constitution Bench of this Court was called upon to consider a similar contention in the well known decision in State of West Bengal v. Anwar Ali Sarkar & Another, (1952 SCR 284 : AIR 1952 SC 75). In that case, validity of certain provisions of the West Bengal Special Courts Act, 1950 was challenged on the ground that they were discriminatory and violative of Article 14 of the Constitution. Dealing with the contention, S.R. Das, J. (as His Lordship then was), made the following pertinent observations which were cited with approval in several cases;

"It is now well established that while article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an "abstract symmetry" in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like Mere classification, however, is not enough to get over the inhibition of the Article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from

others and that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense I have just explained." (emphasis supplied)"

(xv) In *Satyawati Sharma vs. Union of India and another*, reported in AIR 2008 SC 3148, at paragraph Nos.14 to 17, the Hon'ble Supreme Court, observed thus:-

"14. Article 14 declares that the state shall not deny to any person equality before the law or the equal protection of the laws. The concept of equality embodied in Article 14 is also described as doctrine of equality. Broadly speaking, the doctrine of equality means that there should be no discrimination between one person and another, if having regard to the subject matter of legislation, their position is the same. The plain language of Article 14 may suggest that all are equal before the law and the State cannot discriminate between similarly situated persons. However, application of the doctrine of equality embodied in that Article has not been that simple. The debate which started in 1950s on the true scope of equality clause is still continuing. In last 58 years, the courts have been repeatedly called upon to adjudicate on the constitutionality of various legislative instruments including those meant for giving effect to the Directive Principles of State Policy on the ground that same violate the equality clause. It has been the constant refrain of the courts that Article 14 does not prohibit the legislature from classifying apparently similarly situated persons, things or goods into different groups provided that there is rational basis for doing so. The theory of reasonable classification has been invoked in large number of cases for repelling challenge to the constitutionality of different legislations.

25. As stated supra, it is the prerogative of the Government to prescribe qualifications/eligibility criteria for a post, and in the case on hand, the government have classified two groups,

(i) in-service candidates imposed with minor penalties such as Black mark, Reprimand and Censure and the other, with punishments, other than the above three minor punishments or even major punishment/s. In the light of the decision of the Hon'ble Supreme Court on Article 14 of the Constitution of India, and the intelligible differentia with the nexus to consider only those imposed with the lighter penalties, as eligible to apply as against 20% quota, we are of the considered view that there is good ground to strike down the rules. Petitioner has alleged colourable exercise of power. We see no force in the said contention. Petitioner has alleged violation of natural justice. Notification has been issued based rule 14 of the Tamil Nadu Police Subordinate Service Rules. Principle of natural justice is not applicable to legislation. Few decision on the said aspect are considered, as hereunder:-

(i). In H.S.S.K. Niyami and another vs. Union of India and another, reported in (1990) 4 SCC 516, the Hon'ble Supreme Court, at paragraph No.11, ordered as hereunder:-

"11. In *Saraswati Industrial Syndicate Ltd. v. Union of India*, reported in (1974) 2 SCC 630, this Court held that price fixation is more in the nature of legislative measure even though it may be based upon objective criteria found in a report or other material. It could not, therefore, give rise to a complaint that rules of natural justice have not been followed in fixing the price. In *Prag Ice & Oil Mills v. Union of India*, *Chandrachud, J.* (as he then was) speaking for the court held that price fixation is really legislative in character in the type of control order before the court and it satisfies the test legislation and legislative measure does not concern itself with the facts of an individual case. It is meant to lay down a general rule applicable to all persons or objects or transactions of a particular kind or class. (emphasis supplied) In *Lazmi Khandsari v. State of U.P.* the facts are that in exercise of power under clause 8 of Sugarcane (Control) Order, 1966, a notification was issued prohibiting crushing during particular hours of the day. It was contended to be violative of the principles of natural justice. It was held that it is legislative in character and the rules of natural justice would stand completely excluded and no question of hearing arises. In *Union of India v. Cynamide India Ltd*, *Chinnappa Reddy, J.*, speaking for the court held that legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of parliamentary legislation, the proposition is self-evident. In the case of subordinate legislation, it itself provide for a notice and for a hearing, no one case insist upon it and it will not be permissible to read natural justice

inso such legislative activity. In Shri Sitaram Sugar Company case it was reiterated that fixation of price for sugar is a legislative policy and the principles of natural justice would not apply."

(ii) In Pune Municipal Corporation and another vs. Promoters and Builders Association and another, reported in (2004) 10 SCC 796, the Hon'ble Supreme Court, held as follows:-

"Delegated legislation cannot be questioned for violating the principles of natural justice in its making except when the statute itself provides for that requirement. Where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it is not permissible to read natural justice into such legislative activity."

(iii) In K.T.Plantation Private Limited and another vs. State of Karnataka, reported in AIR 2011 SC 3430, the Hon'ble Supreme Court, held as follows:-

"Delegated legislation which is a legislation in character, cannot be questioned on the ground of violation of the principles of natural justice, especially in the absence of any statutory requirement. Legislature or its delegate is also not legally obliged to give any reasons for its action while discharging its legislation function."

26. In view of the above decisions and discussion, writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mvs/dm

To

1. The Secretary to Government
Home (Police III) Dept
Fort St. George
Chennai 9.
2. The Director General of Police
Dr. Radhakrishnan Salai
Mylapore
Chennai 4.
3. The Member Secretary
T.N.Uniformed Services Recruitment Board
Egmore, Chennai 8.

4. The Superintendent of Police
Nagapattinam District
Nagapattinam.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.38454
+1cc to the Government Pleader, S.R.No.38787

Writ Petition No.11854 of 2019

SJ(CO)

RRS (26/06/2019)



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