



W.P.No.13611 of 2013, etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Reserved on : 23.03.2023

Pronounced on : 27.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.Nos.13611/2013, 13612/2013, 19757/2013, 20458/2013,
22760/2013, 22761/2013, 22762/2013, 22763/2013, 22764/2013,
22765/2013, 23992/2013, 30600/2013, 24042/2013, 24063/2013,
24064/2013, 24065/2013, 24066/2013, 24546/2013, 24547/2013,
24548/2013, 24549/2013, 24550/2013, 25820/2013, 26036/2013,
26037/2013, 26038/2013, 5481/2015, 5482/2015, 18776/2015 and

M.P.s. (29 Nos.) and

W.P.Nos.33654/2016, 34713/2016, 42044/2016, 42926/2016,
1071/2017, 1168/2017 and 4863/2017 and WMP.No.3196 of 2016



W.P.No.13611 of 2013, etc., batch

WEB COPY W.P.No.13611 of 2013:

1.Union of India,
rep.by its Director General,
Department of Posts,
Ministry of Communications and I.T.,
Dak Bhavan, Sansad Marg,
New Delhi - 110 003.

2.The Chief Post Master General,
Tamil Nadu Circle,
Anna Salai,
Chennai - 600 002.

3.The Post Master General,
Southern Region (TN),
Madurai - 625 001.

4.The Senior Superintendent of Post Officer,
Tuticorin Division,
Tuticorin.

...Petitioners

vs.

1.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

2.R.Somasundaram

3.K.M.Muthukrishnan

4.V.Murali

5.A.Ramzan Ali

...Respondents



W.P.No.13611 of 2013, etc., batch

WEB COPY

Prayer in W.P.No.13611 of 2013: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records of the 1st respondent passed the impugned order dated 22.05.2012 in O.A.No.581 of 2011 and quash the same.

For Petitioners : Mr.AR.L.Sundaresan
Additional Solicitor General
assisted by Mr.A.Kumara Guru,
SGSC,
Mr.Venkataswamy Babu,
SPC
Mr.P.G.Santhoshkumar,
Mr.V.Vijay Shankar

Mr.K.Gunasekar,
SPCCG

Mr.A.R.Sakthivel

For Respondents : R1 - Tribunal

Mr.T.V.Krishnamachari,
SPCCG

Mr.Veludas,
CGC

Mr.V.Balasubramanian,



WEB COPY



W.P.No.13611 of 2013, etc., batch

SPC

M.Karthikeyan,
SPC

Mr.R.Malaichamy

Mr.P.Rajendran

Mr.S.Ramasamy Rajarajan

Mr.Jerry V.V. Sundar

Mr.K.Kannan

COMMON ORDER

(Order of the Court was delivered by V. LAKSHMINARAYANAN, J.)

These are Writ Petitions filed by the Union of India through the Director General of Posts seeking to set aside the order of the Central Administrative Tribunal in O.A.No.1051 of 2010, etc. and O.A.No.24 of 2011, etc. batch. in all numbering 27 Original Applications.

2.The case of the applicants is that the applicants are working



W.P.No.13611 of 2013, etc., batch

as Gramin Dak Sevak (herein after referred to as the GDS) and as

Casual Labourers on part time/full time basis in the Postal Department. They are working in several stations like Chennai, Coimbatore, Cuddalore, Vellore, Erode, Madurai, Trichy, Kanniyakumari, Tambaram, Kovilpatti, Virudhunagar and Tuticorin Divisions of the Postal Department. They had sought for a direction to the Postal Department to absorb them in service in accordance with Part II of the Schedule under the Department of Posts (Group D Posts) Recruitment Rules, 2002. The relief that had sought for before the Tribunal is extracted hereunder:

"To direct the respondents to absorb the applicants in Group D posts in accordance with Part - II of the Schedule under the Department of Posts (Group - D Posts) Recruitment Rules, 2002 and in the light of the orders passed by the Hon'ble Division Bench of the Kerala High Court in W.P.(C)No.28574/2009, etc., confirming the orders passed by the Ernakulam Branch of this Hon'ble Tribunal in O.A.No.314/2008, etc., and the orders issued by the Department of Post, Office of the Chief



W.P.No.13611 of 2013, etc., batch

Post Master General, Kerala Circle in CO/LC/OA/47/08 dated 12.10.2009 by taking into account the vacancies that have occurred year wise from the year 2002 and absorb the applicants with effect from the date when their turn reached in accordance with their seniority and grant them all consequential benefits."

3.The Central Administrative Tribunal had by its order dated 22.06.2012 allowed the applications with the following directions:

“Accordingly, the respondents are directed to absorb those applicants who are eligible to be absorbed in Group D Posts in accordance with Part II of the Schedule under the Department of Posts (Group – D Posts) Recruitment Rules, 2002, in the light of the orders passed by the Hon'ble Division Bench of the Kerala High Court in W.P. (C) No.28574/2009 etc. confirming the orders passed by the Ernakulam Bench of the Tribunal in OA 314/2008 etc. by taking into account the vacancies that have occurred year wise from 2002, in accordance with their seniority and grant them all



W.P.No.13611 of 2013, etc., batch

consequential benefits, by passing a reasoned order.

This exercise shall be complied with within a period of 3 months from the date of receipt of copy of this order. The OAs are disposed of. No order as to costs.”

Challenging the same, the first set of Writ Petitions have been filed.

4.After the disposal of these applications, another batch of GDS approached the Central Administrative Tribunal in O.A.No.1194 of 2012, etc., batch. Those Original Applications came to be dismissed in and by way of the order dated 08.01.2016. Challenging the order of dismissal, the GDS have filed the other set of Writ Petitions. As the issue raised in both the cases are one and the same, all the Writ Petitions were grouped and heard by us.

5.The arguments on behalf of the Union of India were led by Mr.AR.L. Sundaresan, learned Additional Solicitor General. On behalf of the respondents, we heard Mr.P. Rajendran, Mr.V. Vijay Shankar, Mr.G.Karthikeyan, Mr.S.Ramasamy Rajarajan and



W.P.No.13611 of 2013, etc., batch

Mr.R.Malaichamy. The other counsels adopted the arguments of the learned counsels appearing for the respondents.

6.The issue in this batch is whether the GDS are entitled to be absorbed in Group D posts on the basis of the Recruitment Rules, 2002, or they have to be denied the said relief as the applicable rule will be Multi Tasking Staff Recruitment Rules, 2010.

7.The Postal Telegraph Services originally had Rules called the Indian Posts and Telegraphs (Class IV Posts) Recruitment Rules of 1970. These rules were superseded by the Department of Posts (Group D Posts) Recruitment Rules, 2002. The 2002 Rules prescribed the manner of filling up of vacancies in Group D posts. The Schedule to this Rules consists of two parts, viz., (i)Part - I deals with Post of Circle and Administrative Offices and (ii)Part - II deals with Posts of Subordinate Offices. All these cases fall under the second category, i.e., Posts of Subordinate Offices. Under Sl.No.1 of this category, the following posts are enumerated:



W.P.No.13611 of 2013, etc., batch

“Peons, Letter Box Peons, Mail Peons,

Packer, Porter, Runner, Van Peon, Orderly,

Gatemen, Attendant -cum- Khansama, Cleaner in

Mail Motor Service and Pumpmen.”

8.The Rules specified the method of recruitment for these posts. They are set forth hereunder:

“(i)75% of the vacancies remaining unfilled after recruitment from employees mentioned at Sl.No.2 shall be filled by Gramin Dak Sevaks of the Recruiting Division or Unit where such vacancies occur failing which by Gramin Dak Sevaks of the neighbouring Division or Unit by selection -cum- seniority.

(ii)25% of the vacancies remaining unfilled after recruitment of employees mentioned in Sl.No.2 (that is, Chowkidar / Watchman/ Safaiwala/ Scavenger/ Gardener/ Mall/ Waterman/ Bhisti/ Mazdoor/ Hamal/ Cleaner/ Rest House/ Attendant/Battery man/ Ayan (Lady Attendant)/ Mechanical Workmen/ By Hand Peon Lacars



W.P.No.13611 of 2013, etc., batch

- (a)by casual labourers with temporary status of the recruiting division or unit failing which*
- (b)by full time casual labourers of the recruiting division or unit failing which*
- (c)by full time casual labourers of the neighbouring division or unit failing which*
- (d)by part time casual labourers of the recruiting division or unit failing which*
- (e)by direct recruitment.”*

9.It transpires that though the Rules were made in the year 2002, the respondents were under an impression that they cannot recruit more than one percent of the sanctioned posts. This was on the basis of an Office Memorandum which was issued on 11.05.2001. The said Office Memorandum No.2/8/2001 - PIC was on optimisation of direct recruitment to civilian posts. This Office Memorandum referred to the speech of the Finance Minister of the Union of India while presenting the Budget for 2001-2002. *The Hon'ble Member had stated "all requirements of recruitment will be*



W.P.No.13611 of 2013, etc., batch

scrutinized to ensure that fresh recruitment is limited to 1 percent of total civilian staff strength. As about 3 percent of staff retire every year, this will reduce the manpower by 2 percent per annum achieving a reduction of 10 percent in five years as announced by Prime Minister".

10.Taking a clue from this speech, the Office Memorandum that states the annual recruitment plan would have to ensure direct recruitment does not in any case exceed 1% of the total sanctioned strength of the Department. It further stated that the other modes of recruitment (including that or promotion) prescribed in the recruitment rules/service rules would, however, continue to be *adhere to* as per the provisions of the notified recruitment rules/service rules.

11.Despite the clarity in these Rules stating that it will not apply to the other modes of recruitment, the respondents had not



W.P.No.13611 of 2013, etc., batch

filled the posts from 2002 till 28.03.2009. Therefore, one group of

GDS approached the Central Administrative Tribunal in Ernakulam.

The lead case was O.A.No.312 of 2008. After considering the stand of the applicants as well as the Union of India, the Tribunal had allowed the Original Applications on the following terms:

“64.In view of the above, all the O.As are allowed in the following terms. It is declared that there is absolutely no need to seek the clearance of the Screening Committee to fill up the vacant posts in various Divisions which are to be filled up from out of G.D.S. and Casual Labourers as per the provisions of the Recruitment Rules, 2002. Respondents are directed to take suitable action in this regard, so that all the posts, majority of which appear to be already manned by the GDS themselves working as 'mazdoors'/at extra cost, are duly filled. In a few cases (e.g.O.A.No.118/2008), the claim of the applicants is that they should be considered against the vacancies which arose at that time when they were within fifty years of age. In such cases, if the applicants and similarly situated persons were within the age limit as on the



W.P.No.13611 of 2013, etc., batch

date of availability of vacancies, notwithstanding the fact that they may by now be over aged, their cases should also, If otherwise found fit, be considered subject, of course, to their being sufficiently senior for absorption in Group D post. If on the basis of their seniority, their names could not be considered due to limited number of vacancies and seniors alone could considered for appointment against available vacancies, the respective individuals who could not be considered be informed accordingly. Time calendared for compliance of this order is nine months from the date of communication of this order.”

12.Challenging the order of the Central Administrative Tribunal, the Union of India approached the High Court of Kerala at Ernakulam. The Writ Petition was numbered as W.P.(C).No.28574 of 2009. The said matter was dealt with by the Hon'ble Mr. Justice Kurian Joseph and the Hon'ble Mr. Justice C.T.Ravikumar [as their Lordships then were]. Considering the objections of either side and after finding that the vacancies of the year 2002, remained unfilled



till the disposal of the Writ Petition, the Bench was pleased to hold
as follows:

“7. Therefore all the writ petitions are disposed with the following directions:

1. In case employees belonging to Sl.No.2 under Column No.1 (Chawkidar/ Watchman/Safaiwala /Scavenger / Gardner / Mali Waterman/ Bhisti / Mazdoor / Hamal/ Cleaner / Rest House Attendant/ Batterymen/ Ayaha (Lady Attendant) / Mechanical Workmen / By hand Peon /Lascars) are available in a division as qualified to appear in the test for appointment to the Group D Post of Sl.No.1 of Column No.1 (Peons/Letter box peon/ Packer Porter/ Runner/Van peon/ Orderly/ Gate men/ Attendant -cum- Khansama/ Cleaner in Mail Motor Service/ Pump men), such vacancies shall be filled immediately in the 75% - 25%. It is made clear that being an appointment in the division the available candidates for test shall be determined only with respect to the division concerned. However, while considering the appointment in the GDS category, it is open to this department to consider other eligible candidates in neighbouring Division / Unit in case of



WEB COPY



W.P.No.13611 of 2013, etc., batch

non availability of candidates/ members belonging in the Division.

2.In case there is any employee available in S.No.2 of Column No.1 (Chawkidar/ Watchman/Safaiwala / Scavenger/ Gardner/Mali Waterman / Bhisti / Mazdoor/ Hamal Cleaner / Rest House Attendant / Batterymen Ayahnn (Lady Attendant) Mechanical Workmen / By hand Peon / Lascars) for appointment to SI.No.1 post (Peons/Letter box peons/Packer/poster/ Runner/ Van peon Orderly/ Gatemen/ Attendant-cum-Khansama/Cleaner in Mail Motor Service/ Pumpmen) in the year concerned, the department shall conduct a test to decide the eligibility in respect of the vacancies in each year. In order to avoid any confusion, it is made clear that in the test for the year 2002 the participation shall be based on the eligibility and availability and qualification of candidates as on the date of occurrence of the vacancies of that year. Such process shall be repeated in respect of each year, depending on the availability of vacancies. This process shall be completed within one month.



W.P.No.13611 of 2013, etc., batch

3. *But in case it is found that no candidate has become eligible in the test for being appointed to SL.No.1 of Column No.1 post (Peons/Letter box peons/Packer porter/ Runner Van peon /Orderly/ Gate men/ Attendant-cum-Khansama/ Cleaner in Mail Motor Service/ Pumpmen) such vacancies in each year shall be filled up from among the eligible GDS casual labourers available for appointment in that particular year. This process shall be completed within another two weeks.*

4. *In case, in the above process vacancies arise in Sl No.2 under Column No.1(Chawkidar/Watchman/ Safaiwala/ Scavenger/ Gardner/Mali Waterman /Bhisti / Mazdoor/ Hamal/ Cleaner/ Rest House Attendant /Batteryman/Ayala (Lady Attendanty Mechanical Workmen / By hand Peon/ Lascars) those vacancies shall be filled in accordance with recruitment rules as per the method prescribed in Serial No. 2 under with the Column No.11. The above process shall be completed with another four weeks, except in the case of Employment Exchange Candidates. In the case of Employment*



W.P.No.13611 of 2013, etc., batch

Exchange hands, steps shall be taken to get the list from the Employment Exchange, without delay.”

13.The Bench also took note of the fact that as early as March 2007, ie., 22.03.2007, a Division Bench of that Court held in W.P.No.22818 of 2006 that no clearance from the Screening Committee is required for filling up the vacancies. It is on record that the Union of India had accepted this verdict and had implemented it insofar as Group D Services in Kerala alone. The employment is one of All India Service and it is not confined to the State of Kerala. Feeling aggrieved by the fact that the Judgment of the Central Administrative Tribunal had not been implemented, the applications had been filed before the Central Administrative Tribunal at Chennai. These came to be numbered as O.A.No.1051 of 2010, batch. The Central Administrative Tribunal, Chennai, took note of the Judgment of the Supreme Court in **Arjun Singh Rathore and others v. B.N.Chaturvedi and others [(2007) 11 SCC 605]** for the proposition that the vacancies which occur prior to the



amendment of the rules will be governed by the original rules and not by the amended rules. In particular, Paras 5 and 6 of the said

Judgment are extracted as follows:

“5.Mr.Calla, the learned counsel for applicant has argued that the matter was fully covered by the judgment of this Court in State of Rajasthan vs. R.Dayal 1997(10)SCC 419 wherein it had been held that the vacancies to be filled by promotion were to be filled under the rules which were in operation on the date when the vacancies had occurred. Relying on and referring to an earlier judgment in the case of Y.V.Rangaiah vs. J.Sreenivasa Rao (1983) 3 SCC 284 it was opined as under:

This Court has specifically laid (sic) that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the



W.P.No.13611 of 2013, etc., batch

vacancies that arose subsequent to the amendment of the Rules are required to be filled in in accordance with the law existing as on the date when the vacancies arose.

6.The above legal position has not been seriously disputed by the learned counsel for respondent Nos.6 &7. We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein. We are therefore of the opinion that the judgment of the learned Single Judge needs to be restored. We order accordingly.”

14.It is also held that any vacancy which has arisen prior to coming into the force of the amended regulations must be filled in terms of the law existing prior thereto. It is noted that the applicants before it, who are the respondents before this Court, had worked as GDS for nearly 20 to 27 years and they were similarly situated as those appointed in Kerala. It is held that the Postal Department



W.P.No.13611 of 2013, etc., batch

being All India Department, there cannot be a different treatment for the employees working in Tamil Nadu and that the Union of India should have to apply the Judgments of the Central Administrative Tribunal, Ernakulam and the High Court of Kerala uniformly throughout India including Tamil Nadu. It came to a categorical conclusion that failure on the part of Union of India to apply the Judgments uniformly will amount to treating similarly placed persons dissimilarly and hence will result in discrimination. It carefully perused the reply and instructions to hold that what was restricted under the Office Memorandum dated 11.05.2001 was a direct recruitment and not "inhouse recruitment" or promotion as per the rules. It further rejected the argument that since Group D cadre was no more in existence from 20.03.2009, the applicants before it were not entitled to the benefits. It held that the Union of India not having taken steps to fill the vacancies from 2002 till the new recruitment rules came into force, the mistake cannot be laid at the door of the applicants before it. It held that if the cadre of Group D got elevated to Group C with a name Multi Tasking Staff, it does not



W.P.No.13611 of 2013, etc., batch

take away the right of the GDS employees to be considered for promotion against the vacancies from 2002 till 27.03.2009. On the aforesaid grounds, it held that the clearance for the Screening Committee for recruitment of GDS as per the 2002 rules is unnecessary and that the applicants are entitled to the relief they had sought for, on the same ground as their compatriots in Kerala.

15. In the meantime, few of the persons who are working as GDS in leave vacancies filed O.A.No.973 of 2011. They had prayed for a direction to the Union of India represented by its Director of Posts to regularise the petitioners in Group B or E, D services. The said applications came to be dismissed by the Tribunal on 07.11.2012. The ground of dismissal by the Tribunal was that the applicants in O.A.No.973 of 2011 were engaged "on need basis" and on daily wage rate as and when required. There was no formal or provisional appointment issued to them under the Service Rules. It further held that the applicants in O.A.No.973 of 2011 cannot be treated on par with GDS or even Casual Labourers. This was



W.P.No.13611 of 2013, etc., batch

because there was no recruitment rules framed for such persons. It further held that as the applicants were neither GDS or Casual Labourers the applicants cannot claim parity with the applicants before the Central Administrative Tribunal at Ernakulam Bench. This was because the applicants in O.A.No.973 of 2011 were not recruited on or before 01.09.1993 by the Postal Department. Challenging this order, the Writ Petitions came to be filed before this Court in W.P.No.6474 of 2015 and W.P.No.9071 of 2015. The Hon'ble Mr.Justice V.Ramasubramanian (as his Lordship then was) took note of the fact that the petitioners were engaged only in leave vacancies and were not appointed to the Posts. He noted that the petitioners were working in short term vacancies arising out of regular incumbents going on leave. On that basis, he came to the conclusion that such a person will not be entitled to absorption or regularisation. Referring to the Judgment in **A.Uma Rani v. Registrar (AIR 2004 SC 4504)**, the learned Judge held that as the petitioners were only working in leave vacancies they were not entitled to any benefit and therefore, confirmed the order of the



W.P.No.13611 of 2013, etc., batch

Tribunal in O.A.No.973 of 2011 and dismissed the Writ Petitions.

WEB COPY

16. Thereafter, another batch came to be filed in O.A.No.1194 of 2012, etc., by GDS claiming absorption as per the 2002 Rules. The Tribunal followed the Judgment of the High Court in W.P.Nos.6474 of 2015 and 9051 of 2015 and held that since the reliefs had not been granted to the applicants therein, the same position would hold good for GDS also. It further held that as the 2002 Rules were in force at the time the Writ Petition was disposed of by the Kerala High Court, the Original Applicants had not made out a case and therefore, dismissed the application. Challenging the said order, the other batch of Writ Petitions have been filed.

17. Mr. A.R.L. Sundaresan, learned Additional Solicitor General would submit the following points:

(1) that the GDS are not in central service and they have other means of livelihood. Hence, they cannot maintain the Original Applications.



W.P.No.13611 of 2013, etc., batch

(2)that the absorption or appointment on a timely basis is not a matter of right and therefore, there is no corresponding duty to get a Mandamus for the same.

(3)that the vacancies were filled as and when they arose and the applicants having approached the Tribunal after nearly eight years, are not entitled for any relief as the same is barred by laches.

(4)The Rules in force on the day on which the vacancies are to be filled up alone applies and not the Rules which were in force on the day on which the vacancy arose.

(5)that the order in O.A.No.973 of 2011 having been confirmed by the order of the Division Bench in W.P.No.6474 of 2015 and W.P.No.9071 of 2015, applying the said verdict, the Tribunal should have dismissed the application. The Posts having been abolished on 23.08.2009 a direction cannot be given to fill up the vacancies of non existing posts.



W.P.No.13611 of 2013, etc., batch

18.Mr.P.Rajendran, learned counsel appearing for the respondents in the Writ Petitions filed by the Union of India and for the petitioners challenging the order in O.A.No.1196 of 2012, etc. batch would contend that the arguments of the Union of India that the filling up of vacancies had to be cleared by the Screening Committee is untenable and that the Union of India having recruited the persons across the Country, the Judgment of the Kerala High Court having been attained finality, should be applied to all the persons similarly situated and that in service jurisprudence similarly placed persons cannot be treated dissimilarly.

19.Mr.V. Vijay Shankar, learned counsel appearing for the other petitioners would contend that there are no rules with respect to conducting of Departmental Promotion Committee year on year but the same is operational by virtue of Office Memorandums which are issued by the Union of India through Department of Personnel from time to time.



W.P.No.13611 of 2013, etc., batch

20.Mr.Ramasamy Rajarajan, learned counsel would submit that the Judgment of the Kerala High Court is one in *rem* and therefore, applies across the Country.

21.Mr.V. Vijay Shankar, learned counsel would further contend that the applicants before the Tribunal were all the members of the Group D services, i.e, the lower most cadre in service and they cannot be treated on par with the officers and other categories. Their knowledge is limited and therefore, the Court should not strictly apply the rules as has been done for those in the officers category.

22.The learned Additional Solicitor General in reply would state that the order of the Kerala High Court and the order in the Original Applications do not apply across the Country, but should be confined only to the applicants therein.



W.P.No.13611 of 2013, etc., batch

WEB COPY

23. The learned Additional Solicitor General would rely upon the Judgment of the Supreme Court in **State of Himachal Pradesh v. Rajkumar and others** in **Civil Appeal No.9746 of 2011 dated 20.05.2022** to submit that the view taken in **Y.V. Rangaiah v. J. Sreenivasa Rao (1983) 3 SCC 284** is no longer good law and that the Union of India can take a conscious decision not to fill up the vacancy arising prior to the amendment. He would further rely upon the Judgment in **Rajasthan Public Service commission v. Chanan Ram and another [(1998) 4 SCC 202]** to contend that the Government can withdraw its notification in anticipation of the rules. He would further rely upon the following Judgments:

(1) Anis Parvez and others v. Director General, Council of Scientific and Industrial Research and others, [(2002) 5 SCC 544]

(2) Ghan Sham Sunder and others v. State of Punjab and others [(2004) 9 SCC 508]

(3) S.S. Balu and another v. State of Kerala and others [(2009) 2 SCC 479]

(4) Bharat Sanchar Nigam Limited v.



W.P.No.13611 of 2013, etc., batch

Ghanshyam Dass (2) and others [(2011) 4 SCC 374]

24.Per contra, Mr.P.Rajendran learned counsel would refer to the Judgment of the Hon'ble Supreme Court in **State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others [(2015) 1 Supreme Court Cases 347]**.

25.Mr.R.Malaisamy, learned counsel would similarly refer to the Judgment in the case of **Rushibhai Jagdishchandra Pathak v. Bhavnagar Municipal Corporation in Civil Appeal No.4134 of 2022 dated 18.05.2022**.

26.Mr.Ramasamy Rajarajan, learned counsel would refer to the Judgment in **K.C.Sharma and others v. Union of India and others [1998 Supreme Court Cases (L & S) 226]** and in **B.S.Mathur and another v. Union of India and others [(2008) 10 SCC 271]**.



W.P.No.13611 of 2013, etc., batch

WEB COPY

27.Mr.Karthikeyan, learned counsel would refer to the Judgment in **Tamil Nadu Khadi and Village Industries Board v. M.S.Krishnaswamy and others [(2001) 6 SCC 701]**.

28.Mr.V.Vijay Shankar, learned counsel would refer to the Judgment in Union of India and others v. **Mr.N.R.Banerjee and others [(1997) 9 SCC 287]** and the **Office Memorandum No.22011/9/98 – Estt. (D), dated 08.09.1998** issued by the **Government of India, Department of Personnel and Training** read with **Office Memorandum of even number dated 13.10.1998**.

29.We have carefully considered the arguments on either side and gone through the orders passed by the Central Administrative Tribunal, Ernakulam and the Central Administrative Tribunal, Chennai, in the two batches, the order of the High Court in



W.P.No.13611 of 2013, etc., batch

W.P.No.6474 of 2015 and have considered the arguments of the learned Additional Solicitor General and the arguments made by the counsels for the respective private parties.

30.The Department of Posts (Group D Posts) Recruitment Rules of 2002 is the subject matter of the interpretation. It provided a method of recruitment in Part - II. Candidates holding the posts in Sl.No.2 would be considered for appointment on clearing the test to determine their eligibility. If those who had written the test were unsuccessful, the vacancies would arise. The Rules contemplated how the vacancies should be filled up. The manner was as follows:

*(i)75% of vacancies remaining unfilled **shall** be filled by Gramin Dak Sevaks of the Recruiting Division or Unit where such vacancies occur failing which Gramin Dak Sevaks from the neighbouring Division or Unit by **selection cum seniority**.*

(ii)The remaining 25% shall be filled up by selection cum seniority from among

(a)Casual Labourers with temporary status of the recruiting division or unit,



W.P.No.13611 of 2013, etc., batch

failing which,

(b)By full time Casual Labourers of the recruiting division or unit, failing which,

(c)By Full time Casual Labourers of the neighbouring division or unit, failing which,

(d)By part time Casual Labourers of the recruiting division or unit, failing which,

(e)By direct recruitment.”

31.A reading of these rules would show that the direct recruitment has to be adopted only if vacancies continue to be available after exhausting the persons found in Sl.No.2 in (a) to (e). In 2004, the Department had taken a view that the filling up of vacancies of (a) to (e) was to be treated as direct recruitment and therefore, permission of the Screening Committee was essential. The Central Administrative Tribunal, Ernakulam, in O.A.No.977 of 2003, batch, held as follows:

"The question that arises therefore for



WEB COPY



W.P.No.13611 of 2013, etc., batch

consideration is whether the Screening Committee's approval is mandatory for filling up the posts with reference to Recruitment rules. No documentary proof has been produced by the respondents to show what is the mandate of the Screening Committee referred to by them. It has been stated that Screening Committee's approval is required for filling up the vacancies by direct recruitment. From the reading of the rules it appears that the filling up of Group D posts by the method prescribed in Column 11 cannot be construed as the method for direct recruitment as direct recruitment has been prescribed as an alternative method only if the above procedure failed. Thus the method of recruitment followed appears to be in the nature of promotion only. If that be so, the policy followed by the respondents for appointment of Group D only with the approval of the Screening Committee is incorrect. It has resulted in filling up only limited vacancies on regular basis and filling up the remaining vacancies on ad hoc basis from the GDS and has created a situation where all the vacancies got to be manned by GDS only leaving out the other 25% category of Casual Labourers from consideration. This



W.P.No.13611 of 2013, etc., batch

WEB COPY

is certainly discriminatory and in violation of the prescription in the Recruitment rules."

32.This order was challenged before the High Court of Kerala at Ernakulam in W.P.(C).No.3618 of 2006 and C.W.P.No.4956 of 2006. The order of the Tribunal was upheld and the Writ Petitions filed by the Union of India came to be dismissed. This clearly shows that the defence taken by the Union of India that the approval of the Screening Committee was not granted for filling up of vacancies through GDS and through casual labourers was held to be an untenable defence. In other words, all the GDS and Casual Labourers were eligible to be considered against the 75% and 25% preferential category among the Casual Labourers. The order of the High Court of Kerala in W.P.(C).No.3618 and 4956 of 2006 dated 22.03.2007 for the aforesaid purpose is extracted as follows:

"5.The main contention raised by the petitioners is that prior approval of the Screening Committee is a must for filling up of the vacancies and also that the method of recruitment is only by way of direct



recruitment. A reading of the recruitment rules will show that the contention raised by the petitioners that only direct recruitment is the method, is not correct. Apart from that, they are not justified in contending that prior court under Article 227 of the Constitution of India. Hence, the writ petitions are dismissed uploading the order of the Central Administrative Tribunal."

33.The issue of Screening Committee was once again read up by the Union of India before the Central Administrative Tribunal in O.A.No.115 of 2004. In the said decision, the Central Administrative Tribunal had categorically held as follows:

"6. Nowhere it is mentioned in the above rules that the recruitment is by way of direct recruitment. According to the rules, the first method to be followed is by a test to determine the eligibility of the candidates holding the post specified in the rules and in case suitable candidates are not found, the remaining posts shall be filled up 75% by GDS of the



W.P.No.13611 of 2013, etc., batch

Recruiting Division or Unit failing which by GDS of the neighbouring Division or Unit by selection cum seniority and 25% from casual labourers under four sub categories namely, (1) temporary status, (2) full time labourers of the recruiting division, (3) full time casual labour of the neighbouring division or unit failing which by (4) part time casual labour in that order."

34. Yet again, this order was put in test before the High Court in W.P.No.22818 of 2006. The High Court assessed the case whether the recruitment rules require for clearance from the Departmental Screening Committee. It rejected the arguments holding as follows:

"6.... The relevant recruitment rules do not provide for any clearance from the Departmental Screening Committee. If at all there was a ban, it was limited to direct recruitment vacancies going by paragraph 3 of Annexure R2. Hence, the argument



WEB COPY



W.P.No.13611 of 2013, etc., batch

raised by the petitioners in that regard was also rejected rightly by the Tribunal. The Tribunal has only directed the petitioners to assess the actual number of vacancies and fill them up according to the recruitment rules and consider the applicant in his turn in accordance with the preference provided for in the said rules."

35. Not satisfied with these two rounds of litigations having gone against them, the Department of Posts yet again raised the very same issue in O.A.No.346 of 2005. This was also rejected by a detailed speaking order of the Central Administrative Tribunal in the following terms:

"11. On a wholesome reading of the columns pertaining to the selection and mode of recruitment as provided in the schedule to Part 1 of these rules it can be reasonably concluded that the scheme of recruitment envisaged only "promotion" by "selection-cum-seniority" initially from the categories as mentioned in the category 2 in schedule 2 and in case such categories are not available by the same method



WEB COPY



W.P.No.13611 of 2013, etc., batch

of "selection cum seniority" from the categories as mentioned in col. 11 of the Recruitment Rules in accordance with the percentages as stipulated. Only if any of the above methods fail the provision had been made in for "direct recruitment." Since the term "direct recruitment" is specifically referred to in the Recruitment Rules with reference to failing which clause as a last resort, it would be a natural corollary that the rest of the procedure should be construed as promotion. This view is further fortified by the provision of the Recruitment Rules relating to the consideration of the DPC and also by the method of selection prescribed as "selection cum seniority". In a case of direct recruitment there is no scope for seniority. Even if there is any ambiguity in the Recruitment Rules, a harmonious interpretation of the various provisions in the rules has to be undertaken and on that basis we had come to the conclusion that the selection of GDS under the 75% quota and also the selection of Casual Labourers under the 25% quota would fall under the category of promotion only. The orders in the OAS referred to supra and as confirmed by the Hon'ble High Court relate to part-



WEB COPY



W.P.No.13611 of 2013, etc., batch

time and full time Casual Labourers under the same rules who qualified under the 25% quota. However, the principle whether the method of selection was direct recruitment or promotion would remain the same for both the categories. We therefore reiterate our earlier view. In this context, advertent to Annexures R-4 and R-5 orders of the Full Bench of this Tribunal referred to by the respondents, it is seen that that the points referred to the Full Annexure R-4 order Bench were whether the appointment of GDS as Postman in the 25% seniority quota is by way of direct recruitment or promotion. The rules of promotion to the post of Postman are entirely different from the rules in question in this O.A. Therefore, any reliance of this has no basis.

12.The second aspect is whether for filling up the existing vacancies the approval of the Screening Committee is required or not. The answer to this question flows directly from the decision above whether the posts are to be filled up by direct recruitment or by promotion. It is clear that Annexure R-2 memorandum of the Department of Personnel and the instructions contained therein was limited to



WEB COPY



W.P.No.13611 of 2013, etc., batch

direct recruitment vacancies. Pars 3 thereof is specific in this regard and this was already dealt with by us elaborately in our order in O.A. 115/2004. Therefore the reliance of the respondents on the Memorandum again has no basis and only shows the reluctance on the part of the respondents to accept the settled legal position is no doubt, true that it is the prerogative of the Department to take a conscious decision whether at any point of time the vacancies arising should be filled up or not. They can take a conscious decision not to fill up a post on the existence of a situation. While accepting their reliance on such a ratio in the judgment of the Hon'ble Supreme Court in AIR 1991 SSC 1612. It is also true that the court further observed therein:

"....However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates as reflected at the recruitment test, and no discrimination can be permitted....."



W.P.No.13611 of 2013, etc., batch

WEB COPY

There is no such stand taken by the respondents that they had taken any such decision not to fill up the posts."

36.This too, as pointed out above, was challenged before the High Court of Kerala at Ernakulam in W.P.No.(C).28574 of 2009. It ended up in grief to the Department of Posts on 23.12.2009.

37.In fine, the consistent finding from 2003 onwards is that the clearance by the Departmental Screening Committee was not necessary for filling up of Group D vacancies and the Office Memorandum would apply only to the recruitment of the last category under Part II - Posts of Subordinate Office (III by direct recruitment). When it was pointed out to the learned Additional Solicitor General that the rules on the date on which the vacancies had arisen were the rules of the year 2002 and ought to have been applied, he responded saying on account of the Office Memorandum dated 16.05.2001, the vacancies were not filled in Tamil Nadu. We feel this argument does not lie in favour of the Union of India. The



W.P.No.13611 of 2013, etc., batch

argument had been raised and exterminated by the Tribunal and the Courts in Kerala cannot be resurrected in Tamil Nadu. We have independently assessed the rules and found that

(a)the Office Memorandum cannot replace the rules and

(b)the Office Memorandum applies only to direct recruitment and not to "inhouse promotion". The GDS were available but still the rules were not applied to them despite specific direction of the Court. It is here that we have to take note of Article 261 of the Constitution of India. The said provision reads "Full faith and credit shall be given throughout the Territory of India to public Acts, records and **judicial proceedings of the Union and of every State.**"

It is the duty of the respondents to have given full faith to the repeated verdicts of the Central Administrative Tribunal at Ernakulam and the repeated confirmation of those Judgments by the High Court of Kerala at Ernakulam.

38.The learned Additional Solicitor General would concede that none of the orders passed by the High Court were challenged



W.P.No.13611 of 2013, etc., batch

before the Supreme Court of India by way of a Special Leave. In other words, the Department of Posts had agreed to and had implemented the verdicts.

39. We have to take into consideration the crucial fact that we are dealing with All India Service. It cannot be disputed that the GDS in Kerala are similarly situated as the GDS in Tamil Nadu. In **State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others [(2015) 1 Supreme Court Cases 347]**, the Supreme Court has categorically laid down the position that should prevail. It had held as follows:

"22. Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated



W.P.No.13611 of 2013, etc., batch

persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."

40.It is settled position that to treat similarly placed persons dissimilarly amounts to hostile discrimination. Such an act falls foul of Article 14 of the Constitution of India. It is for this reason that the position laid down in **State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others [(2015) 1 Supreme Court Cases 347]** was reiterated in **Rushibhai Jagdishchandra Pathak v. Bhav Nagar Municipal Corporation in Civil Appeal.4134 of 2022 dated 18.05.2022.**

41.This takes us to the next point of whether it is the duty of the Union to fill a vacancy year on year. The Union of India itself through its Office Memorandum dated 08.09.1998 read with Office Memorandum of Even No.dated 13.10.1998 gains importance.



W.P.No.13611 of 2013, etc., batch

Under the said Office Memorandum, instructions were given that

DPC's should be convened at regular intervals by laying down a time schedule for the said purpose. It also directed drawing of panel that would be utilised for making promotions against the vacancies occurring during the course of the year. It further directed the concerned Authorities to initiate action to fill up the existing as well as the anticipated vacancies well in advance after expiry of the previous panel by collecting relevant documents and placing them before the DPC. The Office Memorandum also suggested a Model Calendar for DPCs. It also directed in Clause 12 as follows:

"12.All Ministries / Departments are requested to take note of the above clarification / modification of the existing instructions for *wide circulation on priority basis and strict compliance* so that the desired objectives of convening of DPC meetings / preparation of the approved select panels as per the aforesaid prescribed time-frame may be achieved."

42.A reading of the Office Memorandum would go against the argument of the learned Additional Solicitor General that the



W.P.No.13611 of 2013, etc., batch

Government need not fill up the posts year on year. It was the

Government which had given a direction for such a DPC. Even

before the Office Memorandum was issued in the year 1998, the

Supreme Court took note of the necessity for convening the DPC

year on year in **Union of India and others v. N.R.Banerjee and**

others [(1997) 9 Supreme Court Cases 287]. In particular, Paras

5, 6 and 9 would be relevant which reads as follows:

“5.Part II of the guidelines relating to the frequency of meeting of the D.P.C. Para 3.1 indicates that the D.P.Cs should be convened at regular annual intervals to draw panels which could be utilised for making promotions against the vacancies occurring during the course of a year. In other words, the life of the panel is one year. For this purpose, it is essential for the concerned appointing authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel, by collecting relevant documents like A.C.Rs., integrity certificates, seniority list etc. for placing before the D.P.C.



WEB COPY



W.P.No.13611 of 2013, etc., batch

6.D.P.Cs. should be convened every year, if necessary, on fixed date, i.e. 1st of April or May. In the middle of the para, by way of amendment brought on May 13, 1995, it postulates that very often action for holding D.P.C meeting is initiated after the vacancy has arisen. This results in undue delay in filling up of vacancies and causes dissatisfaction among those who are eligible for promotion. It may be indicated that regular meeting of D.P.C. should be held every year for each category of posts so that approved select panel is available in advance for making promotions against vacancies arising every year. Under para 3.2, the requirement of convening annual meetings of the D.P.C. should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question. It would, thus, be seen that D.P.Cs. are required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the year for being filled up. The



required material should be collected in advance and merit list finalised by the appointing authorities and placed before the D.P.Cs for consideration. This requirement can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question.

...

9.It would, thus, be seen that the authorities are required to anticipate in advance the vacancies for promotion on regular basis including long term deputation posts and additional posts created and then to take the action plan in finalising the A.C.Rs. preparation of the select list and place necessary material before the D.P.C. for consideration of the candidates within the zone of consideration, as are found eligible for the relevant year/years.”

43.This would make it very clear that the duty is cast upon the Union of India to convene the DPC year on year and it cannot be



W.P.No.13611 of 2013, etc., batch

heard to submit before the Court, as has been done in this case, that since the rules do not contemplate calling for DPC, it was not done from 2002 to 28.03.2009. The infinitesimal gaps left out in the rules are filled by the Office Memorandums and in this particular case, there is not only a binding Judgment of the Supreme Court of India but also Office Memorandum which has been extracted above. The Office Memorandum imposed a duty on the Department of Posts to create a DPC and fill up the vacancies. The Department of Posts cannot be heard to say that it did not do so, despite a binding direction given by the Department of Personnel and Training. The arguments that the GDS are not in Central service and therefore are not entitled to be considered runs contrary to the rules. We have already seen from Part - II of the Recruitment Rules, 2002, 75% of the vacancies were to be filled by GDS. If it was the view of the Department of Posts that he did not want to fill up the vacancies through GDS, then appropriate amendment should be made to the recruitment rules. The Rules having been made, giving a right to be considered for in-house promotion to the GDS, it is too late to



W.P.No.13611 of 2013, etc., batch

contend that the GDS are not entitled on account of them in not being the Central service. This argument goes contrary to the rules and hence, it is rejected.

44.The learned Additional Solicitor General would further contend that the rules in force on the day should be made applicable and not the rules on the day on which the vacancies arose. He would refer to the several Judgments which we shall deal one by one. The learned Additional Solicitor General would argue by the Judgment in **Rajasthan Public Service commission v. Chanan Ram and another [(1998) 4 SCC 202]** that the change in cadres having been contemplated, the Court ought not to apply the old rules. It is here that we have to see the facts which led the Court to come to this conclusion. In that case, an Advertisement was issued by the Rajasthan Public Service Commission for recruitment of 23 posts of Assistant Director (Junior) as direct recruitment. The respondent therein had offered in candidature for direct recruitment through one of the posts. The Government had given a requisition for the posts



W.P.No.13611 of 2013, etc., batch

on 01.11.1993 and the Advertisement was given on 05.11.1993. The

last date for the application was on 31.12.1993. Even before the last date, the State of Rajasthan by a communication dated 28.12.1993 decided not to go ahead with the filling up of the posts as it was contemplating an amendment of the recruitment rules. These facts would go to show that the Government of Rajasthan had taken a conscious decision to amend the Rules and therefore had decided to give up its proposal. It can be looked in yet another manner. The Advertisement calling for applications for filling up of the posts by direct recruitment is an invitation to offer from eligible persons. The invitation to offer itself stood withdrawn before the last date. Therefore, there is no right in a person to demand that even if the invitation to offer is withdrawn, he still has a right to make an application and thereby gives his offer for recruitment. An other distinguishable factor in **Chanan Ram's** case is that it relates to the direct recruitment and not recruitment from persons already recognised by the Rules to have a right to be considered for "inhouse promotion".



WEB COPY

45. The learned Additional Solicitor General would then rely upon **Anis Parvez and others v. Director General, Council of Scientific and Industrial Research and others, [(2002) 5 SCC 544]**. This was a case where the Government came up with a Scheme for recruitment to Group D posts according to seniority. The respondents therein who were seniors to the appellants were absorbed into Group D posts. Subsequently, the Government came up with a scheme of absorption into Group II/Grade - C posts. The respondents 3 to 12 who had already been absorbed protested saying that their juniors have been absorbed into Group II/Grade - C posts, whereas they were not being considered.

46. The Supreme Court held that the respondents 3 to 12 therein having agreed to the absorption into Group D posts cannot turn around and complain that they should be considered again for Group II/Grade - C posts as they had already exercised their option and their option had ended in their favour. We are unable to apply



W.P.No.13611 of 2013, etc., batch

this Judgment to the facts of the present case.

WEB COPY

47.The learned Additional Solicitor General would argue on the basis of **Ghan Sham Sunder and others v. State of Punjab and others [(2004) 9 Supreme Court Cases 508]** that the efficiency is a prime consideration for absorption in Government service. A change in policy of the Government for absorption of Auxiliary Constables into regular Constables found approval by the Supreme Court. There cannot be a dispute to the proposition that the Government has a right to change its policies. It was in that light the Supreme Court had held the right of the State of Punjab to change the suitability test. It is pertinent to point out that one administrative order fixing the suitability test was changed by another administrative order. However, on the case at hand, it is not an administrative order on the basis of which the GDS are seeking their right to be considered. It is on the basis of rules framed under proviso to Article 309 and therefore, it cannot be equated to the situation as in **Ghan Sham Sunder** 's case.



WEB COPY

48. The learned Additional Solicitor General would next refer to the Judgment in **S.S.Balu and another v. State of Kerala and others [(2009) 2 Supreme Court Cases 479]** for the proposition that a person does not acquire a legal right to be appointed only because his name appears in the select list. This Judgment also laid down that the State, as an employer, has a right to fill up all the posts or not filled them up at all. This is too well settled and does not require an authority that the inclusion in select list is only for the purpose of being considered for an appointment. This is not a case of select list and therefore, factually the Judgment does not apply to the present case. Furthermore, in that very Judgment too, it had been held that in case there is a discrimination or arbitrariness in the manner of appointment, the candidate has a legal right to obtain a Writ of Mandamus. We have already seen that despite repeated orders of the Court and the Tribunal, the Department of Posts had discriminated between the employees in the State of Kerala as against their equals in the State of Tamil Nadu. This in itself is a



W.P.No.13611 of 2013, etc., batch

hostile discrimination, apart from the arguments suffering from vice of re-litigation.

49.The learned Additional Solicitor General would also refer to the Judgment in **Union of India and others v. Gandiba Behera [(2019) SCC Online SC 1444]**. This was a case where the plea made by GDS for computation of service, in that capacity, for inclusion in the subsequent service and for pension was rejected. The recruitment rules also do not contemplate such a situation and the GDS are also not seeking for such a plea in the present Original Applications. Therefore, we are not in agreement with the proposition of the learned Additional Solicitor General. He would then argue that the petitioners have to be non-suited on the ground of delay and laches. It is here that the Judgment in **State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others [(2015) 1 Supreme Court Cases 347]** becomes relevant. We have already seen the view taken by the Supreme Court as extracted by us (Para 22.1). A couple of paras later, the Supreme Court has held



that the delay and laches cannot be put out against the Judgment which is one *in rem*. We extract Paras 22.2 and 22.3 for the said purpose:

"22.2.However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3.However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With



such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of Page 27 27 the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

50.The Judgment of the Central Administrative Tribunal at Kerala would have to be held as one *in rem* because of the conclusions arrived at Para 64 which reads as follows:

“64.In view of the above, all the O.As are



WEB COPY



W.P.No.13611 of 2013, etc., batch

allowed in the following terms. It is declared that there is absolutely no need to seek the clearance of the Screening Committee to fill up the vacant posts in various Divisions which are to be filled up from out of G.D.S. and Casual Labourers as per the provisions of the Recruitment Rules, 2002. Respondents are directed to take suitable action in this regard, so that all the posts, majority of which appear to be already manned by the GDS themselves working as 'mazdoors'/at extra cost, are duly filled. In a few cases (e.g.O.A.No.118/2008), the claim of the applicants is that they should be considered against the vacancies which arose at that time when they were within fifty years of age. In such cases, if the applicants and similarly situated persons were within the age limit as on the date of availability of vacancies, notwithstanding the fact that they may by now be over aged, their cases should also, If otherwise found fit, be considered subject, of course, to their being sufficiently senior for absorption in Group D post. If on the basis of their seniority, their names could not be considered due to limited number of



W.P.No.13611 of 2013, etc., batch

vacancies and seniors alone could considered for appointment against available vacancies, the respective individuals who could not be considered be informed accordingly. Time calendared for compliance of this order is nine months from the date of communication of this order.”

51. When this was taken to by the Division Bench of Kerala, this order was not modified but on the contrary, it was confirmed. Therefore, the view in **Arvind Kumar Srivastava's** case would apply in all force and the plea of laches cannot be put against the petitioners. Apart from this, the Supreme Court of India in **Bharat Sanchar Nigam Limited v. Ghanshyam Dass (2) and others [(2011) 4 SCC 374]** has laid down the following proposition:

“25. The principle laid down in K.I. Shephard (supra) that it is not necessary for every person to approach the court for relief and it is the duty of the authority to extend the benefit of a concluded decision in all similar cases without driving every affected person to court to seek relief would apply only in the following circumstances:



a) where the order is made in a petition filed in a representative capacity on behalf of all similarly situated employees;

b) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not;

c) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and

d) where the Court expressly directs that the relief granted should be extended to those who have not approached the court.

The underlined portion, read with the order of the Tribunal, persuades us to hold that the Court having expressly directed the benefit to be extended to all, would apply to similarly situated persons. The Union of India ought to have considered the employees across the Country and it ought not to have restricted the law declared and the interpretation and apply only to those situated in the State of Kerala.



WEB COPY



W.P.No.13611 of 2013, etc., batch

52. We have to add that the Department of Posts had agreed to the verdicts of the Tribunal in Ernakulam as well as that of the High Court. It is here that the Judgment in **Tamil Nadu Khadi and Village Industries Board v. M.S.Krishnaswamy and others [(2001) 6 SCC 701]** becomes important. In the said Judgment, this Court had held that once the State Authority implements an order, it cannot turn around and not extend the benefits to others. The relevant portion of the said Judgment are extracted hereunder:

“5...Be that, as it may, it is clear that the question was examined by the High Court on an earlier occasion in Perumal Swami's case which was decided fairly long time back and that decision was accepted by the Board itself. Having accepted that decision and the same had been acted upon and the benefit of seniority had been extended to others and that decision in Perumal Swami's case having become final, we think that neither is it open to the



Board to contend to the contrary now nor was the learned Single Judge justified in refusing to reckon the claims of the petitioners in the writ petitions before him. Thus we find merit in their contentions and the view taken by the High Court in allowing the appeals is absolutely justified.”

53.The principle of approbate and reprobate equally applies to the Department of Posts as it applies to a private sector. That takes us to the last argument of the learned Additional Solicitor General that the Union of India having taken a conscious decision and bringing forth the Multi Tasking of Recruitment Rules, 2010, it should be those rules which should be made applicable to the vacancies which arose between 2002 to 2009. We are unable to agree with the said contentions.

54.A perusal of the rules goes to show that the rules would come into force only from **12.12.2010**. Therefore, it does not apply to vacancies which arose prior to coming into its force. When this



W.P.No.13611 of 2013, etc., batch

was put to him, the learned Additional Solicitor General, would

refer to a Judgment in **State of Himachal Pradesh v. Rajkumar and others** in **Civil Appeal No.9476 of 2011 dated 20.05.2022**.

That was a case where the Supreme Court had decided whether the decision in **Y.V. Rangaiah v. J. Sreenivasa Rao [(1983) 3 SCC 284]** holds good. Three Judges of the Supreme Court held that the principles laid down in **Y.V. Rangaiah v. J. Sreenivasa Rao [(1983) 3 SCC 284]** are not final but they have been modified, distinguished and exceptions had been created to the broad proposition laid down in **Rangaiah's** case. In Para 36, the conclusions of the three Judge Bench have been postulated. It is relevant to point out the Clause 3 of the said proposition.

“36.A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:



1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's case must be understood in the context of the rules involved therein.

2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates 59.

3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. 60 There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit. 61 The only requirement is that



W.P.No.13611 of 2013, etc., batch

the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

4.The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.

5.When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases.”

55.The Court had very categorically held that the Government can take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the Rules and an employee does not acquire any vested right to be considered for promotion in accordance with the repealed rules in view of the policy decision of the Government. The only requirement is that the policy decision should be fair and reasonable and should be justified on the touchstone of Article 14. This view of the Supreme Court, in fact, goes



W.P.No.13611 of 2013, etc., batch

against the case of the Department of Posts. This is for the reason

the

vacancies arose between 2002 to 2009 when the Multi Tasking Staff Recruitment Rules were not even in contemplation.

56.The Department of Posts, despite repeated verdicts of the Court, had taken a view that the in-house promotion for GDS and Casual Labourers on the ratio of 75:25 for the unfilled posts is a direct recruitment and therefore, went by the Screening Committee decision. Once the Court holds that the Screening Committee decision is not required for filling up the Group D posts and it should be done only in accordance with the 2002 Rules, there is no other impediment for implementing it insofar as the GDS and Casual Labourers are concerned. We asked the learned Additional Solicitor General as to what was the policy decision taken by the Government not to fill the posts between 2002 to 2009 and his



W.P.No.13611 of 2013, etc., batch

response was that it was the conditions laid down in the Office Memorandum dated 11.05.2001. We have already stated that the Office Memorandum regarding direct recruitment came into force on 11.05.2001 whereas the rules giving a right of consideration to the GDS cadre came into force, seven months thereafter, i.e., on 23.01.2002. When the rules are in force, reference to Office Memorandum is of no avail.

57.As stated by the learned Additional Solicitor General, the only policy decision was the Screening Committee decision and the Screening Committee Decision having been held to be inapplicable, there exist no policy at all. Therefore, for the vacancies which arose between 2008 to 28.03.2009, we hold the applicable rules are the Group D recruitment rules which came into force on 23.01.2002.

58.That now brings us to the order of the Administrative Tribunal in O.A.No.1194 of 2012 and O.A.No.1051 of 2010. In



W.P.No.13611 of 2013, etc., batch

these applications, the Central Administrative Tribunal followed the decision of this Court in W.P.No.6474 of 2015 and W.P.No.9071 of 2015. It held that Judgment is applicable to the facts of the present case and therefore, it dismissed the Original Applications. We have carefully perused the order in O.A.No.1194 of 2012, etc., batch. The Tribunal did not take into consideration that the applicants in O.A.No.973 of 2011, which was confirmed in W.P.No.6474 of 2015 and W.P.No.9071 of 2015, were not GDS or Casual Labourers given preferential status as per the Rules. They were all persons who were appointed in leave vacancies. A person who is covered by the rules is fundamentally different from the persons who are claiming regularisation. The applicants before the Tribunal in O.A.No.1194 of 2012, etc., batch were all GDS or Casual employees. They did not come forth before the Tribunal seeking regularisation. The prayer of the applicants in O.A.No.973 of 2011 was a prayer for regularisation and not one seeking for application of the rules as in the present case. This is clear from the very first paragraph of the Judgment rendered in W.P.No.6474 of 2015 and W.P.No.9071 of



W.P.No.13611 of 2013, etc., batch

2015. To treat the GDS and Casual Labourers given priority as per rules on par with those appointed in leave vacancies seeking regularisation amounts to non-application of mind and is a wrong reading of facts and misrepresentation of law. Chalk cannot be compared with cheese.

59. In the light of the above discussions, we pass the following orders:

(1) The orders passed in O.A.No.1194 of 2012, etc., batch dated 08.01.2016 is set aside. The order passed in O.A.No.1051 of 2010, etc., batch dated 22.06.2012 stands confirmed.

(2) The Writ Petitions filed by the Union of India are dismissed.

(3) The Writ Petitions filed by the GDS and the Casual Labourers are allowed.

(4) The Union of India represented by the Director General of Posts and others are directed in terms of the orders passed in W.P.(C).No.28574 of 2009 dated 23.12.2009 in the following terms:



WEB COPY



W.P.No.13611 of 2013, etc., batch

(1).In case employees belonging to SI.No.2 under Column No.1 (Chowkidar/ Watchman/Safaiwala /Scavenger / Gardener / Mali Waterman/ Bhisti / Mazdoor / Hamal/ Cleaner / Rest House Attendant/ Batter men/ Ayah (Lady Attendant) / Mechanical Workmen / By hand Peon /Laskars) are not available in a division as qualified to appear in the test for appointment to the Group D Post of SI.No.1 of Column No.I (Peons/Letter box peon/ Packer Porter/ Runner/Van peon/ Orderly/ Gate men/ Attendant -cum- Khansama/ Cleaner in Mail Motor Service/ Pump men), such vacancies shall be filled immediately in the 75% - 25%. It is made clear that being an appointment in the division the available candidates for test shall be determined only with respect to the division concerned. However, while considering the appointment in the GDS category, it is open to the department to consider other eligible



WEB COPY



W.P.No.13611 of 2013, etc., batch

candidates in neighbouring Division / Unit in case of non availability of candidates/ members belonging in the Division.

(2).In case there is any employee available in S.No.2 of Column No.1 (Chowkidar/ Watchman/Safaiwala / Scavenger/ Gardner/Mali/ Waterman / Bhisti / Mazdoor/ Hamal Cleaner / Rest House Attendant / Batter men Ayah (Lady Attendant) Mechanical Workmen / By hand Peon / Laskars) are not available in a division as qualified to appear in the test for appointment to the Group D post of SI.No.1 post of Column No.1 (Peons/Letter box peons /Packer /porter/ Runner/ Van peon Orderly/ Gatemen/ Attendant-cum-Khansama/Cleaner in Mail Motor Service/ Pumpmen) in the year concerned, the department shall conduct a test to decide the eligibility in respect of the vacancies in each year. In order to avoid any confusion, it is made clear that in



WEB COPY



W.P.No.13611 of 2013, etc., batch

the test for the year 2002 the participation shall be based on the eligibility and availability and qualification of candidates as on the date of occurrence of the vacancies of that year. Such process shall be repeated in respect of each year, depending on the availability of vacancies. This process shall be completed within one month.

(3).But in case it is found that no candidate has become eligible in the test for being appointed to SL.No.1 of Column No.1 post (Peons/Letter box peons/Packer porter/ Runner/ Van peon/ Orderly/ Gate men/ Attendant-cum-Khansama/ Cleaner in Mail Motor Service/ Pumpmen) such vacancies in each year shall be filled up from among the eligible GDS casual labourers available for appointment in that particular year. This process shall be completed within another two weeks.



WEB COPY



W.P.No.13611 of 2013, etc., batch

(4).In case, in the above process vacancies arise in Sl No.2 under Column No.1 (Chowkidar/ Watchman/ Safaiwala/ Scavenger/ Gardener /Mali /Waterman /Bhisti / Mazdoor/ Hamal/ Cleaner/ Rest House Attendant /Batter men/Ayah (Lady Attendant/ Mechanical Workmen / By hand Peon/ Laskars) those vacancies shall be filled in accordance with the recruitment rules as per the method prescribed in Serial No. 2 under Column No.11. The above process shall be completed with another four weeks, except in the case of Employment Exchange Candidates. In the case of Employment Exchange hands, steps shall be taken to get the list from the Employment Exchange, without delay.”

No costs. Consequently, connected Miscellaneous Petitions are closed.

(V.M.V., J) (V.L.N., J)
27.04.2023



W.P.No.13611 of 2013, etc., batch

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
mps



WEB COPY



W.P.No.13611 of 2013, etc., batch

V.M.VELUMANI,J.
and
V.LAKSHMINARAYANAN,J.

mps

Pre-delivery Orders in
W.P.Nos.13611 of 2013,
etc., batch

27.04.2023