



IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

CWP No. 3361 of 2025 along with CWP Nos.3623, 3738, 3968, 4004, 4018, 4019, 4045, 4123, 4132, 4212, 4214, 4325, 4374, 4439, 4444, 4485, 4758, 4959, 4960, 4961, 4962, 4964, 5188, 5189, 5192, 5375, 5488, 5489, 5496, 5570, 5632, 5633, 5634, 5635, 5636, 5769, 5814, 5815, 5821, 5822, 5823, 5827, 5829, 5832, 5834, 5836, 5837, 5838, 5839, 5840, 5841, 5845, 5846, 5847, 5848, 5854, 5855, 5883, 6127, 6129, 6152, 6153, 6155, 6157, 6164, 6322, 6324, 6326, 6328, 6330, 6332, 6336, 6491, 6494, 6495, 6499, 6518, 6549, 6551, 6555, 6577, 6600, 6716, 6738, 6784, 6786, 6787, 6789, 6791, 6792, 6793, 6794, 6797, 6830, 6836, 6837, 6911, 6912, 6913, 6914, 6917, 6976, 7022, 7029, 7032, 7112, 7225, 7227, 7231, 7234, 7236, 7238, 7240, 7244, 7245, 7246, 7247, 7248, 7249, 7250, 7251, 7252, 7253, 7254, 7255, 7256, 7257, 7258, 7259, 7260, 7261, 7300, 7468, 7470, 7471, 7478, 7480, 7503, 7504, 7505, 7508, 7509, 7510, 7511, 7512, 7532, 7543, 7550, 7552, 7553, 7574, 7618, 7686, 8066, 8188, 8252, 8337, 8338, 8339, 8379, 8386, 8388, 8727, 8761, 8786, 8831, 8838, 8840, 8855, 8876, 8878, 8952, 9007, 9029, 9030, 9052, 9077, 9178, 9256, 9312, 9348, 9472, 9666, 9676, 9677, 9678, 9681, 9682, 9683, 9689, 9690, 9691, 9699, 9716, 9746, 9748, 9758, 9776, 9780, 9840, 9841, 9842, 9843, 9844, 9899, 9944, 10073, 10074, 10122, 10143, 10163, 10165, 10168, 10172, 10231, 10300, 10364, 10365, 10453, 10486, 10514, 10528, 10559, 10699, 10757, 10759, 10775, 10776, 10820, 10981, 11009, 11129, 11162, 11163, 11283, 13, 11325, 11350, 11352, 11353, 11355, 11369, 11381, 11653, 11678, 11679, 11681, 11682, 11747, 11766, 11823, 12086, 12095, 12211, 12220, 12455, 12588, 12590, 12594, 12638, 12674, 12678, 12679, 12687, 12713, 12715, 12758, 12759, 12760, 12761, 12766, 12767, 12791, 12792, 12793, 12794, 12795, 12814, 12815, 12870, 12872, 12883, 12910, 12912, 12913, 12941, 12942, 12943, 12948, 12968, 12998, 12999, 13009, 13043, 13075, 13076, 13116, 13154, 13224, 13226, 13247, 13278, 3284, 13285, 13286, 13287, 13288, 13289, 13290, 13291, 13292, 13293, 13294, 13295, 13317, 13343, 13460, 13572, 13677, 13685, 13729, 13734,



13804, 13822, 13835, 13846, 13892, 13953, 13957, 14139, 14140, 14222, 14336, 14373, 14380, 14393, 14414, 14416, 14418, 14487, 14554, 14673, 14741, 14742, 14745, 14753, 14767, 14799, 14800, 14802, 14935, 14942, 14968, 14977, 14979, 14981, 15005, 15048, 15088, 15089, 15102, 15119, 15126, 15209, 15232, 15256, 15257, 15373, 15409, 15410, 15427, 15527, 15528, 15756, 15903, 15919, 16303, 16359, 16360, 16362, 16508, 16519, 16528, 16533, 16615, 16648, 16693, 16745, 16885, 16972, 17069, 17087, 17139, 17172, 17264, 17311, 17407, 17909, 17980, 18028, 18032, 18202, 18360, 18424, 18426, 18492, 18607, 18689, 18690, 18744, 18745, 18748, 18919, 19151, 19200, 19349, 19357, 19387, 19494, 19523, 19721, 19741, 19742, 19806, 19807, 19808, 19809, 19955, 20022, 20310, 20312, 20543, 20969, 21076 of 2025, CWP No.10184 of 2023, CWP Nos.103 & 104 of 2026, EX.PT No.165 & 248 of 2024, EX.PT No.176 of 2023, EX.PT No.29 of 2025, LPA No.364 of 2024, COPC/183/2025 and CMP No.5397 of 2025 in COPC No. 866 of 2024

Reserved on : 05.01.2026

Date of Decision : 25.4.2026

1. CWP No. 3361 of 2025

Devinder Kumar & Ors.

...Petitioners.

Versus

State of Himachal Pradesh & Anr.

...Respondents.

2. CWP No.3623 of 2025

Radhe Shyam & Ors.

...Petitioners.

Versus

State of Himachal Pradesh & Anr.

...Respondents.

**3. CWP No.3738 of 2025**

Harsh Deepika Datta & Ors.

...Petitioners.

Versus

State of Himachal Pradesh & Anr.

...Respondents.

4. CWP No.3968 of 2025

Amit Kumar.

...Petitioner.

Versus

State of Himachal Pradesh & Ors.

...

Respondents.

5. CWP No.4004 of 2025

Sanya Kumari & Ors.

...Petitioners.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

6. CWP No.4018 of 2025

Vivek Chand & Ors.

...Petitioners.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

7. CWP No.4019 of 2025

Dr. Ranjit Singh Thakur & others.

...Petitioners.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

8. CWP No.4045 of 2025

Shivani Sood.

...Petitioner.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

9. CWP No.4123 of 2025

Lekh Ram & Ors.

...Petitioners.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

**10. CWP No.4132 of 2025**

Madan Lal. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

11. CWP No.4212 of 2025

Ranjit Singh & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

12. CWP No.4214 of 2025

Ritu Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

13. CWP No.4325 of 2025

Rita Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

14. CWP No.4374 of 2025

Vijay Rana. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

15. CWP No.4439 of 2025

Roshan Lal. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

16. CWP No.4444 of 2025

Kusum Kumari & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

17. CWP No.4485 of 2025

Joginder Singh & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**18. CWP No.4758 of 2025**

Rakesh Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

19. CWP No.4959 of 2025

Joginder Singh & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

20. CWP No.4960 of 2025

Usha Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

21. CWP No.4961 of 2025

Raj Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

22. CWP No.4962 of 2025

Anil Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

23. CWP No.4964 of 2025

Laxman Ram. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

24. CWP No.5188 of 2025

Ajmer Singh & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

25. CWP No.5189 of 2025

Yashvinder Kumar. ...Petitioner.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

26. CWP No.5192 of 2025

Vijay Kaushal & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

27. CWP No.5375 of 2025

Dinesh Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

28. CWP No.5488 of 2025

Roop Rani. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

29. CWP No.5489 of 2025

Rajinder Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

30. CWP No.5496 of 2025

Jagar Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

31. CWP No.5570 of 2025

Satwant Kaur. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

32. CWP No.5632 of 2025

Rosy Gupta. ...Petitioner.



Versus

State of Himachal Pradesh & Ors. ...Respondents.

33. CWP No.5633 of 2025

Poonam Kumari. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

34. CWP No.5634 of 2025

Deepak Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

35. CWP No.5635 of 2025

Surender Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

36. CWP No.5636 of 2025

Chater Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

37. CWP No.5769 of 2025

Anjana Kumari Dhiman. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

38. CWP No.5814 of 2025

Sushil Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**39. CWP No.5815 of 2025**

Reena Banyal. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

40. CWP No.5821 of 2025

Deep Ram & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

41. CWP No.5822 of 2025

Vikas Chakor & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

42. CWP No.5823 of 2025

Vijai Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

43. CWP No.5827 of 2025

Kamlesh Kumari & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

44. CWP No.5829 of 2025

Ranjan Gupta & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

45. CWP No.5832 of 2025

Sanjay Kumar & Ors. ...Petitioners.



Versus

State of Himachal Pradesh & Ors. ...Respondents.

46. CWP No.5834 of 2025

Uma Devi & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

47. CWP No.5836 of 2025

Sita Ram & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

48. CWP No.5837 of 2025

Radha Chaudhary & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

49. CWP No.5838 of 2025

Panchi Ram Parmar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

50. CWP No.5839 of 2025

Ramesh Chand & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

51. CWP No.5840 of 2025

Sangeeta Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**52. CWP No.5841 of 2025**

Dev Sawroop Bansal & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

53. CWP No.5845 of 2025

Dev Sawroop & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

54. CWP No.5846 of 2025

Tejbir Singh & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

55. CWP No.5847 of 2025

Neelam Parmar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

56. CWP No.5848 of 2025

Simita Dutta & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

57. CWP No.5854 of 2025

Man Singh Thakur. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

58. CWP No.5855 of 2025

Raj Kumar Thakur. ...Petitioner.



Versus

State of Himachal Pradesh & Ors. ...Respondents.

59. CWP No.5883 of 2025

Neela Kanth & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

60. CWP No.6127 of 2025

Santosh Kumar Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

61. CWP No.6129 of 2025

Uttam Chand. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

62. CWP No.6152 of 2025

Pawan Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

63. CWP No.6153 of 2025

Rakesh Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

64. CWP No.6155 of 2025

Ashok Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**65. CWP No.6157 of 2025**

Piar Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

66. CWP No.6164 of 2025

Ajay Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

67. CWP No.6322 of 2025

Pawan Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

68. CWP No.6324 of 2025

Reeta Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

69. CWP No.6326 of 2025

Sarita Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

70. CWP No.6328 of 2025

Hem Raj Gupta. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

71. CWP No.6330 of 2025

Sunka Ram. ...Petitioner.



Versus

State of Himachal Pradesh & Ors. ...Respondents.

72. CWP No.6332 of 2025

Vijay Laxmi & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

73. CWP No.6336 of 2025

Vidya Prakash. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

74. CWP No.6491 of 2025

Prem Lal Verma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

75. CWP No.6494 of 2025

Pritam Chand & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

76. CWP No.6495 of 2025

Dharam Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

77. CWP No.6499 of 2025

Desh Raj. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**78. CWP No.6518 of 2025**

Vijay Kumar & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

79. CWP No.6549 of 2025

Kiran Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

80. CWP No.6551 of 2025

Beena Naryal & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

81. CWP No.6555 of 2025

Sunita Chauhan. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

82. CWP No.6577 of 2025

Jai Ram. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

83. CWP No.6600 of 2025

Birbal. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

84. CWP No.6716 of 2025

Arun Kumar. ...Petitioner.



Versus

State of Himachal Pradesh & Ors. ...Respondents.

85. CWP No.6738 of 2025

Hem Raj & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

86. CWP No.6784 of 2025

Pinki Sharma & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

87. CWP No.6786 of 2025

Shilpa Sood & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

88. CWP No.6787 of 2025

Rajni Bali & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

89. CWP No.6789 of 2025

Pawan Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

90. CWP No.6791 of 2025

Renu Dhar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**91. CWP No.6792 of 2025**

Kali Dass. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

92. CWP No.6793 of 2025

Ranjana Gupta & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

93. CWP No.6794 of 2025

Sanjay Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

94. CWP No.6797 of 2025

Shiv Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

95. CWP No.6830 of 2025

Vikas Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

96. CWP No.6836 of 2025

Hoshier Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

97. CWP No.6837 of 2025

Daler Singh. ...Petitioner.



Versus

State of Himachal Pradesh & Ors. ...Respondents.

98. CWP No.6911 of 2025

Sunil Dutt & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

99. CWP No.6912 of 2025

Anita Thakur & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

100. CWP No.6913 of 2025

Rakesh Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

101. CWP No.6914 of 2025

Bimla Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

102. CWP No.6917 of 2025

Neelima Verma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

103. CWP No.6976 of 2025

Suresh Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**104. CWP No.7022 of 2025**

Anjana Sharma & Ors.

...Petitioners.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

105. CWP No.7029 of 2025

Naresh Kumar & Ors.

...Petitioners.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

106. CWP No.7032 of 2025

Dev Raj.

...Petitioner.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

107. CWP No.7112 of 2025

Kamlesh Sharma.

...Petitioner.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

108. CWP No.7225 of 2025

Sukarma Devi & Ors.

...Petitioners.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

109. CWP No.7227 of 2025

Ajay Kumar & Ors.

...Petitioners.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

110. CWP No.7231 of 2025

Jagat Pal & Ors.

...Petitioners.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

111. CWP No.7234 of 2025

Hitesh Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

112. CWP No.7236 of 2025

Rajesh Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

113. CWP No.7238 of 2025

Harpal Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

114. CWP No.7240 of 2025

Surinder Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

115. CWP No.7244 of 2025

Dharam Pal Verma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

116. CWP No.7245 of 2025

Kali Dass & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

117. CWP No.7246 of 2025



Rajinder Prasad & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

118. CWP No.7247 of 2025

Veena Kumari. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

119. CWP No.7248 of 2025

Kanchan Bhatia & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

120. CWP No.7249 of 2025

Amarti Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

121. CWP No.7250 of 2025

Manjeet Kaur. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

122. CWP No.7251 of 2025

Pawan Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

123. CWP No.7252 of 2025

Vipin Kumari. ...Petitioner.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

124. CWP No.7253 of 2025

Tarun Bala. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

125. CWP No.7254 of 2025

Namrata Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

126. CWP No.7255 of 2025

Rikhi Ram. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

127. CWP No.7256 of 2025

Surinder Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

128. CWP No.7257 of 2025

Ram Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

129. CWP No.7258 of 2025

Inder Dutt. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

130. CWP No.7259 of 2025



Chander Kala. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

131. CWP No.7260 of 2025

Bagga Ram. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

132. CWP No.7261 of 2025

Jeet Ram Thakur. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

133. CWP No.7300 of 2025

Rajinder Singh Thakur. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

134. CWP No.7468 of 2025

Sushil Kumar & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

135. CWP No.7470 of 2025

Sunita Kumari & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

136. CWP No.7471 of 2025

Neeru Chauhan & Ors. ...Petitioners.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

137. CWP No.7478 of 2025

Rajesh Kumar & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

138. CWP No.7480 of 2025

Romila Datta & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

139. CWP No.7503 of 2025

Rajinder Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

140. CWP No.7504 of 2025

Vinesh Kumar Dhiman. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

141. CWP No.7505 of 2025

Sushil Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

142. CWP No.7508 of 2025

Munish Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

143. CWP No.7509 of 2025



Neelam Kumari. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

144. CWP No.7510 of 2025

Amit Tanwar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

145. CWP No.7511 of 2025

Monika Thakur. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

146. CWP No.7512 of 2025

Subhash Chand. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

147. CWP No.7532 of 2025

Vinay Kumar Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

148. CWP No.7543 of 2025

Gopal Singh Sadrehru & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

149. CWP No.7550 of 2025

Pawan Kumar. ...Petitioner.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

150. CWP No.7552 of 2025

Balvinder Singh & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

151. CWP No.7553 of 2025

Narender Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

152. CWP No.7574 of 2025

Madan Mohan. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

153. CWP No.7618 of 2025

Rama Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

154. CWP No.7686 of 2025

Suresh Lal. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

155. CWP No.8066 of 2025

Krishan Chand. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

156. CWP No.8188 of 2025



Ankit Gupta. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

157. CWP No.8252 of 2025

Sunil Kumar Sharma & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

158. CWP No.8337 of 2025

Chuni Lal. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

159. CWP No.8338 of 2025

Anita. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

160. CWP No.8339 of 2025

Kaushal Rana. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

161. CWP No.8379 of 2025

Renu Bala. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

162. CWP No.8386 of 2025

Satish Kumar & Ors. ...Petitioners.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

163. CWP No.8388 of 2025

Vipan Chander Singh & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

164. CWP No.8727 of 2025

Lokpal. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

165. CWP No.8761 of 2025

Rafi Mohammed & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

166. CWP No.8786 of 2025

Pammi Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

167. CWP No.8831 of 2025

Sangita Kaushal & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

168. CWP No.8838 of 2025

Narender Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

169. CWP No.8840 of 2025



Puja Rani & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

170. CWP No.8855 of 2025

Ajay Raghuvanshi & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

171. CWP No.8876 of 2025

Dila Ram & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

172. CWP No.8878 of 2025

Amar Singh & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

173. CWP No.8952 of 2025

Anjana Kumari. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

174. CWP No.9007 of 2025

Bhisham Dutt & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

175. CWP No.9029 of 2025

Ranjit Singh. ...Petitioner.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

176. CWP No.9030 of 2025

Amit Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

177. CWP No.9052 of 2025

Jai Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

178. CWP No.9077 of 2025

Pradeep Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

179. CWP No.9178 of 2025

Manju Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

180. CWP No.9256 of 2025

Yudhbir Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

181. CWP No.9312 of 2025

Nitin Gupta & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

182. CWP No.9348 of 2025



Sneh Lata & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

183. CWP No.9472 of 2025

Padam Dev Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

184. CWP No.9666 of 2025

Kusum Lata. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

185. CWP No.9676 of 2025

Raj Kumar Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

186. CWP No.9677 of 2025

Sajeeli Manhas & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

187. CWP No.9678 of 2025

Vidya Devi & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

188. CWP No.9681 of 2025

Gurpreet Kaur & Ors. ...Petitioners.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

189. CWP No.9682 of 2025

Avinash Kumar Kaushal & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

190. CWP No.9683 of 2025

Puran Chand & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

191. CWP No.9689 of 2025

Neelam Kumari & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

192. CWP No.9690 of 2025

Sita Ram & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

193. CWP No.9691 of 2025

Babita Devi & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

194. CWP No.9699 of 2025

Anil Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

195. CWP No.9716 of 2025



Salra Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

196. CWP No.9746 of 2025

Kaku Ram. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

197. CWP No.9748 of 2025

Narender Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

198. CWP No.9758 of 2025

Vivek Singh Sandhu & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

199. CWP No.9776 of 2025

Dinesh Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

200. CWP No.9780 of 2025

Prem Lal. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

201. CWP No.9840 of 2025

Dimple & Anr. ...Petitioners.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

202. CWP No.9841 of 2025

Hem Prakash. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

203. CWP No.9842 of 2025

Manoj Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

204. CWP No.9843 of 2025

Vijender Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

205. CWP No.9844 of 2025

Arun. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

206. CWP No.9899 of 2025

Ajay Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

207. CWP No.9944 of 2025

Suniti Rani & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

208. CWP No.10073 of 2025



Veena Bhardwaj. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

209. CWP No.10074 of 2025

Ritu Gupta & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

210. CWP No.10122 of 2025

Richa Mishra. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

211. CWP No.10143 of 2025

Ashish & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

212. CWP No.10163 of 2025

Priyanka Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

213. CWP No.10165 of 2025

Harish Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

214. CWP No.10168 of 2025

Rahul Goswami & Anr. ...Petitioners.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

215. CWP No.10172 of 2025

Sanjeev Acharya & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

216. CWP No.10231 of 2025

Ajay Kumar & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

217. CWP No.10300 of 2025

Nigam Avasthi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

218. CWP No.10364 of 2025

Rajesh Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

219. CWP No.10365 of 2025

Guddi Devi & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

220. CWP No.10453 of 2025

Jyoti. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

221. CWP No.10486 of 2025



Hans Raj Thakur & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

222. CWP No.10514 of 2025

Hemant Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

223. CWP No.10528 of 2025

Basu Devi & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

224. CWP No.10559 of 2025

Devender Chand & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

225. CWP No.10699 of 2025

Raj Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

226. CWP No.10757 of 2025

Sushil Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

227. CWP No.10759 of 2025

Pawan Kumar & Ors. ...Petitioners.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

228. CWP No.10775 of 2025

Sapan Bala & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

229. CWP No.10776 of 2025

Poonam Thakur & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

230. CWP No.10820 of 2025

Rajesh Kumar Verma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

231. CWP No.10981 of 2025

Lucky Thakur & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

232. CWP No.11009 of 2025

Poonam Guleria. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

233. CWP No.11129 of 2025

Raj Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

234. CWP No.11162 of 2025



Sunil & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

235. CWP No.11163 of 2025

Bhupender Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

236. CWP No.11283 of 2025

Parul Shukla & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

237. CWP No.11309 of 2025

Anurag Khurana & Ors. ...Petitioners.

Versus

HP University. ...Respondent.

238. CWP No.11325 of 2025

Sunil Dogra & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

239. CWP No.11350 of 2025

Harbaksh Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

240. CWP No.11352 of 2025

Madan Lal. ...Petitioner.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

241. CWP No.11353 of 2025

Shyam Lal. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

242. CWP No.11355 of 2025

Kulwant Kaur. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

243. CWP No.11369 of 2025

Banita Kumari & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

244. CWP No.11381 of 2025

Pernita Kumari Gurdal. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

245. CWP No.11653 of 2025

Anju Patyal. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

246. CWP No.11678 of 2025

Tek Chand. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

247. CWP No.11679 of 2025



Bhuvneshwar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

248. CWP No.11681 of 2025

Nagesh Bhardwaj. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

249. CWP No.11682 of 2025

Suneeta Kanwar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

250. CWP No.11747 of 2025

Ham Raj Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

251. CWP No.11766 of 2025

Ranju Bala & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

252. CWP No.11823 of 2025

Bodh Raj. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

253. CWP No.12086 of 2025

Dinesh Kumar. ...Petitioner.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

254. CWP No.12095 of 2025

Dinesh Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

255. CWP No.12211 of 2025

Paul Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

256. CWP No.12220 of 2025

Rajiv Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

257. CWP No.12455 of 2025

Veena Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

258. CWP No.12588 of 2025

Mohan Lal Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

259. CWP No.12590 of 2025

Reena Kumari & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

260. CWP No.12594 of 2025



Kusum Bala. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

261. CWP No.12638 of 2025

Sawroop Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

262. CWP No.12674 of 2025

Surender Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

263. CWP No.12678 of 2025

Kamlesh Kumar & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

264. CWP No.12679 of 2025

Neelam Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

265. CWP No.12687 of 2025

Hem Raj. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

266. CWP No.12713 of 2025

Satish Kumar. ...Petitioner.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

267. CWP No.12715 of 2025

Bharat Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

268. CWP No.12758 of 2025

Amar Nath. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

269. CWP No.12759 of 2025

Satish Chand Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

270. CWP No.12760 of 2025

Shakuntla Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

271. CWP No.12761 of 2025

Surjit Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

272. CWP No.12766 of 2025

Rameshwar Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

273. CWP No.12767 of 2025



Bir Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

274. CWP No.12791 of 2025

Ranbir Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

275. CWP No.12792 of 2025

Ashok Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

276. CWP No.12793 of 2025

Achla Bhardwaj & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

277. CWP No.12794 of 2025

Anil Kumar Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

278. CWP No.12795 of 2025

Samarjit Singh & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

279. CWP No.12814 of 2025

Sneh Lata. ...Petitioner.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

280. CWP No.12815 of 2025

Rajesh Bala. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

281. CWP No.12870 of 2025

Yashwant Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

282. CWP No.12872 of 2025

Jai Kishan Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

283. CWP No.12883 of 2025

Naresh Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

284. CWP No.12910 of 2025

Ashwani Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

285. CWP No.12912 of 2025

Shalu Kanwar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

286. CWP No.12913 of 2025



Provinder Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

287. CWP No.12941 of 2025

Ankit Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

288. CWP No.12942 of 2025

Dinesh Kumar Bhatia & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

289. CWP No.12943 of 2025

Gulshan Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

290. CWP No.12948 of 2025

Amrita Bhaik Khimta & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

291. CWP No.12968 of 2025

Hem Raj & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

292. CWP No.12998 of 2025

Mahesh Kumar & Anr. ...Petitioners.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

293. CWP No.12999 of 2025

Sanjeev Kumar Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

294. CWP No.13009 of 2025

Prashant & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

295. CWP No.13043 of 2025

Sant Ram. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

296. CWP No.13075 of 2025

Vikrant Kaundal & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

297. CWP No.13076 of 2025

Tilak Raj & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

298. CWP No.13116 of 2025

Daljeet Kumar Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

299. CWP No.13154 of 2025



Rachna Gupta & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

300. CWP No.13224 of 2025

Suneeta Sood. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

301. CWP No.13226 of 2025

Anita Thakur & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

302. CWP No.13247 of 2025

Rekha Kumari. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

303. CWP No.13278 of 2025

Dinesh Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

304. CWP No.13284 of 2025

Karam Chand. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

305. CWP No.13285 of 2025

Neha Verma. ...Petitioner.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

306. CWP No.13286 of 2025

Bharat Bhushan Pathak. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

307. CWP No.13287 of 2025

Nitin Kashyap. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

308. CWP No.13288 of 2025

Kapil Bhardwaj. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

309. CWP No.13289 of 2025

Bimla Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

310. CWP No.13290 of 2025

Sunil Dutt & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

311. CWP No.13291 of 2025

Rajinder Prasad & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

312. CWP No.13292 of 2025



Raj Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

313. CWP No.13293 of 2025

Mukesh Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

314. CWP No.13294 of 2025

Kailash Chand. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

315. CWP No.13295 of 2025

Meena Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

316. CWP No.13317 of 2025

Raj Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

317. CWP No.13343 of 2025

Neeta Dhawan. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

318. CWP No.13460 of 2025

Ajit Kumar. ...Petitioner.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

319. CWP No.13572 of 2025

Anita Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

320. CWP No.13677 of 2025

Saroj Kumari. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

321. CWP No.13685 of 2025

Rattan Chand Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

322. CWP No.13729 of 2025

Jaipal Garg & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

323. CWP No.13734 of 2025

Inder Kumar Garg & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

324. CWP No.13804 of 2025

Tara Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

325. CWP No.13822 of 2025



Mohan Dutt. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

326. CWP No.13835 of 2025

Tilak Raj & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

327. CWP No.13846 of 2025

Saroj Kumari. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

328. CWP No.13892 of 2025

Jagdish Chand. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

329. CWP No.13953 of 2025

Prem Lata. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

330. CWP No.13957 of 2025

Urmil Thakur. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

331. CWP No.14139 of 2025

Sushil Kumar & Ors. ...Petitioners.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

332. CWP No.14140 of 2025

Anjana Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

333. CWP No.14222 of 2025

Sawaran Kumar & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

334. CWP No.14336 of 2025

Ravinder Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

335. CWP No.14373 of 2025

Amrik Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

336. CWP No.14380 of 2025

Raman Kumar Abhilashi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

337. CWP No.14393 of 2025

Ashok Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**338. CWP No.14414 of 2025**

Leela Dhar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

339. CWP No.14416 of 2025

Ramesh Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

340. CWP No.14418 of 2025

Promila Thakur. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

341. CWP No.14487 of 2025

Arun Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

342. CWP No.14554 of 2025

Bhupender Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

343. CWP No.14673 of 2025

Rohit Sharma & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

344. CWP No.14741 of 2025

Aarti Kumari Dogra. ...Petitioner.



Versus

State of Himachal Pradesh & Ors. ...Respondents.

345. CWP No.14742 of 2025

Anil Chandel. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

346. CWP No.14745 of 2025

Rajneesh Paul & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

347. CWP No.14753 of 2025

Nisha Kumari Sood & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

348. CWP No.14767 of 2025

Raj Kumar Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

349. CWP No.14799 of 2025

Jatinder Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

350. CWP No.14800 of 2025

Kamla Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**351. CWP No.14802 of 2025**

Manju Lata. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

352. CWP No.14935 of 2025

Vipin Kumar Guleria & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

353. CWP No.14942 of 2025

Inderjit Singh Sahotra. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

354. CWP No.14968 of 2025

Raj Kumar & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

355. CWP No.14977 of 2025

Rajiv Kumar Sondhi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

356. CWP No.14979 of 2025

Hitender R Dulta. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

357. CWP No.14981 of 2025

Parveen Kumar & Ors. ...Petitioners.



Versus

State of Himachal Pradesh & Ors. ...Respondents.

358. CWP No.15005 of 2025

Milan Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

359. CWP No.15048 of 2025

Prem Chand. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

360. CWP No.15088 of 2025

Satya Pal. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

361. CWP No.15089 of 2025

Nagin Chand Thakur. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

362. CWP No.15102 of 2025

Kanchan Lata. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

363. CWP No.15119 of 2025

Khem Raj. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**364. CWP No.15126 of 2025**

Sanjay. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

365. CWP No.15209 of 2025

Monika Singh & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

366. CWP No.15232 of 2025

Ishu Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

367. CWP No.15256 of 2025

Mansa Ram Sharma & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

368. CWP No.15257 of 2025

Som Dutt & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

369. CWP No.15373 of 2025

Radha Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

370. CWP No.15409 of 2025

Rajesh Chauhan. ...Petitioner.



Versus

State of Himachal Pradesh & Ors. ...Respondents.

371. CWP No.15410 of 2025

Vijay Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

372. CWP No.15427 of 2025

Subash Chand & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

373. CWP No.15527 of 2025

Narender Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

374. CWP No.15528 of 2025

Anand Dev. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

375. CWP No.15756 of 2025

Sonika Kapoor & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

376. CWP No.15903 of 2025

Amit Khan & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

377. CWP No.15919 of 2025



Rajnish Kumar Rana & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

378. CWP No.16303 of 2025

Lucky Sharma & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

379. CWP No.16359 of 2025

Rishab Dev. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

380. CWP No.16360 of 2025

Ram Pal & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

381. CWP No.16362 of 2025

Manoj Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

382. CWP No.16508 of 2025

Manju Madan. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

383. CWP No.16519 of 2025

Achhar Singh & Ors. ...Petitioners.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

384. CWP No.16528 of 2025

Kuldeep & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

385. CWP No.16533 of 2025

Naresh Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

386. CWP No.16615 of 2025

Sushil Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

387. CWP No.16648 of 2025

Gurcharan Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

388. CWP No.16693 of 2025

Mohinder Singh & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

389. CWP No.16745 of 2025

Salochana Devi. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

390. CWP No.16885 of 2025



Madhu Sudan Bakshi & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

391. CWP No.16972 of 2025

Ranjit Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

392. CWP No.17069 of 2025

Karam Chand. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

393. CWP No.17087 of 2025

Surinder Singh Chauhan. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

394. CWP No.17139 of 2025

Kaul Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

395. CWP No.17172 of 2025

Naresh Kumar & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

396. CWP No.17264 of 2025

Harish Kharbanda. ...Petitioner.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

397. CWP No.17311 of 2025

Deepak Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

398. CWP No.17407 of 2025

Yog Raj. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

399. CWP No.17909 of 2025

Ramesh Chand. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

400. CWP No.17980 of 2025

Chattar Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

401. CWP No.18028 of 2025

Poonam Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

402. CWP No.18032 of 2025

Randhir Singh & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

403. CWP No.18202 of 2025



Keshav Rana. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

404. CWP No.18360 of 2025

Krishan Chand Chauhan. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

405. CWP No.18424 of 2025

Subhash Chand. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

406. CWP No.18426 of 2025

Kanwar Singh Rana. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

407. CWP No.18492 of 2025

Jaiparkash & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

408. CWP No.18607 of 2025

Karun Nagar & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

409. CWP No.18689 of 2025

Deepshikha Thakur & Ors. ...Petitioners.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

410. CWP No.18690 of 2025

Manish Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

411. CWP No.18744 of 2025

Kavita Kumari & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

412. CWP No.18745 of 2025

Sangeeta Rani. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

413. CWP No.18748 of 2025

Rajender Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

414. CWP No.18919 of 2025

Sunil Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

415. CWP No.19151 of 2025

Tek Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**416. CWP No.19200 of 2025**

Anand Sagar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

417. CWP No.19349 of 2025

Balwant Singh Chauhan & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

418. CWP No.19357 of 2025

Murari Lal & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

419. CWP No.19387 of 2025

Shikha Kumari. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

420. CWP No.19494 of 2025

Jeet Singh. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

421. CWP No.19523 of 2025

Sudesh Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

422. CWP No.19721 of 2025

Indu Devi. ...Petitioner.



Versus

State of Himachal Pradesh & Ors. ...Respondents.

423. CWP No.19741 of 2025

Poonam Sharma. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

424. CWP No.19742 of 2025

Kiran Bala & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

425. CWP No.19806 of 2025

Pawan Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

426. CWP No.19807 of 2025

Rajesh Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

427. CWP No.19808 of 2025

Rakesh Kumar. ...Petitioner.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

428. CWP No.19809 of 2025

Karan Bir & Anr. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**429. CWP No.19955 of 2025**

Sanjeev Kumar Sharma.

...Petitioner.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

430. CWP No.20022 of 2025

Nisha Devi & Ors.

...Petitioners.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

431. CWP No.20310 of 2025

Vivek Kumar & Ors.

...Petitioners.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

432. CWP No.20312 of 2025

Revati Ramson.

...Petitioner.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

433. CWP No.20543 of 2025

Manoj Kumar.

...Petitioner.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

434. CWP No.20969 of 2025

Jugal Kishor Sharma.

...Petitioner.

Versus

State of Himachal Pradesh & Ors.

...Respondents.

435. CWP No.21076 of 2025

Chander Kant.

...Petitioner.

Versus



State of Himachal Pradesh & Ors. ...Respondents.

436. CWP No.10184 of 2023

Ravinder Kumar & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

437. CWP No. 103 of 2026

Aditya Chauhan & others. ...Petitioners.

Versus

State of Himachal Pradesh & others. ...Respondents.

438. CWP No. 104 of 2026

Kesar Singh & others. ...Petitioners.

Versus

State of Himachal Pradesh & others. ...Respondents.

439. EX.PT No.165 of 2024

Prashant Thakur & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

440. EX.PT No.248 of 2024

Manohar Lal & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

441. EX.PT No.176 of 2023

Vijay Kaushal & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

442. EX.PT No.29 of 2025

Lekh Ram & Ors. ...Petitioners.

Versus

State of Himachal Pradesh & Ors. ...Respondents.

**443. LPA No.364 of 2024**

State of H.P. & Anr. ...Appellant.

Versus

Arun Kumar. ...Respondent.

444. COPC No.183 of 2025

Anita Thakur & Anr. ...Petitioner.

Versus

RD Nazeem & Anr. ...Respondents.

445. CMP No.5397 of 2025 in COPC No.866 of 2024

Diwaker & Ors. ...Applicants.

Versus

Rakesh Kanwar & Anr. ...Respondents.

445. CWP No. 104 of 2026

Kesar Singh & Another Petitioners

Versus

State of H.P. & others. ...Respondents

Coram***Hon'ble Mr. Justice Vivek Singh Thakur, Judge.******Hon'ble Mr. Justice Romesh Verma, Judge.******Whether approved for reporting?¹ Yes.***

For the petitioners : Mr. Dilip Sharma, Mr. Rajnish Maniktala, Mr. Sanjeev Bhushan, Mr. K. S. Banyal, Mr. T.S. Chauhan, Mr. Lovneesh Kanwar, Mr. Bimal Gupta, Mr. Neeraj Sharma, Senior Advocate(s), with Uday Singh Banyal, Mr. Dinkar Bhaskar, Mr. Surya Chauhan, Mr. Sparsh Bhushan, Mr. Tek Chand, Ms. Kusum Chaudhary, Mr. Hemant Thakur, Advocates, Mr. Onkar Jairath, Advocate, Mr. Piyush Mehta, Advocate and Mr. Anshul Jairath, Advocate, Mr. Nitin Thakur, Mr. Vinay Mehta, Mr. Amit Kumar Dhumal, Ms. Vishali Lakhanpal, Mr. Shekar Badola, Mr.

¹ Whether the reporters of the local papers may be allowed to see the judgment?



Mohammad Ahamed Safee, Mr. Pranav Kumar, Mr. Vaibhav Tanwar, Mr. Adarsh Kumar Vashista, Mr. Raju Ram Rahi, Mr. Shivom Vashishta, Mr. Munish Datwalia, Ms. Amita Chandel/Ms. Ruchika Khachi, Mr. Nishant Khidta, Ms. Shalini Thakur, Mr. Parveen Kumar Chandel, Mr. Yash Sharma, Mr. Naveen K. Bhardwaj, Mr. H.R. Bhardwaj, Mr. Sanjeev Kumar Suri, Mr. Suresh Singh Saini, Mr. Somesh Raj, Mr. Thakur, Mr. Ashok Kumar, Mr. Ashwani Kumar Sharma, Mr. Vishal Singh Thakur, Ms. Shivani, Mr. Nitin Rishi, Mr. Amrinder Singh Rana, Mr. Sat Prakash, Mr. Shyama Prashad Chatterji, Mr. Udit Shaurya Kaushik, Mr. Parav Sharma, Shekhar Badola, Rupesh Kumar, Mr. Rahul Thakur, Mr. Vikas Rajput, Mr. Ganesh Barowalia, Mr. Ajeet Singh Saklani, Mr. Ashwani Kaundal, Mr. Suneel Awasthi, Mr. Sanjeev K. Motta, Mr. Vinod Chauhan, Mr. Vivek Thakur, Mr. Pradeep Kumar Sharma, Mr. Naresh Kaul, Ms. Sheetal Kaul, Mr. Balwant Singh Thakur, Ms. Anchal Sharma, Mr. Inder Sharma, Mr. Surila Sangam Mr. Virbahadur Verma, Ms. Shashi Kiran, Ms. Anu Minhas, Ms. Anita Devi, Mr. Mukul Sharma, Mr. Yogesh Kumar Chandel, Mr. Rajesh Prakash, Mr. Prashant Sharma, Mr. Deven Krishan Khanna, Sumeet Raj Sharma, Ms. Yamini Sharma, Mr. Lal Singh Mehta, Mr. Roop Lal Chaudhary, Mr. Tarun K. Sharma, Mr. Yash P. Sharma, Mr. Ranbir Rathore, Mr. Rakesh Kumar Dogra, Mr. Sanjeev Mankotia, Mr. Vinod Kumar Thakur, Mr. Sat Prakash, Mr. Sameer Miyan, Mr. Vikas Rathore, Ms. Anu Minhas, Mr. Lal Chand, Ms. Sumita Rani, Mr. Rinkesh Kumar, Mr. Lesh Singh, Mr. Anil Kumar, Mr. Sandeep Kumar Pandey, Mr. Bhupinder Kumar, Mr. Mukul Sood, Mr. Ankit Dhiman, Mr. Deepanshu Bindal, Mr. Arun Kaushal, Ms. Shagun Sharma, Mr. Anil Kumar God, Mr. Vivekanand, Ms. Rajni Gandhi, Mr. Rajesh Kumar, Mr. Rakesh Chauhan, Mr. Paresh Sharma, Mr. Rajiv Rai, Mr. Mayank Sharma, Mr. Manohar Lal Sharma, Mr. Himanshu Kapila, Mr. Bonit Prakash, Mr. Sajeew Kumar, Mr. Surender



Prakash Sharma, Mr. Naresh K. Sharma, Mr. Lalit Kumar Sehga, Mr. Sumeet Raj Sharma, Mr. Hitesh Kumar, Mr. Shashwat Dadwal, Mr. Gurdev Singh, Mr. Vishwa Bhushan, Mr. Ravinder Singh, Mr. C.D. Negi, Mr. Pawanish Kumar Shukla, Mr. Rocky, Mr. B. Nandan Vashisht, Ms. Deepmala, Mr. Mandeep Chandel, Mr. Ram Kumar, Mr. Ramesh Chand Sharma, Mr. Rajat Kumar, Mr. Mohit Thakur, Mr. Vinod Kumar Thakur, Mr. Sumesh Raj, Mr. Mohar Singh, Mr. Rupinder Singh, Mr. Devender K. Sharma, Mr. Arvind Sharma, Mr. Bharat Thakur, Mr. Manish Sharma, Mr. Nitin Thakur, Mr. Ajay Chandel, Mr. Ajay Thakur, Ms. Anamika Kohali, Mr. Raman Jamalta, Mr. Paras Dhaulta, Mr. Jai Krishan Sharma, Mr. Abhimanyu Rathore, Mr. Abhinav Mohan Goel, Mr. Abhijeet Singh Chauhan, Mr. Praneet Gupta, Advocates, Mr. Amrick Singh, Advocate, Ms. Shubh Mahajan, Mr. Naresh Mahajan, Ms. Shrutika Chauhan, Advocate vice Mr. Dheeraj Kumar Vashisht, Advocate, Mr. Sanjay Kumar Jaiswal, Advocate, Ms. Dhanwanti, for respective petitioner(s).

For the Appellant:

Mr. Anup Rattan, Advocate General with Ms. Swati Draik, Dy. A.G. and Mr. Shalabh Thakur, Asstt. A.G. in LPA No. 364 of 2024.

For the Respondents:

Mr. Paramjit Singh Patwalia, Senior Advocate with Ms. Harshika Verma, Advocate and Mr. Anup Rattan, Advocate General with Ms. Swati Draik, Dy. A.G. and Mr. Shalabh Thakur, Asstt. A.G. for the respondents/State.

- : Ms. Salochana Rana, Advocate, for respondent/ State Pollution Control Board.
- : Ms. Kiran Lata Sharma, Advocate, for H.P. State Marketing Board.
- : Mr. Vikrant Thakur & Mr. Rishabh Kumar Dogra, Advocates, for the respondent-HPPSC.



- : Mr.Vinod Chauhan and Mr.Tara Chand Chauhan, Advocates, for respective respondents in respective petitions.
 - : Mr.Dheeraj Kumar Vashisht/Ms Shrutika Chauhan, Mr.Raman Jamalta, Mr.Rahul Thakur, Mr. Virender Singh Kanwar and Mr. Deepak Sharma, Advocates for respondent-H.R.T.C. in respective petitions.
 - : Mr.Rajesh Prakash and Om Prakash, Advocates, for respective respondents in respective petitions.
 - : Mr.Devender K. Sharma and Ms.Archana Dutt, Advocates, for HPU in respective petitions.
 - : Mr. Tek Ram Sharma, Mr. Tara Chand Chauhan and Mr. Rangil Singh, Advocates, for the respondent/Accountant General in respective petitions.
 - : Mr.Janesh Mahajan, Advocate, for respondents in respective petitions.
 - : Mr.Ramesh Chand, Advocate, for respondents in respective petitions.
 - : Mr. Rajesh Kosh, Advocate, for respondent/Accountant General in CWP No.8602 of 2025.
 - : Ms. Komal Chaudhary, Advocate, for the respondent/Accountant General in CWP No.10300 of 2025.
 - : Mr. Anil Kumar, Advocate, for HPSEBL-respondent in the respective petitions.
 - : Mr. Tejasvi Dogra, Mr. Rahul Thakur, Mr. Nitin Thakur, Mr. Mukul Sharma, Mr.Amrick Singh, Mr. Ranbir Rathore, Mr. Mukul Sood, Advocates, for respective respondent(s).
 - : Mr. Vishwabhusan, Advocate, for respodnent(s) in LPA No. 364 of 2024.
-



Vivek Singh Thakur, Judge

For deciding common issued involved to be adjudicated on the basis of common question of law and facts, these petitions are being decided by this common judgment.

2. In all these petitions, the petitioners are mainly aggrieved by the enactment of the Himachal Pradesh Recruitment and Conditions of Service of Government Employees Act, 2024 (Act No. 23 of 2025) (in short '**Govt. Employees Act**'/the Act/the impugned Act).

3. In this common judgment, we are adjudicating only the constitutionality, validity, and legality of the Govt. Employee Act. For other reliefs, the consequences shall follow accordingly, and in case any further relief(s) is/are required to be determined after adjudication of additional facts, not discussed or adjudicated or covered in this judgment, the petitioners shall be at liberty to avail appropriate remedies, including the filing of fresh petitions for redressal of grievance based on such other issues raised or not raised in these petitions.

Background

4. For adjudicating the issue being decided in present writ petitions, it is relevant to refer to background and the past conduct of the State and history of certain cases, which have resulted in present litigations.



5. Service jurisprudence and law permits the employer/State to make adhoc appointments by appointing/engaging employees temporarily to cope with emergent situation in the larger public interest till appointment/engagement of regular incumbent on sanctioned post, functioning whereof is necessary for governance including teaching. Such adhoc engagement/appointment is termed as stopgap arrangement.

6. In the past by taking advantage of aforesaid power, the State made it norm to resort to adhoc appointments by terming them as stopgap arrangement and continue the same for a considerable long period of several years to say 7 to 10 years, but extending restricted service benefits lesser than the regular appointees. Such practice, being exploitative in nature, was deprecated by the Courts and such adhoc appointees serving for several years, depicting the availability of work, and necessity of performance thereof for governance, were held entitled for service benefits including the pay scale and vacation salary like regular appointees.

7. In the decade of 1970s, the State had been in practice of appointing employees, including teachers, on *ad hoc* basis without resorting to the prescribed procedure for engagement of employees as mandated in the Constitution, either to deprive such employees of their lawful remuneration payable for appointment against the post or to adjust



their well-wishers through back-door entry, and sometimes for both reasons as well as to gain cheap popularity. The Government used to regularize or deny regularisation of such persons after utilizing their services on *ad hoc* basis for a considerably long period. On being approached by some of such employees, the Courts/Administrative Tribunals interfered, and after completion of 90 days *ad hoc* of service, such employees were held entitled to continuation of service as well as certain service benefits like regular employees.

8. After suffering verdict of the Courts, in order to avoid implementation of order/directions of the Court(s) and to defeat the endeavours made by the Courts to protect the interests of such employees, the Government to continue exploiting them, and to surpass the verdict of Court, instead of making appointments on regular basis, devised a method by making appointments on tenure basis for 89 days and after completion of such period, after giving break, again re-engaged such employees for another 89 days, and so on, so as to avoid extension of service benefits to such employees and to avoid to treat such appointments as a continuing temporary appointments for several years, which had been recognized as such, for granting relief by passing various orders/judgments of the Tribunal and the Courts, including the High Court and the Supreme Court.



9. Again Courts came to rescue against exploitative policy/action of the State because such tenure appointments were also being continued for several years, to say more then 7-8 years and some time 10 years. It was held by the Court that the breaks, given to such tenure appointees, after 89 days were frictional in nature, whereas work was available, post was available, but State was shirking from making regular appointments and instead exploiting the unemployed by appointing them on tenure of 89 days and thereafter they were being continued by giving breaks of 1 or 2 or more days to avoid service benefits as well as verdict of the Courts. Irrespective of frictional breaks, tenure appointees were held entitled for benefits similar to adhoc/temporary appointees continued for a considerable long period against the sanctioned post.

10. The aforesaid practice of tenure appointment was also depreciated by the Court and in this regard judgment in ***Rattan Lal & Ors. vs. State of Haryana & Ors., (1985) 3 SCC 43*** and ***State of Haryana & Ors. vs. Piara Singh & Ors., (1992) 4 SCC 118***, are relevant to be referred.

11. In *Rattan Lal's case (supra)*, the practice of *ad hoc* appointment was deprecated and depriving, *ad hoc* and tenure employees, of salary for the vacation period was declared to be illegal,



and such employees were held entitled to salary for all 12 months in a year. Verdict of the Apex Court in ***Rattan Lal & Ors. vs. State of Haryana & Ors., (1985) 4 SCC 43*** reads as under:-

“In all these petitions the common question which arises for decision is whether it is open to the State Government to appoint teachers on an ad-hoc basis at the commencement of an academic year and terminate their services before the commencement of the next summer vacation or earlier to appoint them again on an ad-hoc basis at the commencement of next academic year and to terminate their services before the commencement of the succeeding summer vacation or earlier and to continue to do so year after year. A substantial number of such ad-hoc appointments are made in the existing vacancies which have remained unfilled for three to four years. It is the duty of the State Government to take steps to appoint teachers in those vacancies in accordance with the rules as early as possible. The State Government of Haryana has failed to discharge that duty in these cases. It has been appointing teachers for quite some time on an ad-hoc basis for short periods as stated above without any justifiable reason. In some cases the appointments are made for a period of six months only and they are renewed after a break of a few days. The number of teachers in the State of Haryana who are thus appointed on such ad-hoc basis is very large indeed. If the teachers had been appointed regularly they would have been entitled to the benefits of summer vacation along with the salary and allowance payable in respect of that period and to all other privileges such as casual leave, medical leave, maternity leave etc. available to all the Government servants. These benefits are denied to these ad-hoc teachers unreasonably on account of this pernicious system of appointment adopted by the State Government. These ad-hoc teachers are unnecessarily subjected to an arbitrary 'hiring and firing' policy. These teachers who constitute the bulk of the educated unemployed are



compelled to accept these jobs on an ad-hoc basis with miserable conditions of service. The government appears to be exploiting this situation. This is not a sound personnel policy. It is bound to have serious repercussions on the educational institutions and the children studying there. The policy of 'ad-hocism' followed by the State Government for a long period has led to the breach of Article 14 and Article 16 of the Constitution. Such a situation cannot be permitted to last any longer. It is needless to say that the State Government is expected to function as a model employer.

2. We, therefore, direct the State Government to take immediate steps to fill up in accordance with the relevant rules. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent -- the distinction between regularization and making permanent, was not emphasized here -- can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of *Piara Singh (supra)* are to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent. the vacancies in which those who are appointed on an ad-hoc basis are now working and to allow all those who are now holding these posts on ad-hoc basis to remain in those posts till the vacancies are duly filled up. The teachers who are now working on such ad-hoc basis if they have the prescribed qualification may also apply for being appointed regularly in those posts. The State



Government may also consider sympathetically the question of relaxing the qualification of maximum age prescribed for appointment to those posts in the case of those who have been victims of this system of 'ad-hoc' appointments. If any of the petitioners in these petitions has under any existing rule acquired the right to be treated as a regularly appointed teacher, his case shall be considered by the State Government and an appropriate order may be passed in his case.

3. We strongly deprecate the policy of the State Government under which 'ad-hoc' teachers are denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These 'ad-hoc' teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave, shall also be granted such leave in accordance with the rules."

12. In *Piara Singh's* case (*supra*), after discussing the nature of employment of *ad hoc*, work-charge and other temporary employees, it was observed as under:-

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

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



47. Thirdly, even where an adhoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

48. An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

49. If for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

50. The proper course would be that each States prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same way be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be."

13. In order to overcome the judgments, including that of the Supreme Court, the State kept on changing the nomenclature of temporary appointments, with efforts to make appointments through back-door entry and/or to deprive employees of the service benefits which were available to such employees on regular appointment to the said posts.



14. *Adhoc*, tenure, volunteer and other such temporary appointments were deprecated by the Courts and certain rights were extended to such employees by the Supreme Court in *Rattan Lal* and *Piara Singh's* judgments (*supra*) and some other judgments dealing with similar issues. Because of such judgments, the Government was not able to appoint persons, replace such appointee(s) and to extend or restrict the benefits to its whims and fancies.

15. In 1996, to avoid the extension of service benefits to the temporary employees in terms of verdict of the Court, the State devised another method to make temporary appointments by formulating policy to engage employees on contract basis, though again terming the same as a short term appointment/stopgap arrangement till the appointment of regular incumbent through due process.

16. In this chain, the State had also formulated Contract Policy which was circulated vide communication No.PA-DE-10/96-Cont. 96/97-(DEO) by Directorate of Education, Himachal Pradesh dated 08.10.1996 to All District Education Officers of Himachal Pradesh with the '*subject – appointment of teaching staff against short term/leave vacancies on contractual basis*'.



17. In the memo of afore policy, intention of the Government and purpose for which this policy was formulated, was reflected in first two paras, which read as under:-

“At present all appointments on short term/leave vacancies of teaching staff on adhoc/tenure basis is banned because many High Courts have given judgments giving different ruling causing considerable difficulties to continue the arrangement of adhoc/tenure/ part time appointments. The Supreme Court judgment delivered in the case of State of Haryana and others V/S Piara Singh directing the Govt. organisations to avoid the adhoc appointments has necessitated to review the complete arrangement.

2. Keeping in view the judgment of various High Courts/Supreme Court the Govt. have decided that all appointments of teaching staff in the schools against short term/leave vacancies shall be on contractual basis and it has been decided to pay full wages at the minimum of the scale including the allowances to the teachers appointed on contractual basis.”

18. Though the subject of aforesaid communication and purpose stated therein indicate that such contract appointments were to be made against short term/leave vacancies, but this policy was made a rule as a tool to fill-up all vacant sanctioned posts of Teachers in Himachal Pradesh under this Policy on contract basis, and such contract employees were continued for 8 to 10 years or more, and thereafter, their services were regularised on completion of requisite years of service, as prescribed and notified by the Government in its subsequent Policy(ies). Later on in all Departments, Contract appointments were started.



19. Later on, in numerous cases, orders were passed by the Tribunal, which were affirmed and approved by the High Court and upheld by the Supreme Court declaring that temporary employees, including contract employees, cannot be replaced by another temporary or contract employee, but can be replaced by regular appointee(s). They were also held entitled to salary at the minimum of the pay scale of the post, including allowances available to regular employees, and were also held entitled to vacation salary.

20. In order to get rid of the verdicts of the Courts, the Government formulated almost similar policies by changing the nomenclature of appointments as Primary Assistant Teachers, Para Teachers, and PTA Teachers, Vidya Upasak etc., by formulating and circulating Notification No.EDN.C.B.(2)-4/2003 dated 27.08.2003 notifying the *Himachal Pradesh Prathmik Sahayak Adhyapak/Primary Assistant Teacher (PAT) Scheme, 2003*; Communication No.EDN-H(6)1-1/2003-PT-2003 Plan by Directorate of Education, Himachal Pradesh dated 17.09.2003 with 'subject – *Regarding Hiring/Engagement of Para Teachers (Lecturer School Cadre), Para Teacher (T.G.T's) and Para Teachers (C&V)*'; and Notification No.EDN-A(Kha))7-3/2006 dated 29.06.2006 notifying '*Grant-in-Aid to Parents Teachers Association Rules, 2006*'.



21. Dealing with the same issue the Apex Court in ***Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., (2006) 4 SCC 1***; has observed and held as under:-

3. A sovereign government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. Going by a law newly enacted, The National Rural Employment Guarantee Act, 2005, the object is to give employment to at least one member of a family for hundred days in an year, on paying wages as fixed under that Act. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.

4. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular



or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

XX

XX

XX

6. These two sets of appeals reflect the cleavage of opinion in the High Court of Karnataka based on the difference in approach in two sets of decisions of this Court leading to a reference of these appeals to the Constitution Bench for decision. The conflict relates to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work of which they were otherwise doing. The claim is essentially based on the fact that they having continued in employment or engaged in the work for a significant length of time, they are entitled to be absorbed in the posts



in which they had worked in the department concerned or the authority concerned. There are also more ambitious claims that even if they were not working against a sanctioned post, even if they do not possess the requisite qualification, even if they were not appointed in terms of the procedure prescribed for appointment, and had only recently been engaged, they are entitled to continue and should be directed to be absorbed.

xx

xx

xx

11. In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and Public Service Commissions for the States. Article 320 deals with the functions of Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any



employment outside this constitutional scheme and without following the requirements set down therein.

12. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

xx

xx

xx

16. In *B.N. Nagarajan & Ors. Vs. State of Karnataka & Ors.* (1979) 3 SCR 937, this court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology



followed in making the appointments. This court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

Xx

xx

xx

26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent -- the distinction between regularization and making permanent, was not emphasized here -- can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of *Piara Singh* (supra) are to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

Xx

xx

xx



43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if



ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

44. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have



even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

45. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not



inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

xx xx xx

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.



XX XX XX
53. Coming to Civil Appeal Nos. 1861-2063 of 2001, in view of our conclusion on the questions referred to, no relief can be granted, that too to an indeterminate number of members of the association. These appointments or engagements were also made in the teeth of directions of the Government not to make such appointments and it is impermissible to recognize such appointments made in the teeth of directions issued by the Government in that regard. We have also held that they are not legally entitled to any such relief. Granting of the relief claimed would mean paying a premium for defiance and insubordination by those concerned who engaged these persons against the interdict in that behalf. Thus, on the whole, the appellants in these appeals are found to be not entitled to any relief. These appeals have, therefore, to be dismissed."

22. A Division Bench of this High Court in *CWP No.415 of 2000* titled as '*Baldev Singh & Ors. vs. State of H.P. & Ors.*' along with connected matters vide judgment dated 01.09.2008 reported in ***Latest HLJ 2009 (HP) 293***, after taking into consideration judgments rendered in ***Secretary, State of Karnataka and Ors. vs. Uma Devi & Ors., (2006) 4 SCC 1; B.N. Nagarjan & Ors. vs. State of Karnataka & Ors., (1979) 3 SCR 937***; and ***Rattan Lal vs. State of Haryana, (1985) 3 SCC 43***, has observed as under:-

"2. The whole problem has arisen because the Government in spite of repeated judicial pronouncements continues to make appointments to certain posts in violation of the rules. Persons are appointed to various posts without following the recruitment and promotion rules. After serving for a few years, these persons who are appointed without following the prescribed procedure clamour that they should be



regularized. This problem can be best avoided if the Government strictly follows the rules.

3. In the last 15 years, various governments have framed Schemes for appointments of teachers. Some of these Schemes are Voluntary Teacher Scheme, Vidya Upasak Scheme, Para Teacher Scheme, PTA teachers scheme etc. etc. The entire purpose of framing these schemes is to avoid making recruitments to the post of teachers by following the procedure prescribed by law. Under normal Recruitment and Promotion Rules, the appointment of teachers is made through the H.P. Public Service Commission. Under the schemes, which have been framed in violation of the rules and are against the very ethos of Article 311 of the Constitution of India, appointments are made at a very lower level some times at the school level. The Selection Committees consist of people who can be easily manipulated. At the time when the schemes are framed, the Government promises that regular appointments shall be made in accordance with rules. However, once the persons appointed against the schemes have continued for a few years, they start raising protests that their services should not be dispensed with in accordance with the terms of the scheme but they should be regularized.

4. In the present cases, we are concerned with teachers employed on contract basis in various schools in Himachal Pradesh. The teachers were appointed on contract basis as College lecturers, School lecturers, JBT teachers, C & V teachers and Lab attendants. When the contractual period of appointment of these teachers had ended or was coming to an end, a large number of cases were filed against their termination or proposed termination before the learned H.P State Administrative Tribunal.

XX

XX

XX

7. At the outset, we may mention that most of questions raised in these writ petitions do not survive in view of the judgment rendered by the Apex Court in (2006) 4 SCC 1, Secretary, State of Karnataka and others versus Uma Devi (3) and others.....



.....The aforesaid erudite and absolutely relevant observations of the Apex Court can only lead to one conclusion that when the Recruitment & Promotion Rules (for short R& P Rules) have been framed, the State should not make any appointment without following the said rules except when the same becomes absolutely necessary.

8. In the present case, the teachers in normal course should have been appointed through the Public Service Commission. The contract teachers were appointed directly by the Principals of the schools. This obviously would lead to shoddy selections and poor competition since many competent candidates would not be able to apply for the posts filled in at the local level. The State should as a rule not make any appointment without following the R&P rules. However, if in case of exigencies of service a departure has to be made, then the persons so appointed cannot claim that they must be regularized.

9. On the one hand, the case sought to be made out for the employees is that since they have worked for a long period of time, they should be regularized without even following the R&P Rules, on the other hand this Court cannot be oblivious to the rights of a large number of well qualified candidates who are unemployed but because of lack of proper advertisements and due to improper selections at lower level, they were denied the opportunity to be applied for or be appointed to such post(s). If this Court approves the action of the State, it would result in depriving many well qualified unemployed youth of their opportunity and right to compete for public employment.

In fact, in a poor economy like ours and especially in a State like Himachal where the main employer is the State, everybody looks forward for public employment. Government service also gives security of tenure and status to the employee.

xx

xx

xx

12. Having held that the State should not normally make appointments without following the R & P Rules, this Court cannot shut its eyes to the fact that the State is repeatedly indulging in this unhealthy practice. We have also been informed at the Bar that in



some cases, the rules have also been amended and contractual appointments have been made part and parcel of the rules.

13. The rule of law operates for everybody including the State. No man is above the law. The R & P rules have the statutory force of law. They in fact have the constitutional backing of Article 309 of the Constitution of India. In case the appointments are made in accordance with the rules, all the appointments including the contractual appointments made in accordance with rules would be legal and valid. We would recommend that in all cases, the appointments should be made strictly in accordance with rules and in case for some very urgent reasons, the regular process of appointments cannot be followed and the State is compelled to make ad hoc / temporary appointments then before the posts are filled up, the authority proposing to make such appointments de hors the rules should obtain administrative approval from an authority not below the rank of Principal Secretary to the State of H.P after giving reasons as to why the appointments cannot be made by following the rules.

14. There is one other point which has been agitated before us. This point is that the State must follow the principle of 'first come last go' while dealing with the persons appointed without following the R & P rules. This Court vide a detailed interim order dated September 19, 2000 had directed the State Government to prepare a seniority list of all such appointees.

We have found that in a number of cases, the officials of the State follow a very devious and highly unethical method of ousting the employees who have been employed on contract earlier. We may give two examples of law this is done. Supposing a person 'A' has been appointed as contract teacher and is posted at station 'S' for a long duration. The State, on regular selections being made, posts a regular appointee at station 'S'. Person 'A' will be removed but the other person(s) who may have worked for a much shorter period as contract teacher(s) at other stations are permitted to continue. Another method used is that after the person "A" has been removed , the regular



appointee is transferred to some other station and a contract employee at some other station, who may have a much shorter tenure than "A" is brought to station "S". Sometimes the second person is also removed and a fresh contract appointee is appointed. This practice cannot be permitted to continue. Therefore, we direct that the State shall follow the principle of 'first come last go' even in the case of contract employee(s). We hereby direct that though normally no appointments should be made de hors the rules, in case such appointments are made then the State must follow the principle of 'last come first go' while removing the persons not appointed in accordance with R & P rules. The State cannot raise the bogey that the appointments have been made by the school level or at the tehsil level and therefore, it cannot follow this principle of 'last come first go'. In case under the R & P rules the cadre to which a person is appointed is a State cadre, the State Government must follow the principle of 'last come first go' by taking all the employees in the State into consideration. In case of a district cadre post, it will follow 'first come last go' principle in relation to the employees of the concerned district.

15. The contention of the State that the employees' appointed on contract basis are lower in status to the ad hoc employees and therefore, cannot be granted salary during the vacations is totally ill founded. In fact, a contractual employee has been appointed after following some procedure even though the procedure may not be in accordance with rules. His status is better than that of an ad hoc employee who may be appointed without following any procedure whatsoever. The apex Court in 1985 (4) SCC 43, Rattan Lal versus State of Haryana, has clearly held that the persons appointed on ad hoc basis are entitled to salary for the vacations and the State being a model employer cannot follow invidious method of making public appointments from the first day of the academic term and terminate the appointment on the last date of the academic term. The teachers were appointed on contract basis have worked for a period of more than 2 to 3 years and cannot be deprived of the benefit of salary for the vacation



period.

16. In view of the above discussion, we dispose of the writ petitions by summarizing our findings as follows:

- i) that the State should normally not make any appointment without following the R & P rules;
- ii) that in a situation where the State or its instrumentalities are forced to make public employment without following the R & P rules, we recommend that the approval of the Administrative Secretary not below the rank of Principal Secretary should normally be obtained after given complete reasons, in respect of each post, as to why the post could not be filled up by following the R & P rules;
- iii) that the appointees on contract basis are to be treated at par with the ad hoc appointees;
- iv) that this court has no power to direct the State to regularize the services of any employee appointed without following the R & P rules;
- v) that this court cannot direct the State to frame a policy of regularization; and
- vi) that the State must follow the principle of 'last come first go' as enumerated above vis-a-vis the employees who are appointed dehors the rules.
- vii) that normally the State should not regularize the employees appointed without following the rules since this adversely affects the rights of many eligible candidates."

23. In **Baldev Singh's** case (supra), it was categorically held by the Court that the Contract appointees were also entitled for benefits at par with ad hoc appointees but with unambiguous clarification that Court has no power and cannot direct the State to frame a policy of regularization of service of any employee appointed without following the R&P Rules with further directions that the State should normally not make any appointment without following R&P Rules and normally should not



regularize the employees appointed without following the R&P Rules. Irrespective of aforesaid direction, State formulated Policy(ies) for regularization of contract employees and made these policies applicable to all employees appointed under above referred Schemes/Policies with different nomenclature of appointees.

24. The persons appointed under the aforesaid policies, ultimately directed to be governed by the Contract Policy and were regularized after completion of period of contract service prescribed in regularisation Policy(ies). After regularization, they filed petitions seeking the benefit of past contract service followed by regularisation without interruption. After taking into consideration the Central Civil Services (CCS) Pension Rules, 1972, and other relevant provisions of law, it was held by the Courts that such contract employees, after regularization, shall be entitled to all service benefits, including pay scale and counting of contract service period for pensionary benefits by adding increments, but excluding seniority.

25. In case of persons appointed on contract basis in furtherance to the Contract Policy formulated by the State but without following procedure prescribed in R&P Rules, it would be relevant to refer judgment of Division Bench of this High Court in **LPA No.322 of 2024** titled as **Ram Chand & Ors. vs. State of H.P. & Ors.** decided on 02.09.2024, wherein



history of judgments passed by the Courts in various cases has been noticed, which reads as under:-

- “3. In **CWP No.850 of 2010**, titled as **Paras Ram vs. State of H.P. and another**, decided on **19.10.2010**, reported in **Latest HLJ 2009 (H) 887**, it was held that ad hoc service followed by regular service in the same post could be counted for the purpose of increments.
4. Approving the aforesaid judgment in **Paras Ram’s case**, a Division Bench of this High Court in **LPA No.36 of 2010**, titled as **Sita Ram vs. State of H.P. & others**, decided on 15.07.2010, had observed that appellant in **Sita Ram’s case** was entitled for counting of ad hoc service followed by regular service for the purpose of increments and pension, but he was not entitled for counting the said ad hoc service for the purpose of seniority.
5. It is also apt to record that judgments in **Paras Ram’s** and **Sita Ram’s** cases have attained finality.
6. In **CWP No.4550 of 2010**, titled as **Ravi Kumar vs. State of H.P. and another**, decided on **16.12.2010** alongwith connected matters, in case of tenure appointees, direction was given to grant annual increment during period of tenure services and to count the said period for the purpose of pension like ad hoc appointees in the Education Department. However, issue related to contract Teachers was kept open to be decided by the Authority.
7. In **CWP No.5400 of 2014**, titled as **Veena Devi vs. Himachal Pradesh State Electricity Board Ltd & another**, decided on **21.11.2014**, contract service followed by regular appointment without interruption was directed to be considered for the purpose of qualifying service for pensionary benefits.
8. **Special Leave to Appeal CC No(s) 18898 of 2015**, titled as **H.P. State Electricity Board Ltd. and another vs. Veena Devi**, preferred against the said order was dismissed by the Supreme Court on **26.10.2015**.
9. A Division Bench of this High Court in **CWP No.8953 of 2013**,



titled as ***Joga Singh and others vs. State of Himachal Pradesh and others***, decided on 15.06.2015, had held that services rendered by the petitioners therein, who were appointed Vidya Upasaks on honorarium basis which was followed by regular appointment as Junior Basic Teachers (JBTs), were entitled for counting of their service for the purpose of pensionary benefits and annual increments.

10. After dismissal of **SLP(C) No.183 of 2016**, titled as ***State of H.P. & others vs. Joga Singh and others, Review Petition (Civil) No.274 of 2017*** filed in the said **SLP (C) No.183 of 2016**, was also dismissed by the Supreme Court on 02.03.2017.

11. In similar case **CWPOA No.195 of 2019**, titled as ***Sheela Devi vs. State of H.P. & others***, decided on 26.12.2019, after taking into consideration Rule 17 of Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'CCS Pension Rules'), and other pronouncements of this High Court as well as Supreme Court, Division Bench of this Court had directed to count period of contract service followed by regular service as qualifying service for granting pension.

12. **CWP No.2411 of 2019**, titled as ***Jagdish Chand vs. State of Himachal Pradesh & others***, decided on 10.01.2020, alongwith connected matters, by a Division Bench of this High Court. In these matters petitioners, who were not JBT but having qualification as TGT, O.T., Shastri etc., were appointed against sanctioned vacant post(s) of JBT as Vidya Upasak and were regularized as JBTs in the year 2007 after awarding them special JBT certificates. In these matters, it was directed to count contract service followed by regularization against the post of JBT towards qualifying service for the purpose of pension under CCS Pension Rules as well as for annual increment, but restricting actual financial benefits to three years prior to filing of writ petitions.

13. It is also an admitted fact that SLP (Civil) No.10399 of 2020, titled as ***State of Himachal Pradesh & another vs. Sheela Devi***, has been dismissed by the Supreme Court vide order dated 07.08.2023 with direction that past service of contractual employee on regularization is to be counted for the purpose of pension and thus judgment in ***Sheela***



Devi's case, referred supra, has attained finality.

14. Undisputedly, **SLP(C) Nos.8012-8013 of 2021**, titled as **State of Himachal Pradesh vs. Jagdish Chand**, has also been dismissed on 7.8.2023 and, thus, judgment in **Jagdish Chand's** case has also attained finality.

15. Learned Additional Advocate General has contended that in **Sheela Devi's case** benefits of counting contract service for annual increment has not been granted and, therefore, has supported the impugned judgment.

16. In **Sheela Devi's case** (supra), the High Court had directed to count the contract service for the purpose of qualifying service towards pension. However, the Apex Court, in its order dated 7.8.2023 has directed the respondents/State to count the contract service for the purpose of pension. As a matter of fact, counting of contract service for the purpose of qualifying service towards pension and 'counting of contract service for the purpose of pension' means one and the same thing. In both directions, there is mandate to consider the contract service for determining pension.

17. Following the aforesaid judgments in **Sheela Devi's** and **Jagdish Chand's** cases, this Court in CWPOA No.5507 of 2020, titled as **Oma Wati and another vs. State of Himachal Pradesh and others**, has directed to extend benefit of annual increments and counting of period of contract service followed by regular appointment for the purpose of pensionary benefits, by observing as under:-

"8. Despite repeated observations as well as directions of the Courts in numerous cases that State must behave like a Model Employer, State, irrespective of persons in power and change in Guard, successively keeps on to formulate, adopt and practise exploitative policies as a device to avoid extension of legitimate rights of the employees for which they are otherwise entitled. On intervention of the Courts directing the State to extend such benefits like pay scale, increment, leave and counting of service etc., State every time tries to deprive the employee from such



benefit by changing nomenclature of post and scheme to continue with practice of temporary/ad-hoc appointments. Appointment of Voluntary Teachers, ad-hoc Teachers, Vidya Upasaks, Contract Teachers, PARA Teachers, PAT, PTA and SMC Teachers are examples of clever phraseology devised by State to overcome directions of the Courts in order to avoid permanent appointments by appointing adhoc/Temporary Teachers depriving them of service benefits available to regular employees. When Courts upheld the entitlement of ad-hoc employees for service benefits, State came with Scheme for appointment of Voluntary Teachers. Again, on intervention of the Court, State continued changing the name of Policy but for appointment on exploitative terms. Therefore, we are of the opinion that all these terms are similar temporary appointments irrespective of their nomenclature. Therefore, verdict of the Court regarding extension of service benefits with respect to one kind of temporary appointment is equally applicable to similar temporary appointment with different nomenclature.”

18. Taking into consideration aforesaid judgment, a Division Bench of this High Court, vide judgment dated 29.8.2023, has decided ***CWPOA No.5187 of 2020, titled as Sunil Dutt & others vs. State of Himachal Pradesh and others alongwith connected matters***, wherein petitioners have been held entitled for counting of contract service, followed by regularization on the same post without interruption, for the purpose of pensionary benefits as well as annual increments with following observations:-

“17... ..Needless to say that for counting the service to extend the benefit thereof for pension, annual increment for the relevant period is an essential factor required to be considered for calculating pension. Observations by the Division Bench of this Court in this regard in ***CWP No.850 of 2010***, titled ***Paras Ram vs. State of HP and others***, Latest HLJ 2009 (HP) 887, as



also referred in order dated 15.7.2010 passed by a Division Bench of this Court in **LPA No.36 of 2010**, titled **Sita Ram vs. State of H.P.**, are relevant wherein it has been stated that service counted for the purpose of annual increment will be counted for pension also. There is direction for counting the contractual service for pension/pensionary benefits. Counting of service for pension includes, counting of length of service for qualifying service for pension, as well as for quantifying the amount of pension payable by calculating it on the basis of basic pay with addition of increment. Therefore, direction to count service for pension also mandates calculation of pension by granting annual increment for relevant period either actual or notional basis."

19. Undoubtedly, pension is calculated on the basis of last pay drawn by the employee and last pay of the employee depends upon the Basic Pay earned by the employee on the basis of pay scale as well as annual increments earned by him during his entire service and, therefore, for counting service for pensionary benefits or as a qualifying service towards pension, the annual increments for the said service period, are inevitable to be taken into consideration. It is relevant to record here that it was not the case of the respondent-State that during contract period, services rendered by the appellants were not satisfactory, rather contrary to that considering their services satisfactory their services were regularized by the State-Department.

20. In **Sheela Devi's case**, prayer made by the petitioner was only with respect to count past service of her husband, on contract basis, for the purpose of pension. However, it is apt to record that when past contract service is considered valid for counting for the purpose of pensionary benefits, the same period is also to be taken into consideration by granting annual increment because for calculation of pensionary benefits, last pay drawn, determined on the basis of annual increment drawn, is a decisive factor and last pay drawn also depends



on the annual increments earned by the employee. Therefore, for calculating and determining pensionary benefits, annual increments and length of service are major relevant factors.

21. Entitlement or disentitlement for annual increments, for contract period service followed by regular appointment on the same post, without interruption, was not a issue and thus was not agitated and decided in **Sheela Devi's** case specifically and separately. Though, as discussed supra, at the time of taking into consideration contract service for the purpose of pensionary benefits, annual increments for the said service are also to be taken into consideration, however, even otherwise, settled position in **Paras Ram's, Sita Ram's, Joga Singh's** and **Jagdish Chand's** cases, mandatory entitlement of an employee for annual increments for the contract period of service followed by regular appointment on the same post, without interruption, cannot be unsettled on the basis of a judgment in which the said issue has not been discussed and decided, particularly when judgment in **Joga Singh's** and **Jagdish Chand's** cases have attained finality after dismissal of SLPs preferred by the State in those cases.

22. Judgment in **Sheela Devi's** case, which declared that contract service period is to be counted for the purpose of pension, cannot be taken a judgment as a denial of annual increments for the said period.

23. As evident from judgment in **CWPOA No.195 of 2019**, titled as **Sheela Devi v. State of Himachal Pradesh**, the moot question adjudicated and decided by the Court was that whether the services of an employee appointed on contractual basis, in temporary capacity, can be counted towards qualifying service for grant of pension after regularization of his services. The Division Bench has answered this issue by holding that service rendered by an employee on contract, prior to his regularization, shall be treated as qualifying service for grant of pension. Issue with respect to grant or non-grant of annual increments



for the contract service period, after regularization, was neither in issue specifically nor discussed.

24. It is also relevant to record here that Division Bench of this Court in judgment dated 07.12.2011 passed in **CWP No.10529 of 2011**, titled as **Youdhishther Kumar Sharma vs. The State of H.P. and another**, has decided the issue of entitlement of counting contract service in those cases wherein employees had served on contract/temporary basis on different posts but had been regularized or appointed as regular on some other posts. In such a situation, the employee was held entitled for counting of his ad hoc/tenure/temporary service only for the purpose of pension, but not for annual increment. In present case, the facts are entirely different because temporary/contract appointment of petitioner is followed by regularization on the same post without interruption and, therefore, this judgment is not applicable in present case.

25. Though judgment in **CWPOA No.5187 of 2020**, alongwith connected matters, has been considered by learned Single Judge in Para-3 of the impugned judgment, but by taking into consideration only part of the relief granted to the petitioners therein, regarding counting of service for the purpose of pensionary benefits. However, perhaps due to oversight, observations that counting of contract service period for pensionary benefits also includes grant of increment for the said period and direction to grant annual increments for contract service period, on regularization, has been overlooked, which has resulted into passing a judgment by learned Single Judge contrary to the judgment passed by a Division Bench.

26. It is apt to record that the aforesaid judgment in **CWPOA No.5187 of 2020**, by the Division Bench, has been passed by taking into consideration judgment in **Sheela Devi's** case. In any case, as discussed supra, when contract service is to be taken into consideration for the purpose of pensionary benefits, then natural corollary thereof is that for the said period annual increments are also required to be



granted. Therefore, learned Single Judge has fallen in error by inferring that in **Sheela Devi's** case, on regularization, annual increments for contract service have not been granted or have been denied.

27. On dismissal of SLP in **Sheela Devi's** case, the State did not contest the SLP filed in **Jagdish Chand's** case and had withdrawn the same, in terms of judgment passed in **Sheela Devi's** case.

28. From aforesaid facts, it is apparent that on adjudication of the issue with respect to counting of contract service for pensionary benefits by the Supreme Court, the State did not prefer adjudication of the issue of entitlement for annual increments for the contract service period, after regularization, but withdrew the SLP filed in **Jagdish Chand's** case.

29. As discussed supra, counting of contract service for pensionary benefits would entail grant of annual increments for the said period. Therefore, for judgment of Supreme Court in **Sheela Devi's** case, dismissing the SLP, and also for withdrawal of SLP by the State in **Jagdish Chand's** case, contractual period of service of an employee, followed by regularization on the same post, is to be counted for the purpose of pensionary benefits and annual increments.

30. A Division Bench of this High Court in **CWPOA No.5363 of 2020**, titled as **Ishwar Verma & others v. H.P. University & others**, has observed as under:

“15. State, including its functionaries, has to make appointment by following procedure prescribed under Recruitment and Promotion Rules/Service Rules framed under Article 309 of the Constitution of India. However, sometimes, State or its functionaries resort to make appointment without following process prescribed under Recruitment and Promotion Rules i.e. de hors of Service Rules but following some procedure prescribed in some valid Policy formulated and adopted by it.

16. Sometimes, not only de hors of Recruitment and Promotion Rules but also without framing or following any valid policy,



appointments are made. Such appointment made in last category are not protected by law and/or Courts being backdoor entry.

17. In first two categories, sometimes initial appointments are made on temporary or contract basis and such services are regularized later on.

18. It is now settled that temporary/contract appointee of first category on regularization shall be entitled for counting of temporary/contractual service for all service benefits since their initial date of appointment including seniority, annual increments and pensionary benefits, whereas such appointee of second category, on regularization shall be entitled for annual increment and pensionary benefits etc. but not for seniority."

31. Similar observation has been made by Division Bench in judgments passed in **LPA No.207 of 2023**, titled as **Subodh Kumar & others v. Rakesh Kumar & others**.

32. Contract service of the petitioners was followed by regular service, without interruption, on the same post. Therefore, they are definitely entitled for counting their contract service for the purpose of annual increments as well as pensionary benefits.

33. The issue stands already settled in various judgments, including the cases of **Joga Singh** and **Jagdish Chand** cases and other matters, but it has not only been implemented by the State in respect of all similarly situated employees and employees are compelled to prefer identical petitions for getting the benefit of judgments of the Supreme Court, which are judgments in *rem* and based on policy decisions of the State.

34. Legal principles summed up by the Supreme Court in **State of UP v. Arvind Kumar Shrivastva, (2015) 1 SCC 347** are relevant in present matter, which are:



“22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The 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 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.

22.2. However, this principle is subject to well recognised 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 fencesitters 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 persons. 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 v. Union of India, (1997) 6 SCC 721). 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 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."

35. In present case also, above referred legal principles contained in Paras 22.1 and 22.3 of the judgment in **Arvind Kumar Shrivastva's** case are applicable, because the issue that contract period of service, followed by regular appointment on the same post without interruption, is to be taken for consideration for annual increments and pensionary benefits, is no longer *res integra*, rather is well settled, and the State has also implemented it, if not thousand but with respect to hundreds of employees, but despite that all similarly situated employees entitled for the said relief are not being treated in the same manner, due to which Court is being engaged to decide the same issue again and again, leading to wastage of time and energy and the resources.

36. It has been invariably noticed that issues, which stood decided once, are being raised by the State repeatedly again and again causing not only wastage of time and energy of the State, but also of the Court as well as poor litigants. Such an act of the State is contrary to the Litigation Policy adopted by the State.

37. Such practice and conduct on the part of the State, because of wastage of precious time of the Court, leads to delay in dispensation of justice to other litigants whose claims or cases are pending adjudication since long.

38. State is expected not to repeat such practice in the cases, which have already been decided by this Court as well as by the Supreme Court and even implemented by the State.



39. Accordingly, judgment passed by learned Single Judge is modified with observation that reasoning assigned for deciding CWPOA No.5187 of 2020, shall be *mutatis mutandi* applicable to the present matter also and appellants shall be entitled for counting their contract service for the purpose of pensionary benefits as well as annual increments for the said period with all consequential benefits, but restricting actual consequential financial benefits to three years prior to filing of the writ petition.”

26. The persons appointed by the respondent-State in furtherance of policies formulated under Notification No.EDN.C.B.(2)-4/2003 dated 27.08.2003 notifying *the Himachal Pradesh Prathmik Sahayak Adhyapak/Primary Assistant Teacher (PAT) Scheme, 2003*; Communication No.EDN-H(6)1-1/2003-PT-2003 Plan by Directorate of Education, Himachal Pradesh dated 17.09.2003 with ‘*subject– Regarding Hiring/Engagement of Para Teachers (Lecturer School Cadre), Para Teacher (T.G.T’s) and Para Teachers (C&V)*’; and Notification No.EDN-A(Kha))7-3/2006 dated 29.06.2006 notifying ‘*Grant-in-Aid to Parents Teachers Association Rules, 2006*’, were converted into contract employee and, after completion of requisite period of contract service, their services were also regularized. These employees also approached the Courts for extension of service benefits of their contract service, like the teachers appointed on contract in pursuance of the policy formulated in the year 1996. 485 petitions preferred by numerous such employees have been decided by the Coordinate Division Bench vide judgment



dated 12.11.2024 passed in LPA No. 338 of 2024 titled as Narayan Dutt vs. State of HP and others with connected matters. In the cases of these employees also, similar judgments, like judgment in *LPA No.322 of 2024* have been passed by Division Benches of this Court.

27. State also formulated policy for appointing Vidya Upasaks in Primary Schools instead of making regular appointments against the sanctioned post. The persons appointed as Vidya Upasak, on completion of certain period of service as Vidya Upasak, were also converted into contract teacher, and thereafter, they were also regularized. These teachers also approached the Court for the service benefits, and one of such case ***CWP No.8953 of 2013*** titled as '***Joga Singh & Ors. vs. State of Himachal Pradesh & Ors.***' was decided on 15.06.2015 along with connected matters, declaring them entitled for counting of their service for the purpose of pensionary benefits and annual increments. ***SLP(C) No.183 of 2016*** titled as ***State of Himachal Pradesh vs. Joga Singh*** and ***Review Petition (C) No.274 of 2017*** filed against the said judgment dated 15.6.2015 was also dismissed by the Supreme Court on 02.03.2017.

28. With respect to counting of contract period for pensionary benefits, the issue has attained finality after decision of ***SLP(C) No.10399 of 2020*** titled as ***State of Himachal Pradesh & Ors. vs. Sheela Devi &***



Ors. passed by the Apex Court vide order dated 07.08.2023. Similarly, in another case this issue was also decided by this High Court in **CWP No.2411 of 2019** titled as **Jagdish Chand vs. State of Himachal Pradesh & Ors.** on 10.01.2020 along with connected matters and the said decision has also attained finality in **SLP (C) No. 8012-8013 of 2021** titled as **State of Himachal Pradesh vs. Jagdish Chand.**

29. Because of the verdicts of the Courts, the Government was again and again restrained from making appointments on temporary basis *dehors* the Recruitment and Promotion Rules (in short 'R&P Rules') that too without following the procedure prescribed under the R&P Rules for appointment through prescribed agencies, i.e. the H.P. Public Service Commission or the H.P. Subordinate Services Selection Board, whereupon the Government started making appointments on a contract basis, but by adopting the procedure prescribed under the R&P Rules through the prescribed agencies.

30. It was held by the Courts that the Government cannot resort to extra-constitutional methods for appointments by making appointments on contract or otherwise on temporary basis without having such provision in the R&P Rules framed under Article 309 of the Constitution. It was further held that, in the absence of any provision for contract appointments under the R&P Rules, all employees, appointed on contract



basis after following the prescribed procedure under the R&P Rules, were to be treated as regular employees from the very first day of their appointment.

31. After suffering the judgments of the Courts, vide communication dated 12.12.2003, the Government of Himachal Pradesh, Department of Personnel, through Chief Secretary to the Government of Himachal Pradesh, issued the directions to all Secretaries to the Government of Himachal Pradesh, All Heads of Departments of Himachal Pradesh, all Divisional Commissioners in Himachal Pradesh and all Deputy Commissioners in Himachal Pradesh to prescribe the provisions for appointment on contract basis by amending the provisions of Column No.10 of concerned Recruitment and Promotion Rules. The communication reads as under:-

“.....

12.12.2003

Subject:- Prescribing of Provision for appointment on contract basis.
Sir,

I am directed to say that it has been decided by the Government that the mode of recruitment by way of “contract recruitment” may also be prescribed in addition to other mode of recruitment in all the Recruitment and Promotion Rules.

It is, therefore, requested that all existing Recruitment and Promotion Rules where the mode of direct recruitment of the post has been prescribed, the same may be amended. As such provision of Col No.10 of the Recruitment and Promotion Rules be prescribed in the following manner:-

**“Col.No.10: By direct recruitment or on Contract basis”**

Since the matter has already been approved by the Council of Ministers, it is therefore, requested to amend the Recruitment & Promotion Rules accordingly without referring the matter to the Cabinet.....”

32. Thereafter, appointments in all departments on contract basis were made by adopting the procedure prescribed under the R&P Rules through the prescribed agencies.

33. However, necessary amendment in relevant R&P Rules was not carried out immediately but recruitment process was initiated on the basis of unamended Rules however offering appointment on contract basis. In some cases, R&P Rules were amended during the process of selection. It led filing of various petitions by aggrieved appointed/selected persons. 34 such petitions were decided by the Single Bench of this High Court along with ***CWP No. 1811 of 2008 titled Dev Raj vs. State of HP*** vide judgment dated 14th November, 2011 in following terms:-

“18. The Apex Court in ***P.Mohanan Pillai vs. State of Kerala and others (2007) 9 SCC 497*** held as follows:-

“9. Why such a decision had been taken after the publication of the result of the written examination and after calling 36 candidates for interview is not known. Why the Company intended to enlarge the zone of consideration from 1: 3 to 1: 4 has also not been disclosed. Why the cut-off mark was also lowered remained a mystery.

10. It may be that in a given situation, a decision of the State may be changed, but therefor good and sufficient reasons must



be assigned. The Company failed to do so. The decision taken in this behalf smacks of arbitrariness. It prejudiced the candidates like the appellant.

11. It is now well-settled that ordinarily rules which were prevailing at the time, when the vacancies arose would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedures as were prevailing on the date of vacancy should ordinarily be followed.”

19 The Apex Court in **Arjun Singh Rathore and others vs. B.N.Chaturvedi and others (2007) 11 SCC 605** held that the vacancies occurring prior to the promulgation of the new Rules have to be filled in according to the old rules even though the interviews were held after the promulgation and notification of the new Rules.

.....

25. At the time when the selection process was initiated and selection made the Government had not even thought of making contractual appointments. All appointments under Government are expected to be made as per the Recruitment and Promotion Rules and if the Rules do not permit, the Government cannot make contractual appointments. The decision to make direct recruitment on contractual basis was taken at a later stage. The argument of Shri Vivek Thakur, learned Addl. A.G. that when the Government has the power to appoint it also has the power to appoint on contractual basis cannot be accepted. Government appointments are made in accordance with the Rules framed under Article 309 of the Constitution of India. When such Rules are framed the Government is expected to act and make appointments in accordance with the Rules. If the Rules do not permit the Government to make appointments on contract basis they must be made on regular basis.

.....

29. In view of the above discussion, all the writ petitions are allowed and the petitioners except the petitioners in CWP No. 7376 of 2010 shall be deemed to be regular employees of the State Government



from the date of their appointment. As far as the petitioners in CWP No. 7376 of 2010 are concerned they shall be deemed to be regular teachers from the dates their colleagues were offered contractual appointment in the year 2009 and have now to be treated as regular employee. Their earlier appointment on contractual basis or as para teachers will not be counted towards seniority and their seniority shall be governed as per the merit list of the Subordinate Selection Board. The petitioners shall be entitled to all consequential benefits.

30 The writ petition is allowed in the aforesaid terms and the respondent-State is directed to grant all financial benefits to the petitioners latest by 31st March, 2012 failing which the State shall be liable to pay interest @ 9% per annum."

34. Aforesaid judgment dated 14.11.2011 passed in CWP No. 1811 of 2008 was assailed by the State by filing ***LPA No. 420 of 2012 titled State of HP vs. Dev Raj and another.***

35. In the meanwhile, ***CWP No. 7538 of 2010 titled Gopi Devi Thakur vs. State of HP*** was decided on 28th December, 2012 by the Single Bench of this High court on the basis of aforesaid judgment dated 14th November, 2011 passed in ***Dev Raj's case*** in following terms:-

"2. Having perused the records, I am of the considered view that facts in the instant case are similar to that of Dev Raj (Supra). In the instant case also petitioner is seeking appointment on regular and not contract basis as per merit wise recommendations made by H.P Subordinate Selection Board, Hamirpur, with respect to the requisition sent by IPH Department of the State. In Dev Raj (Supra) the Court has held that at the time of initiation of selection process, Government had not even contemplated giving appointments on contractual basis. The Court has



directed the respondents to consider the case of the petitioners and grant all financial benefits.

3. As such, directions issued in *Dev Raj (Supra)* shall mutatis mutandis apply to the present case also."

36. The judgment passed in CWP No. 7538 of 2010 was also assailed by the Government by filing *LPA No. 367 of 2012 titled State vs. Gopi Devi Thakur*, which was dismissed by the Division Bench on 23rd December, 2014 with observation that appellant/State had already complied with Court direction, with finding that on perusal of pleadings, record and impugned judgment, the Division Bench was of the considered view that Writ Court had rightly directed the State to consider the case of petitioner and judgment was speaking and legal one. This judgment in LPA No. 367 of 2012 was not assailed further.

37. Along with *CWP No. 1811 of 2008*, one *CWP No. 6893 of 2010 titled Manju Bala vs State of HP* was also decided by common judgment dated 14.11.2011. The judgment in *Manju Bala's* case was also assailed by State by filing *LPA No. 237 of 2012 titled State vs. Manju Bala*.

38. *LPA No. 237 of 2012 titled State of HP vs. Manju Bala* was decided vide judgment dated 30.5.2015 on the basis of judgment passed in LPA No. 367 of 2012 in the same terms.



39. The judgment in *LPA No. 237 of 2012* was assailed by the State by filing *SLP (C) No. 1171 of 2017* which was decided by the Apex Court on 24.3.2017 saying that no ground to interfere with impugned order was found except to direct that respondent(petitioner) will not be entitled to arrears of financial benefits. The law point decided by learned Single Judge was upheld by the Apex Court with finding that no ground to interfere was made out.

40. Above referred *LPA No. 420 of 2012 titled State of HP vs. Dev Raj*, preferred against decision rendered in *CWP No. 1811 of 2008*, was also decided by the Coordinate Division Bench on 6.4.2021 in terms of judgment passed in *LPA No. 237 of 2012* as modified by the Apex Court vide order dated 24.3.2017 passed in *SLP(C) No. 1171 of 2017*. Therefore, ratio of law that in absence of any provision for contract appointment in R&P Rules, the appointment made by following the procedure as per R&P Rules has to be considered as regular appointment from the very first day of appointment remained intact.

41. *CWP No. 6727 of 2010 titled Ravinder Kumar vs. State of HP* and 7 other petitions were decided by common judgment dated 2.5.2012 passed by learned Single Judge with lead case *CWP No. 7602 of 2010*, wherein it was held as under:-



“..... No doubt, Government took a policy decision to make all appointments on contract basis after 12th December, 2003, but then this could be done only by amending the rules and incorporating specific conditions therein.....”

42. The aforesaid judgment was assailed by Sate by filing *LPA No. 21 of 2013* titled *State of HP vs. Ravinder Kumar* and the same was decided by the Division Bench on 4.10.2019 upholding the findings returned by the Single Judge with following observations:-

“4(iii).....

There is no provision in the above notification for taking over services of staff of privately managed colleges on contract basis, more so, in the facts of instant case, in view of Recruitment and Promotion Rules of Lecturer (School cadre) as they existed on 6.2.2007 i.e. the date of take over, whereunder no provision for appointment on contract basis was there, regular recruitment was the only prescribed mode.”

43. The Coordinate Division Bench of this High Court, vide common judgment dated 9.11.2023 passed in 38 petitions, filed by numerous petitioners and decided along with *CWPOA No. 2343 of 2020* titled as *Vikram Singh vs. HRTC*, has held that in absence of any provision for contract appointment in R&P Rules, the appointment, made by following the procedure prescribed in R&P Rules, is to be considered as regular from the very first day. The relevant observations are as under:-

“9. The respondent-Corporation has further, in its reply, contended that since its incorporation it is following the general instructions including



Policies relating to recruitment, condition of service, training of its employees and wages being paid as issued by the State Government in this regard. Based on the aforesaid, it is contended that the instructions dated 12.12.2003, whereby the State had directed all concerned to modify their Recruitment and Promotion Rules in order to incorporate a new mode of recruitment, i.e., contractual appointment, is being followed "in principle" by the respondent-Corporation, though service regulations in this respect were amended on 03.08.2006

27. The recruitments in question, as has already been stated supra, had been initiated in furtherance of approval accorded in this regard in the 95th Board meeting held on 02.08.2003 prior to issuance of instructions dated 12.12.2003 and its adoption by the Board on 03.08.2006. Therefore, the petitions filed by the petitioners, being similarly situate as their counterparts who had been appointed earlier with respect to whom parity was being sought, deserves to be allowed on this account also."

44. Later on, in pursuance to communication dated 12.12.2003, referred supra, necessary amendments were incorporated in Recruitment and Promotion Rules for recruitment in all Departments of the Government of Himachal Pradesh by amending Column 10 and incorporating Column 15-A therein. The Himachal Pradesh Higher Education Department, Lecturer (College Cadre), Class-I, Gazetted Recruitment and Promotion Rules, 2007 notified vide Notification dated 20.9.2007 are being referred herein as an example/sample. Relevant provisions whereof are as under:-

"HIGHER EDUCATION DEPARTMENT
NOTIFICATION
Shimla-2, the 20th September, 2007



1. Short title and Commencement: (1) These rules may be called the Himachal Pradesh, Higher Education Department, Lecturer (College Cadre) Class-I (Gazetted) Recruitment and Promotion Rules, 2007.....

Annexure - A

Recruitment and Promotion Rules for the post of Lecturers (College Cadre) Class-I, Gazetted in the Department of Higher Education, Himachal Pradesh.

1. Name of the Post : Lecturer (College Cadre)

2.....

10. *Method of recruitment: Whether by direct or by contract basis and promotion / deputation / transfer and the percentage of posts to be filled in the various method: 100% by direct recruitment or on contract basis.*

11.....

15. *Selection for appointment to post by direct recruitment :* Selection for appointment to the post in case of direct recruitment shall be made on the basis of viva-voce test, if Himachal Pradesh Public Service commission or other recruiting agency, as the case may be, so consider necessary or expedient, by a written test or practical test, the standard / syllabus etc. of which will be determined by the Commission / other recruiting agency as the case may be.

15-A. Selection for appointment to the post by Contract appointment

(I) CONCEPT (a) Under this policy the Lecturers (College Cadre) in the Department of Higher Education, H.P. will be engaged on contract basis initially for one year, which may be extendable for two more years on year to year basis.

(b) The Principal Secretary/Secretary (Hr.Education) to the Government of Himachal Pradesh after obtaining the approval of the Government to fill up the vacant posts on contract basis will place the requisition with the concerned recruiting agency i.e. H.P. Public Service Commission.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules.

(d) Contract appointee so selected under these Rules will not have any right to claim for regularization or permanent absorption in the Government job.



(II) CONTRACTUAL EMOLUMENTS: The Lecturers (College Cadre) appointed on contract basis will be paid consolidated fixed contractual amount @ Rs. 12,000 P.M. (Rs. twelve thousand only) (which shall be equal to initial of the pay scale + (Dearness pay).

No amount will be paid for vacation period. An amount of Rs. 275/- as annual increase in contractual emoluments for the second and third years respectively will be allowed if contract is extended beyond one year.

(III) APPOINTING/DISCIPLINARY AUTHORITY: The Principal Secretary/Secretary (Hr.Education) to the Government of Himachal Pradesh will be appointing and disciplinary authority.

(IV) SELECTION PROCESS: Selection for appointment to the post in the case of Contract Appointment will be made on the basis of viva-voce test or if considered necessary or expedient by a written test or practical test the standard/syllabus etc. of which will be determined by the concerned recruiting agency i.e. H.P. Public Service Commission, Shimla.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL PPOINTMENTS: As may be constituted by the concerned recruiting agency i.e. the H.P. Public Service Commission, Shimla from time to time.

(VI) AGREEMENT: After selection of a candidate, he/she shall sign an agreement as per Annexure-B appended to these Rules.

(VII) TERMS AND CONDITIONS: (a) The contract appointee will be paid fixed contractual amount @ Rs. 12000/- per month (which shall be equal to initial of the pay scale + dearness pay). No amount will be paid for vacation period. The Contract Appointee will be entitled for increase in contractual amount @ Rs. 275/- per annum for second and third years respectively and no other allied benefits such as senior/selection scales etc. shall be given.

(b) The service of the Contract Appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory.

(c) Contractual appointment shall not confer any right to incumbent for the regularization in service at any stage.

(d) Contract Appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated up to one year. No leave of any other kind is admissible to the contract appointee. He/She shall not be entitled for Medical Re-imbursement and LTC etc. only maternity leave will be given as per rules.



(e) Unauthorized absence from the duty without the approval of the controlling Officer shall automatically lead to the termination from the contract. Contract Appointee shall not be entitled for contractual amount for the period of absence from duty.

(f) Transfer of a contract appointee will not be permitted from one place to another in any case.

(g) Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. Woman candidate pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The woman candidate will be re-examined for the fitness from an authorized Medical Officer/Practitioner.

(h) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular officials at the minimum of pay scale.

(VIII) RIGHT TO CLAIM REGULAR APPOINTMENT: The candidate engaged on contract basis under these Rules shall have no right to claim for regularization/ permanent absorption as Lecturer (College cadre) in the Department at any stage.

16. Reservation: The appointment to the service shall be subject to orders regarding reservation in the service for Scheduled Castes /ST / Other Backward classes other categories of persons issued by the Himachal Pradesh Government from time to time.

17. Departmental Examination: Every member of the service shall pass a departmental examination as prescribed in the Himachal Pradesh Departmental Examination Rules, 1997 as amended from time to time.

18. Power to relax. - Where the state Govt. is of the opinion that it is necessary or expedient to do so, it may, by order for reason to be recorded in writing and in consultation with the HPPSC relax any of the provisions of these rules with respect to any class or category of persons or post.

Form of contract/agreement to be executed between the _____ (Name of the post) and the Government of Himachal Pradesh through _____ (Designation of the Appointing Authority).

This agreement is made on this _____ day of _____ in the year _____. Between Sh. / Smt. _____ S/o/D/o _____ Shri _____ R/o _____ Contract appointee (hereinafter called the FIRST PARTY), AND the Governor of



Himachal Pradesh through _____ (Designation of the Appointing Authority) Himachal Pradesh (here-in-after the SECOND PARTY).

Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a Lecturer (College Cadre) on contract basis on the following terms & conditions:-

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as a Lecturer (College Cadre) for a period of 1 year commencing on day of _____ and ending on the day of _____. It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall ipso-facto stand terminated on the last working day i.e. on _____. And information notice shall not be necessary.
2. The contractual amount of the FIRST PARTY will be Rs.12,000/- per month. No amount will be paid for vacation period.
3. The service of FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good or if a regular incumbent is appointed / posted against the vacancy for which the first party was engaged on contract.
4. The contractual appointment shall not confer any right to incumbent for the regularization of service at any stage.
5. Contractual appointee will be entitled for one day casual leave after putting in one month service. This leave can be accumulated up to one year. No leave of any kind is admissible to the contractual appointee. He will not be entitled for Medical Reimbursement and LTC etc. Only maternity leave will be given as per Rules.
6. Unauthorized absence from the duty without the approval of the controlling Officer shall automatically lead to the termination of the contract. A contractual appointee will not be entitled for contractual amount for the period of absence from duty.
7. Transfer of an official appointed on contract basis will not be permitted from one place to another in any case.
8. Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. In case of women candidates pregnancy beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/Practitioner.



9. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counter-part official at the minimum of pay scale.

10. The Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to contractual appointee(s).

IN WITNESS the FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESS:

1. _____

(Name and Full Address)

(Signature of the FIRST PARTY)

2. _____

(Name and Full Address)

IN THE PRESENCE OF WITNESS:

1. _____

(Name and Full Address)

(Signature of the SECOND PARTY)

2. _____

(Name and Full Address)"

45. In the year 2011, nomenclature of Lecturer (College Cadre) was changed to Assistant Professor (College Cadre) and accordingly R&P Rules were notified vide Notification dated 29.10.2011 afresh wherein Column Nos. 10 and 15 remained as such as were in Rules 2007, however there was slight change in Column No. 15-A regarding transfer of contract appointee and non-applicability of Service Rules applicable to regular employee. There was change in nomenclature of



the R&P Rules as well as the post. Relevant extract of the said Notification is as under:-

“HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-2, the 29th October, 2011

1. Short title and Commencement: (1) These rules may be called the Himachal Pradesh, Higher Education Department, Assistant Professors (College cadre), Class-I (Gazetted) and Contract Recruitment and Promotion Rules, 2010.

.....

Annexure-A

Recruitment and Promotion Rules for the post of Assistant Professor (College Cadre) Class-I, Gazetted and contract in the Department of Higher Education, Himachal Pradesh.

1. Name of the Post- Assistant Professor (College Cadre).

10

15. Selection for appointment to post by direct recruitment - Selection for appointment to the post in case of direct recruitment shall be made on the basis of viva-voce test, if Himachal Pradesh Public Service commission or other recruiting agency, as the case may be, so consider necessary or expedient, by a written test or practical test, the standard /syllabus etc. of which will be determined by the Commission / other recruiting agency as the case may be.

15-A. Selection for appointment to the post by Contract appointment- Notwithstanding anything contained in these rules, contract appointments to the post will be made subject to the terms and conditions given below:-

(I) CONCEPT (a) Under this policy the Assistant Professor (College Cadre) in the Higher Education Department, H.P. will be engaged on contract basis initially for one year, which may be extendable on year to year basis.

Provided that for extension / renewal of contract period on year to year basis the concerned HOD shall issue a certificate that the service and conduct of the contract appointee is satisfactory during the year and only then his period of contract is to be renewed / extended.

(b) POSTS FALLS WITHIN THE PURVIEW OF HP PSC:- The Principal Secretary / Secretary (Hr. Education) to the Government of Himachal Pradesh after obtaining the approval of the Government to fill up the



vacant posts on contract basis will place the requisition with the concerned recruiting agency i.e. H.P. Public Service Commission.

(c) The selection will be made in accordance with the eligibility conditions prescribed in these Rules.

(II) CONTRACTUAL EMOLUMENTS: The Assistant Professor (College Cadre) appointed on contract basis will be paid consolidated fixed contractual amount @ Rs.21,600/-PM (Rs. Twenty one thousand and six hundred) only (which shall be equal to the minimum of the pay band plus AGP). An amount of Rs. 648/- (3% of the minimum of pay band + AGP of the post) as annual increase in contractual emoluments for the subsequent year(s) will be allowed, if contract is extended beyond one year.

(III) APPOINTING / DISCIPLINARY AUTHORITY: The Principal Secretary / Secretary (Hr. Education) to the Government of Himachal Pradesh will be appointing and disciplinary authority.

(IV) SELECTION PROCESS: Selection for appointment to the post in the case of Contract Appointment will be made on the basis of viva-voce test or if considered necessary or expedient by a written test or practical test the standard / syllabus etc. of which will be determined by the concerned recruiting agency i.e. H.P. Public Service Commission, Shimla.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS: As may be constituted by the concerned recruiting agency i.e. the H.P. Public Service Commission, Shimla from time to time.

(VI) AGREEMENT After selection of a candidate, he/she shall sign an agreement as per Annexure-B appended to these Rules.

(VII) TERMS AND CONDITIONS The contract appointee will be paid fixed contractual amount @ Rs. 21,600/- per month (which shall be equal to minimum of the pay band + AGP). The Contract Appointee will be entitled for increase in contractual amount @ Rs. 648/-(3% of minimum of pay band + AGP of the post) for further extended years and no other allied benefits such as senior / selections etc. will be given.

(b) The service of the Contract Appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance / conduct of the contract appointee is not found satisfactory.

(c) Contract Appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated up to one year. No leave of any other kind is admissible to the contract appointee.



He/She shall not be entitled for Medical Re-imburement and LTC etc. only maternity leave will be given as per rules.

(d) Unauthorized absence from the duty without the approval of the controlling Officer shall automatically lead to the termination from the contract. Contract Appointee shall not be entitled for contractual amount for the period of absence from duty.

(e) An official on contract basis who have completed five years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

(f) Selected candidate will have to submit a certificate of his / her fitness from a Government / Registered Medical Practitioner. Woman candidate pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The woman candidate will be re-examined for the fitness from an authorized Medical Officer/Practitioner.

(g) Contract appointee will be entitled to TA/DA, if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counterpart officials at the minimum of pay scale.

(h) Provisions of service rules like FR SR, Leave Rules, GPF Rules, Pension Rules & Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract appointees. They will be entitled for emoluments etc. as detailed in this Column."

46. In consonance with aforesaid R&P Rules, a large number of posts of Assistant Professor in college cadre were filled-in on contract basis by following the procedure prescribed under R&P Rules and after completion of 3 years service on contract basis, these Assistant Professor (College Cadre) were regularized.

47. Similar recruitments were made in various Departments for filling-up various sanctioned regular posts on contract basis and those employees were also regularized after completion of requisite period of contract service as notified by the Government.



48. These employees after regularization claimed benefit of contract service for all service benefits including the seniority.

49. These employees approached the Courts for counting of their past contract service for extension of service benefits on the grounds that the said past contract service was followed by regular service without any interruption, as their appointment on contract was made by following the procedure prescribed under the R&P Rules.

50. In the cases of this set of employees, it was observed by the Court that these contract employees were appointed by following the procedure prescribed for regular appointments and had been selected after competing with all eligible aspirants in an open competition in accordance with the prescribed procedure, and therefore, upon regularization, their past contract service was directed to be counted for all service benefits, like regular employees, including seniority from the first day of their initial appointment.

51. Similar set of employees of Food and Civil Supply Department, who were appointed on contract basis, after insertion of provision for contract appointments in the R&P Rules, approached the Court for service benefits of contract period of service. In this matter, Lekh Ram and others (petitioners in CWP No. 4123 of 2025) had preferred *Original Application No. 3337 of 2016 titled Lekh Ram vs. State*



of HP and others before the Erstwhile H.P. State Administrative Tribunal, Shimla who were though initially appointed on contract during September, 2008/May 2010/November, 2010, but in accordance with procedure prescribed under Recruitment and Promotion Rules, 2007 by an open competition for all eligible desirous candidates through H.P. Service Selection Board. Private respondents therein were promoted on regular basis but before regularization of petitioners therein. The Erstwhile H.P. State Administrative Tribunal allowed the petition vide order dated 25.5.2017, with direction to count entire service of petitioners, including initially on contract and subsequently on regularization, towards seniority along with consequential benefits.

52. The aforesaid order passed in Original Application No. 3337 of 2016 was assailed by one Taj Mohammad by filing CWP No. 2004 of 2017 titled Taj Mohammad vs State of HP as well as Government by filing CWP No. 629 of 2018 titled as State of HP and another vs. Lekh Ram and others. Both these petitions were decided by a Division Bench of this High Court vide judgment dated 3.8.2023 by taking into consideration the various pronouncements of the Supreme Court including ***Direct Recruits Class II Engineering Officer's Association vs. State of Maharashtra and others (1990) 2 SCC 715***. Writ petitions preferred by Taj Mohammad as well as State were dismissed upholding the order passed by the



Erstwhile H.P. State Administrative Tribunal and it was held that the H.P. State Administrative Tribunal had rightly held that the services rendered by the petitioners on contract basis were liable to be counted for the purpose of seniority and consequential benefits after their regularization, as their initial appointment on contract basis was made after following the procedure prescribed under the R&P Rules.

53. The aforesaid judgment was assailed by State of HP in the Supreme Court by filing *SLP (C) No. 25641-25642/2023* titled *State of HP vs. Lekh Ram and others* which was dismissed on 4.12.2023 with observation that after hearing the learned counsel for petitioner for a considerable time, impugned order was found perfectly justified and did not call for interference.

54. Thereafter, Review Petition No. 146 of 2023 titled *Taj Mohammad and others vs. State of HP* preferred by *Taj Mohammad and others* was also dismissed by the Division Bench of this High Court vide judgment dated 6.3.2024.

55. The Government had also preferred Review Petition along with application for condonation of delay CMP(M) No. 428 of 2024 titled *State of HP vs. Lekh Ram and others*, which was also dismissed by the Division Bench on 5.9.2024 alongwith unregistered Review Petition by rejecting the reasons for preferring the Review Petition.



56. Lekh Ram and others had filed Execution Petition (T) No. 79 of 2024 in this High Court. Order dated 5.12.2024 passed in the said Execution Petition (T) No. 79 of 2024 was also assailed by the Government in the Supreme Court by filing SLP (C) No. 3052 of 2025, titled State of HP vs. Lekh Ram and others, which was dismissed on 10.02.2025 with finding that after hearing the learned counsel for petitioner, no reason and ground to interfere with order was seen.

57. Thereafter, seniority was assigned to the petitioners Lekh Ram and others on 10.9.2024 in terms of judgment and they were promoted amongst others on 26.10.2024.

58. Vide order dated 5.12.2024, the Execution Petition preferred by Lekh Ram was also decided by Division Bench of this High Court directing the respondents to consider them for promotion from retrospective date with all benefits as per judgment in their favour.

59. Thereafter, State has notified the assent of Governor on 7th February, 2025 to the Himachal Pradesh Recruitment and Conditions of Service of Government Employees Act, 2024. Thereupon vide order dated 1.3.2025, promotion and posting order of petitioners were withdrawn and vide order dated 15th March, 2025 seniority assigned to them was also withdrawn.



60. Contempt Petition No. 183 of 2023 preferred by some of petitioners in Lekh Ram's case was ordered to be listed along with CWP No. 3361 of 2025 vide order dated 18.3.2025, however, in the meanwhile, restraining the State from initiating any action to the prejudice of petitioners therein.

61. Other similarly situated employees of other Departments including Assistant Professor of College Cadre (petitioners in CWP No. 10559 of 2025) had also approached the Court and in these cases judgments/orders were passed either deciding the writ petitions in their favour or directing the concerned competent Authority to consider and decide their representations for redressal of their grievances in terms of judgment passed in Taj Mohammad's case. Several Assistant Professors (College Cadre) also approached the Court by filing various writ petitions which were decided by different orders of this High Court directing the concerned competent Authority to consider and decided their representations in terms of judgment passed in Taj Mohammad's case.

Government Employees Act/Impugned Act

62. In some cases, benefits were extended to the employees whereas other cases were pending consideration before the competent Authority. In the meanwhile, impugned Act came into force and resultantly, benefits extended to employees in terms and compliance of judgments of the Court were withdrawn or proposed to be withdrawn and



all pending cases including the representations of the Assistant Professors in college cadre were rejected by referring the provisions of impugned Act.

63. In the aforesaid background, the State has enacted The Himachal Pradesh Recruitment and Conditions of Service of Government Employees Act, 2024 (Act No.23 of 2025) with following statement of object and reasons:-

“STATEMENT OF OBJECT AND REASONS

The provision under Article 309 of the Constitution provides for making law for regulating the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the State. It has also been provided that until provisions on this behalf are made under an Act, rules may be made. Accordingly, the recruitment and conditions of service of persons appointed to the public services are being regulated by making the rules. In the recruitment and promotion rules framed in exercise of the powers conferred under the proviso to Article 309 of the Constitution, the appointments on contract basis have also been included. Since, the service conditions of the persons working on contract basis are regulated as per the agreement signed between the parties, the various service rules applicable to the Government employees, do not apply to such persons and as such the contract appointees are not part of public services. On account of the inclusion of contract appointments in the recruitment and promotion rules, these appointments are being treated as appointments to the public services wrongly, which is totally against the intention and purpose of engaging the persons on contract basis. Hence, it is necessary to harmonise the interests of the persons appointed on regular basis to the public services and contract appointees. In case, the



contract appointees are treated as equivalent to the regular employees, it will not only put a huge burden on the State Exchequer, but the settled position will also get unsettled. The contract appointments have been made since 2003 and treating them as equivalent to regular employees will result into revising the seniority lists for the last more than 21 years and many employees may have to be demoted to adjust the contract persons. The persons engaged on a contract basis were aware at the time of their engagement that they were not entitled to seniority and other service benefits for the period of contract service. Such persons had accepted these terms and conditions and signed contracts to this effect. Moreover, most of the regular employees were already in the service and had sufficient experience about the working of the department, which fact cannot be ignored. Therefore, to avoid a huge burden on the State Exchequer and not to unsettle the settled position, the Bill is required to be processed.

This Bill seeks to achieve the aforesaid objectives.

(SUKHVINDER SINGH SUKHU)
Chief Minister

DHARAMSHALA:
THE....., 2024”

64. As the challenge has been laid to all the provisions of the Act and the entire Act is under challenge, it would be relevant to reproduce the Act, which reads as under:-

“Act No. 23 of 2025

**THE HIMACHAL PRADESH RECRUITMENT AND CONDITIONS OF
SERVICE OF GOVERNMENT EMPLOYEES ACT, 2024**

(AS ASSENTED TO BY THE GOVERNOR ON 7TH FEBRUARY, 2025)

AN
ACT



to regulate the recruitment and conditions of service of persons appointed, to public services in connection with the affairs of the State and matters connected therewith or incidental thereto.

WHEREAS, article 309 of the Constitution provides for making law for regulating the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the State;

AND WHEREAS, in the recruitment and promotion rules framed in exercise of the powers conferred under the proviso to article 309 of the Constitution, the appointments on contract basis have also been included;

AND WHEREAS, on account of inclusion of contract appointments in the recruitment and promotions rules, these appointments are being treated as appointments to the public services;

AND WHEREAS, since, the service conditions of the persons working on contract basis are regulated as per the agreement signed between the parties, the various service rules applicable to the Government employees, are not applicable to them and as such the contract appointees are not part of public service;

AND WHEREAS, it is necessary to harmonise the interests of the persons appointed on regular basis to the public services and on contract basis;

NOW THEREFORE, it is expedient to exclude the contract appointments from the recruitment and promotion rules.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Seventy-fifth Year of the Republic of India as follows:—

1. Short title and commencement.—(1) This Act may be called the Himachal Pradesh Recruitment and Conditions of Service of Government Employees Act, 2024.

(2) It shall come into force on such date as the State Government may, by notification in the Rajpatra (e-Gazette), Himachal Pradesh, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “Competent Authority” means an authority, as may be prescribed;
- (b) “Department” means any Department of the Government of Himachal Pradesh;
- (c) “Government” or “State Government” means the Government of Himachal Pradesh;
- (d) “Government employee” means a person appointed to the public services on regular basis;



- (e) “notification” means a notification published in the Rajpatra (e-Gazette), Himachal Pradesh;
- (f) “prescribed” means prescribed by rules made under this Act; and
- (g) “State” means the State of Himachal Pradesh.

3. Method of recruitment.—All recruitments to the public services in the State shall be made by regularisation of services, or by promotion, or in the manner as may be prescribed.

4. Conditions of service.—The conditions of service of a Government employee shall be such, as may be prescribed.

5. Regularisation of persons working on contract basis.—Notwithstanding anything contained in any law, rule, notification, Government order etc. for the time being in force, the services of a person appointed on contract basis or on daily wage basis shall be regularised, in the manner and subject to fulfillment of such terms and conditions, as may be prescribed.

6. Extension of service benefits.—(1) The service benefits available under various Central Civil Services Rules, as applicable in the State, the Himachal Pradesh Civil Services Rules, and other service benefits such as, seniority, increment, promotion, etc. shall be applicable only to the employees appointed on regular basis.

(2) No person working in any Government Department, who has not been appointed as per the provisions of this Act and rules made thereunder on regular basis shall be entitled to service benefits available under the various Central Civil Services Rules, as applicable in the State, the Himachal Pradesh Civil Services Rules and other service benefits such as, seniority, increment, promotion etc.:

Provided that a person shall be entitled for service benefits only from the date of regularisation of his services:

Provided further that a person whose services have been regularised after 12th December, 2003 shall also be entitled to service benefits from the date of regularisation, as if their services have been regularised under the provisions of this Act:

Provided also that the service benefits already extended to the persons for the service other than regular service shall stand withdrawn.

7. Validity of rules and orders, etc.—No rule, regulation, order, direction, or notification made or published and no adjudication, inquiry or act done under any of the provisions of this Act or the rules made thereunder, which is substantially in consonance with the same, shall be deemed to be illegal, void or invalid only by reason of any defect or form.

8. Amendment in Column 10 of the rules.—Notwithstanding anything contained in any judgment, decree or order of any court; law, rule, notification, order, etc., for the period commencing on and from



12th December, 2003 and ending on the date of commencement of this Act, in Column number 10 of the recruitment and promotion rules notified in exercise of powers conferred by proviso to article 309 of the Constitution of India, the words “on contract basis”, or such similar words conveying the same meaning, wherever occurs, the words “by regularisation” shall be deemed to have always been substituted as if this Act had been in force at all material times:

Provided that the appointments, if any, already made on contract basis will be regularised or deemed to have been regularised under the provisions of this Act.

9. Overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law, rule, notification, etc., if any.

10. Power to make rules.—(1) The State Government may, by notification in the Rajpatra (e-Gazatte), Himachal Pradesh; and after previous publication, make rules for carrying out the purposes of this Act.

(2) Every rule made under this section shall be laid, as soon as may be after it is made, before the Legislative Assembly, while it is in session for a total period of not less than ten days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rule or decides that the rules should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

11. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by general or special order, published in the Rajpatra (e-Gazette), Himachal Pradesh, make provision, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the State Legislative Assembly.

12. Repeal and savings.—(1) All rules, notifications, etc. made or notified in exercise of the powers conferred by the proviso to article 309 of the Constitution of India, which are contrary to the provisions of this Act, are hereby repealed.

(2) Without prejudice to the provisions contained in the Himachal Pradesh General Clauses Act, 1968 with respect to repeals, any rule



made under the proviso to article 309 of the Constitution, any notification, rule, order, appointment, decision, direction, approval, authorisation, consent, application, request or thing made, issued, given or done except to the extent that a provision may be inconsistent with the provisions of this Act, continue to be in force and shall have effect as if made under the corresponding provisions of this Act.”

Petitioners’ submissions

65. Mr. Rajnish Maniktala, Senior Advocate for the petitioners has submitted that public employment must conform to the Constitutional scheme and that regular appointments against sanctioned posts must be the rule. While the State may make temporary appointments in genuine exigencies, making temporary or contractual appointments as a norm undermines the Constitution and violates Articles 14 and 16. Section 3 of the Act, which provides regularisation, promotion or any other prescribed mode as modes of recruitment, is in direct conflict with Articles 315 and 320 because it excludes the role of the H.P. Public Service Commission by excluding temporary/ad-hoc/contractual appointments from “public services”. The Act is also attacked being vague and arbitrary as it is silent as to the manner, authority and timing of regularisation and thereby is open to misuse, and it permits executive regularisation excluding the HPPSC, which would defeat equality of opportunity. Further, validity of the legislation has been challenged on the ground that its retrospective applicability is a device to nullify judicial decisions (including Direct Recruits, Lekh Ram, Taj Mohammad and others cases) wherein it has



been held that persons, appointed after competitive selection and continued uninterruptedly till regularisation, are entitled to consequential benefits including seniority. Reliance has been placed on a string of authorities (e.g. *State of Karnataka v. Uma Devi*, *M.L. Kesari*, *Narender Kumar Tiwari*, *Mineral Area Development Authority*), and it has been urged that the Act facilitates exploitation and “back-door” entry contrary to the State's duty to be a Model Employer.

66. Learned Senior Advocate for the petitioners has submitted that the Constitution does not envisage any employment outside the Constitutional Scheme and without following the requirements set down therein. The Act, enacted violating the Constitutional Scheme, is bad in law. There is no legislative competence to enact laws in violation of Constitutional Scheme. Further that not adhering to Constitutional Scheme is violative of Article 14 of Constitution of India. To substantiate the plea reliance has been placed on ***State of Karnataka vs Uma Devi (2006) 4 SCC 1***, paras 3, 4, 11, 12 (quoted supra).

67. Further reliance has been placed on para 11 of judgment of the Apex Court in ***State of Karnataka v. M.L. Kesari, (2010) 9 SCC 247***, which reads as under:-

“11. The object behind the said direction in para 53 of Umadevi is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts



or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/ casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.”

68. Reliance has also been placed on paras 5 and 7 of the Apex Court judgment in ***Narender Kumar Tiwari vs State of Jharkhand, (2018) 8 SCC 238***, which read as under:-

“5. The decision in State of Karnataka v. Umadevi (3), SCC 1 was intended to put a full stop to the somewhat pernicious practice of irregularity appointing daily-wage workers and continuing with them indefinitely. In fact, in para 49 of the Report, it was pointed out that the rule of law requires appointments to be made in a constitutional manner and the State cannot be permitted to perpetuate an irregularity in the matter of public employment which would adversely affect those who could be employed in terms of the constitutional scheme. It is for this reason that the concept of a one-time measure and a cut-off date was introduced in the hope and expectation that the State would cease and



desist from making irregular or illegal appointments and instead make appointments on a regular basis.

6.

7. The purpose and intent of the decision in *State of Karnataka v. Umadevi* (3), SCC 1 was therefore twofold, namely, to prevent irregular or illegal appointments in the future and secondly, to confer a benefit on those who had been irregularly appointed in the past. The fact that the State of Jharkhand continued with the irregular appointments for almost a decade after the decision in *State of Karnataka v. Umadevi* (3), SCC 1 is a clear indication that it believes that it was all right to continue with irregular appointments, and whenever required, terminate the services of the irregularly appointed employees on the ground that they were irregularly appointed. This is nothing but a form of exploitation of the employees by not giving them the benefits of regularisation and by placing the sword of Damocles over their head. This is precisely what *State of Karnataka v. Umadevi* (3), SCC 1 and *State of Karnataka v. M.L. Kesari*, (2010) 9 SCC 247 sought to be avoid.”

69. Mr. Maniktala, Senior Advocate has further placed reliance on paras 31 and 40 of ***Mineral Area Development Authority vs Steel Authority, (2024) 10 SCC 1***, which read as under:-

“31. Part XI of the Constitution deals with the relations between the Union and the States. Article 245 provides that subject to the provisions of the Constitution, Parliament may make laws for the whole or any part of the territory of India and the Legislature of a State may make laws for the whole or any part of the State. The power to enact laws is inherently related to the sovereignty of the Union and State legislatures in their respective fields. While the sovereign legislative powers of Parliament and the State legislatures are plenary, they are subject to well-defined constitutional limitations. The language of Article 245 makes the exercise of legislative powers expressly subject to the provisions of the



Constitution. Therefore, laws made by a legislature may be void not only for the lack of legislative power in respect of the subject-matter, but also for transgressing constitutional limitations. It is the duty of constitutional courts to resolve disputes regarding a breach of constitutional limits by the Union and State legislatures.”

.....

40. With respect to the powers of taxation, Article 265 provides that no tax shall be levied or collected except by authority of law. In *Mafatlal Industries v. Union of India* (1997) 5 SCC 536, a nine-Judge Bench of this Court held that the “law” mentioned under Article 265 refers to a valid law whose validity has to be determined with reference to other provisions in the Constitution. Therefore, with respect to taxation laws particularly, there is a constitutional requirement that the law imposing tax must be in conformity with the provisions of the Constitution, particularly Part III dealing with the fundamental rights. This is also a constitutional limitation because the appropriate legislature has to ensure that the law is in accord with the principles of equality and non-discrimination. Any legislation enacted by the legislature in excess of its constitutional powers is void.”

70. Mr. Maniktala, Senior Advocate has submitted that the Act is totally silent as to how the regularisation of temporary or ad hoc or contractual appointments would take place. As per the Act, the regularisation will take place in the manner and terms & conditions that may be prescribed. Which authority will be responsible for regularisation, is uncertain. Whether it takes place after completion of certain number of years of such service? If it does, it totally excludes role of Public Service Commission and is contrary to Constitutional Scheme. The Act also does not provide any role of HPPSC at any stage of appointment by way of



regularisation or promotion in contrast with Recruitment Rules. The Act is vague, open to misuse/abuse and arbitrary thereby violative of Article 14. To substantiate this plea, reliance has been placed on the judgment of the Apex Court in ***Shreya Singhal vs Union of India, (2015) 5 SCC 1***.

71. It has been submitted by Mr.Maniktala, that the provisions of Act are vague & open to abuse in sense that regularisation of services can be done by any Executive Authority excluding role of HPPSC. It will defeat the Constitutional guarantee of equal protection of laws and equality before law. Articles 14 & 16 will be violated.

72. Mr.Maniktala has further submitted that the impugned Act is not to remove some defect, pointed out in the Judgments of Apex Court or this Court, but it is simply to nullify the effect of judicial decisions by making the law retrospectively, which is impermissible under law.

73. It has been submitted by Mr. Maniktala that the Act nullifies the judgments in Direct Recruits, Lekh Ram, Taj Mohammed cases etc. (*supra*) where it is laid down that if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. In support of this plea learned Senior Advocate has referred



judgments/orders in **CWP 1235 of 2007 decided on 17.9.2013, Bhojia Dental College vs State; CWP 851 of 1996 Narain Singh vs State of HP; (2000) 3 Shim LC 103; and WP (C) 1018 of 2021** decided on 19.11.2025, titled as **Madras Bar Association vs Union of India**.

74. It has also been pleaded by Mr. Maniktala that Act is also not sustainable as Articles 14 and 16 require that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees. The State must be a Model Employer, whereas the impugned Act will facilitate back door entry.

75. Mr.Dilip Sharma, Senior Advocate has also submitted on behalf of petitioners that impugned Act is inconsistent with provisions of Part-III of the Constitution and, therefore, in view of Article 13 of the Constitution, it is *void abinitio*.

76. Article 13 of the Constitution of India reads as under:-

“13. Laws inconsistent with or in derogation of the fundamental rights.---

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.



- (3) In this article, unless the context otherwise requires,-
- (a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;
- (b) "laws in force" includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368."

77. Mr.Dilip Sharma, Senior Advocate has submitted that there are two parts of Article 13, first part deals with law which was in force immediately before the commencement of the Constitution and second limb of this Article deals with laws to be made after commencement of the Constitution, whereby State has been prohibited by stating that State shall not make any law, which takes away or abridges the Rights conferred by Part III of the Constitution with further declaration that any law made in contravention of this clause shall, to the extent of the contravention, be void. He has submitted that law for the purpose of this Article, includes Ordinance, order, bye-laws, rule, regulation, notification, custom or usage, and by giving wide meaning, intention of the framers of the Constitution is clear that in no eventuality any law can be permitted to be violative of Part-III of the Constitution of



India. It has been submitted that Article 14 of the Constitution, propounding the guarantee of equality, is part of Part-III of the Constitution and in numerous pronouncements, the Courts, including the Apex Court, have held that arbitrariness is in negation to the doctrine of equality, and arbitrariness is antithesis to the principle of equality enshrined under Article 14 of the Constitution. He has further submitted that Article 16 of the Constitution, subject to certain exceptions carved out therein, guarantees equal opportunity before making any appointment in a transparent manner.

78. It has been submitted by Mr.Sharma, Senior Advocate that Section 3 of the impugned Act provides entry in public service on regularisation of service, which clearly indicates that person would be appointed/engaged before regularisation of the service, i.e. entry in public service which is nowhere provided in Recruitment and Promotion Rules and, therefore, an extra constitutional mode has been proposed to be devised by the Government to make appointment to the public service without following the mandate of the Constitution, which is definitely violative of Articles 14 and 16 of the Constitution and thus the impugned Act being violative of provisions of Part-III of the Constitution, is *void ab initio* and thus deserves to be declared ultra vires to the Constitution and thereby to be quashed.



79. It has been further submitted by Mr. Dilip Sharma, Senior Advocate that the contract appointees in *Taj Mohammad* and other similar cases were appointed on contract basis, following the Recruitment and Promotion Rules and, therefore, after regularisation, the Courts have rightly extended benefits to them of judgment of ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and others, (1990) 2 SCC 715***, but Section 8 of the impugned Act provides that instead of following Recruitment and Promotion Rules, the appointments shall be made otherwise. It has been further submitted that the candidates appointed either on contract basis or on regular basis, but following the Recruitment and Promotion Rules, facing the same rigour of process, competing with all eligible candidates, who had applied for the post, are no manner different from each other except the nomenclature used by the State as "contract appointee" and "regular appointee" and, therefore, in *Taj Mohammad's* case and other similar cases, the Courts have rightly treated such candidates equal to each other with direction to extension of service benefits of contract service period to such appointees alongwith seniority.

80. It has been further submitted that cut off date, i.e., 12.12.2003, is also arbitrary in nature because prior to 12.12.2003, there was no provision in the Recruitment and Promotion Rules to make



appointment on contract basis, but despite that the candidates appointed prior to 12.12.2003 have been treated as having been appointed differently than the candidates appointed on contract after 12.12.2003, whereas the candidates after insertion of “contract appointment” in Recruitment and Promotion Rules were and have been appointed by following the Recruitment and Promotion Rules, but the State is extending the benefits to such contract employees, who were appointed without following the procedure without any policy, whereas the contract appointees appointed as per policy and/or following the Recruitment and Promotion Rules are being denied the same and thus, impugned Act is intended to justify the illegal and dishonest conduct and practice of the respondents-State, which is not permissible in the Constitutional Scheme.

81. It has been further submitted by Mr. Sharma, Senior Advocate that provisions of entire Act clearly display the intention of the State that appointments to the Government job are firstly to be made dehors of Recruitment and Promotion Rules without following the Constitutional Scheme and thereafter, their entry in public service shall be treated only on regularisation, for which procedure has nowhere been provided, either in the Recruitment and Promotion Rules and in the impugned Act, therefore, the Statute enacted by way of impugned Act is



nullity, being arbitrary which cannot withstand with the settled law of the land and thus, deserves to be quashed and set aside.

82. Mr.Sharma, Senior Advocate has submitted that present enactment is a glaring example of abuse of power of legislature as the Act has been enacted to use as a shield against the pronouncement of the Apex Court, more particularly by applying the law retrospectively.

83. It has been submitted by Mr. Dilip Sharma, Senior Advocate that Court has not given any verdict in favour of contract appointees on its own, but it has interpreted law and no law has been struck down, therefore, there is no question of removing the base of findings, which has caused the State to suffer judgment, but verdict of the Court is in consonance with the Recruitment and Promotion Rules and, therefore, impugned Act, has been enacted with ulterior motive which is clearly evident from the Statement of Object and Reasons for enactment of the Act, whereas such enactment in the given facts and circumstances, is impermissible because benefit of judgment cannot be withdrawn by the Legislature/Government by doing anything indirectly which is not permissible directly.

84. It has been submitted by learned arguing counsel Mr. Sharma that the plea of the State, which is clear from the Object and Reasons, wherein it has been stated that contract appointments are being



treated by the Courts as regular appointments from the date of initial appointment, is also misleading and mischievous because during period of contract appointments, no such benefits have been given by the Courts to the contract appointees, but it is only after regularisation of their services, who were working on contract after appointment by following the Recruitment and Promotion Rules, the Courts, by applying the principle of *Director Recruits case*, have extended the benefit of contract service. It is not a case where any contract appointee has been extended benefit of service before regularisation of the service, but on regularisation of contract appointee, after appointment on contract basis according to Recruitment and Promotion Rules and Policy, followed by regularisation without interruption, the benefits have been extended by the Courts to the contract appointees by interpreting Recruitment and Promotion Rules as well as CCS Pension Rules. It has been submitted that neither Pension Rules have been amended nor any benefits have been given by the Court to any employee before regularisation by the State and, therefore, the impugned Act deserves to be quashed and set aside.

85. It has been submitted by Mr. Dilip Sharma, Senior Advocate that direct recruits are being treated differently, some employees were appointed on regular basis under the same Recruitment and Promotion Rules, whereas some of them were appointed on contract despite being



governed by the same Recruitment and Promotion Rules and, therefore, such contract appointees are not backdoor entrants, but are similarly situated to the candidates who were appointed on regular basis, and the appointments of the contract appointees were and are not illegal, but these were irregular because of conduct of the State and when such irregularity has been removed by regularization of the service, then definitely such appointees are entitled for service benefits in terms of *Direct Recruits-II* case including the seniority, as has been held by the Courts, and to overrule the same, present impugned Act has been enacted and thus petitions deserve to be allowed by quashing impugned Act.

86. Mr.Sharma has submitted that in *Lekh Ram's* case, decided alongwith *Taj Mohammad's* case, there was no different procedure for recruitment/engagement within the Recruitment and Promotion Rules, followed for appointment/engaging employees on contract basis and there was also no difference of duty. Therefore, there is no question of unsettling the settled position because the persons, who are entitled for seniority for their appointment by following the same process, but were and are being deprived from the same by mischievous act of the State by offering appointment on contract, have been held entitled for benefit of



seniority, and therefore, it cannot be a ground for the State to enact the law to avoid the judgment suffered by the State.

87. It has been submitted by learned arguing counsel Mr. Sharma that Preamble of the Act and Statement of Object and Reasons published for enactment of the Act, are clearly indicating that this is a deliberate attempt of the Legislature/Government to override the judgment, whereas affirmation of rights of the employees and benefits extended to them, are findings of the fact which cannot be taken away by enacting a Law to surpass the judgment of the Court. Appointments, though were made by following proper procedure, are being declared illegal. Attempt of the Government to nullify appointments made by following due process, by bringing the impugned Act is definitely illegal.

88. Mr. Sharma has also contended that provisions of impugned Act, especially Section 3 of the Act provides that direct recruitment shall be made as prescribed and entry of such appointees to the public service shall be on regularisation which presupposes pre-regular service and there is no mode provided for pre-regularisation engagement. Therefore, impugned Act is giving complete go-by to the Constitutional Scheme, especially Article 309 of the Constitution.



89. It has also been submitted by Mr. Sharma that legislature cannot nullify the judgment which has attained finality between the parties. The parties shall be governed by principle of resjudicata.

90. To substantiate his plea, Mr. Sharma has referred following paras of the Apex Court judgment in **G.C. Kanungo Vs. State of Orissa, (1995) 5 SCC 96:-**

“8.
.....

4. If the awards of Special Arbitration Tribunals did not merge in the judgments and decrees of Courts, when they were made 'Rules of Court', can it be said that the 1991 Amendment Act which nullifies the judgments and decrees of Courts by which the awards of the Special Arbitration Tribunals, were made 'Rules of Court' is enacted by the Orissa State Legislature by encroaching upon the judicial power of the State exclusively vested in Courts as sentinals of Rule of Law, a basic feature of our Constitution, and hence is unconstitutional?

17. It is true, as argued on behalf of the petitioners, that a Legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid or not binding, for such power if exercised would not be a legislative power exercised by it but a judicial power exercised by it encroaching upon the judicial power of the State exclusively vested in Courts. The said argument advanced, since represents the correct and well-settled position in law, we have thought it unnecessary to refer to the decisions of this Court cited by learned counsel for the petitioners, in that behalf and hence have not referred to them.



18. For the 1991 Amendment Act to become unconstitutional on the ground that it has rendered judgments and decrees of Courts by which the Special Arbitration Tribunals' awards are made "Rules of Court", invalid or ineffective, such judgments and decrees must be decisions of Courts rendered by them in exercise of their judicial power of decision making in respect of the subjects of dispute before them and not where they render judgments and decrees to make the awards of the Special Arbitration Tribunals "Rules of Court" so that they could be made enforceable through the machinery of Courts. Thus, the awards of the Special Arbitration Tribunals when get the super-added seals of Courts for such awards, by the Courts making them 'Rules of Court' by their judgments and decrees, such awards do not get merged in judgments and decrees of Courts so as to make them the decisions of Courts, rendered in exercise of State's judicial power of decision making, as it happens in the causes directly brought before them by way of suits for their decisions. As we have already pointed out, question of claim or cause of a party which gets merged in the award of a Special Arbitration Tribunal, in turn, getting merged in judgment and decree made by Civil Court, for the purpose of making the award a "Rule of Court", so as to make it enforceable, can not arise. What needs to be noted is, that Courts even if render their judgments and decrees for making the awards "Rules of Court", those judgments and decrees cannot substitute their own decisions for the decisions of Special Arbitration Tribunals contained in their awards. This situation makes it clear that power exercised by the Civil Courts in making the awards of Special Arbitration Tribunals 'Rules of Court' by their judgments and decrees is not their judicial power exercised in rendering judgments and decrees, as Civil Courts exercise their powers vested in them for resolving disputes between parties. To be precise, judgments and decrees made by Civil Courts in making the awards of the Special Arbitration Tribunals the "Rules of Court" for the sole purpose of their enforceability through the machinery of Court, cannot make such judgments and decrees of Civil Court, the decisions rendered by Civil Courts in exercise of judicial



power of the State exclusively invested in them under our Constitution. Thus, when the judgments and decrees made by Civil Courts in making the awards of Special Arbitration Tribunals “Rules of Court” are not those judgments and decrees of Courts made in exercise of judicial power of State vested in them under our Constitution, the 1991 Amendment Act when nullifies the judgments and decrees of Courts by which awards of Special Arbitration Tribunals are made “Rules of Court”, cannot be regarded as that enacted by the Orissa State Legislature encroaching upon the judicial powers of State exercisable under our Constitution by Courts as sentinels of Rule of Law, a basic feature of our Constitution. Hence, the 1991 Amendment Act in so far as it nullifies judgments and decrees of Courts by which awards of Special Arbitration Tribunals are made “Rules of Court”, even where they are affirmed by higher Courts, cannot be regarded as that made by the Orissa State Legislature transgressing upon the judicial power of State vested in Courts as would make it unconstitutional.

Point 5

19. If the awards made by Special Arbitration Tribunals which are sought to be nullified by the 1991 Amendment Act enacted by the Orissa State Legislature, are regarded as those made by the Special Arbitration Tribunals in exercise of judicial power of the State conferred upon them, by an enactment of the State Legislature, the 1984 Amendment Act, was it open to the State Legislature to enact the 1991 Amendment Act to simply nullify such awards without encroaching upon the judicial power of the State especially conferred on Special Arbitration Tribunals in the matter of adjudicating upon arbitral disputes not coming before them at the instance of parties, is the point.

20. When awards are made in disputes between the parties by the arbitrators of their choice or arbitrators who may be appointed by the Court on their behalf, as provided for under the Principal Act, such awards, can never be regarded as those made by the arbitrators in exercise of the judicial power of the State conferred upon them. However, if reasoned awards are made by Special Arbitration Tribunals



constituted under a legislative enactment in exercise of the power conferred upon them under such enactment in the matter of adjudicating upon disputes between the parties according to accepted norms of judicial procedure, can such awards be not regarded as those rendered by the arbitration tribunals in exercise of the judicial power of the State conferred upon them under the legislative enactment, is the principal question.

21. As the Objects and Reasons annexed to the Bill on the basis of which the impugned 1991 Amendment Act has been enacted for constituting Special Arbitration Tribunals by the State and for conferring power of adjudicating disputes between parties referred to them, furnishes the historical background in which the Bill was introduced in the State Legislature, it would be useful to reproduce the same thus:

“Section 41-A of the Arbitration Act, 1940 as it applies to the State of Orissa was amended with effect from 26.3.1983 by the Arbitration (Orissa Amendment) Act 1984, whereby, a proviso to sub-section (1) of the said section was inserted to the effect that reference to arbitration of disputes specified in the said sub-section involving claims of rupees one crore or above may be made to a Special Arbitration Tribunal comprising one or more retired High Court Judges, as may be constituted by the State Government from time to time. In the course of operation of this proviso it was experienced that a tendency has developed among the Contractors to seek constitution of Special Arbitration Tribunals by inflating their claims to rupees one crore and above, inter alia, to avoid depositing the security money required for reference to the Arbitration Tribunal. Therefore, the said proviso was deleted with effect from 25.1.1990 by the Arbitration (Orissa Amendment) Act 1989 (Orissa Act 1 of 1990). While so deleting the proviso, the cases which were pending before the Special Arbitration Tribunal for disposal, whereas the cases in which award was already passed were left unaffected in view of prospective operation of the amendment.



Later it came to the notice of the Government that in some of the cases, in which award was made by a Special Arbitration Tribunal, not only the Contractors inflated their claims abnormally but also the awards passed in respect thereof are surprisingly high and unreasonable. This is a matter of serious concern for the Government since the amounts involved in such awards, besides being unreasonable and assessed improperly and inaccurately for the reason that the one man Special Arbitration Tribunals were not assisted by any Technical and Finance members as in the case of the Arbitration Tribunal, put a heavy and undesirable burden on the public exchequer to which the Government, in view of its serious responsibility to the people as well as the obligation to the Constitution cannot close their eyes.

Accordingly, it is considered necessary in the public interest to make the provision relating to reference of disputes to the Special Arbitration Tribunals during the period of operation of the proviso to sub-section (1) of section 41-A i.e., between 26.3.1983 and 24.1.1994, subject to one more condition so that any reference to arbitration made to a Special Arbitration Tribunal during the said period inconsistently with the proposed new condition shall be invalid and, in every such case, a fresh reference shall be made to the Arbitration Tribunal within the stipulated period for adjudication of the dispute.

For the above purpose, the Arbitration (Orissa Amendment) Ordinance, 1991 (Orissa Ordinance No. 7 of 1991) was Ordinance, 1991 was promulgated to amend section 41-A of the Arbitration Act, 1940 as applicable to the State of Orissa and necessary consequential provision was made in such Ordinance. The said Ordinance is required to be replaced by an Act of the State Legislature.

The Bill seeks to achieve the above object."



22. What are the Special Arbitration Tribunals, adverted to in the above Objects and Reasons of the Bill, the awards of which are sought to be invalidated by the Amendment Act to be made pursuant to that Bill requires mention here for understanding as to how they have come into existence, as to what is the power exercised by them in resolving the disputes referred to them and as to how they are resolved by making the award. Under the 1982 Amendment Act, a Special provision had been made empowering the State Government to constitute Arbitration Tribunals consisting of three members and referring certain disputes for decision by those Arbitration Tribunals. When 1984 Amendment Act was enacted by the State Legislature, it provided for referring certain disputes involving claims of Rs. 1 crore or above, to Special Arbitration Tribunals to be constituted by the State Government comprised of one or more retired High Court Judges, from time to time. It also provided for transfer of disputes involving claims of Rs. 1 crore or above pending before the Arbitration Tribunals constituted under the 1982 Amendment Act to the Special Arbitration Tribunal to be constituted by the State Government under 1984 Amendment Act. One of the provisions in the 1984 Amendment Act read thus:

"The business of the Arbitration Tribunal or Special Arbitration Tribunal shall be conducted in such manner as the Tribunal may determine and awards made and signed shall be supported by reasons."

23. From what we have stated hereinbefore, it becomes obvious that the Special Arbitration Tribunals had been constituted by the State Government in accordance with the 1984 Amendment Act to adjudicate upon or decide the disputes referred to them under that Act, by making reasoned awards. The power of deciding the disputes conferred upon those Special Tribunals was not conferred upon them by the parties to the disputes. Instead such power had been conferred upon them by the State under the provisions of the 1984 Amendment Act. Such Arbitration Tribunals had to make the reasoned awards because they were enjoined to do so under that Amendment Act itself. Though the Special



Arbitration Tribunals themselves are entitled under the provisions of the said Amendment Act to evolve their own procedure for conducting its proceedings, ordinary norms of judicial procedure had to be adopted by them so as to conform to the principles of natural justice being Tribunals constituted under a legislative enactment with power conferred upon them to adjudicate upon disputes between parties.

24. Thus, when under the 1984 Amendment Act, the Special Arbitration Tribunals had been constituted by the State Government and were conferred by that enactment the power of adjudicating upon the disputes between parties referred to them, conforming to the normal judicial procedure and by making reasoned awards, the awards so made by Special Arbitration Tribunals, we cannot but hold are those made in exercise of State's judicial power conferred upon them under the 1984 Amendment Act for deciding the disputes between the parties by having recourse to normal judicial process.

25. No doubt, by the 1989 Amendment Act, referred to in the Objects and Reasons of the Bill, the provision relating to constitution of Special Arbitration Tribunals introduced in the Principal Act by the 1984 Amendment Act was deleted and a provision was made therein for transfer of matters pending consideration before such Special Arbitration Tribunals to the Arbitration Tribunals constituted under the 1982 Amendment Act and decision to be made thereon. But, for getting rid of the awards which had already been made by the Special Arbitration Tribunals referred for their decision under the 1984 Amendment Act, by the State Government, 1991 Ordinance was promulgated by the State and the same is subsequently replaced by the 1991 Amendment Act.

26. The 1991 Amendment Act which is reproduced by us earlier contains hardly four Sections. Out of the Sections 2 and 3 alone are material. Insofar as Section 2 is concerned by its deemed retrospective operation between 26th day of March 1983 and 24th day of February, 1990 forbids the making of reference under sub-section (1) of Section 42-A of the Principal Act, involving a claim of Rs.1 crore or more unless



the amount agreed to by the parties in the Contract exceeds the amount of such claim.

27. Then, coming to Section 3 it declares that all the awards made by the Special Arbitration Tribunals on references made to it under the 1984 Amendment Act during the period adverted to under Section 2 invalid even where those awards were made 'Rules of Court', i.e., judgments and decrees of Courts. Further, that Section requires the making of fresh references to arbitration of such dispute to the Arbitration Tribunals constituted under the 1982 Amendment Act. Thus, Sections 2 and 3 of the 1991 Amendment Act seek to nullify the awards of Special Arbitration Tribunals, made on disputes referred to them from the 26th day of March, 1983 to 24th day of February, 1990 under the 1984 Amendment Act becomes obvious.

28. Thus, the impugned 1991 Amendment Act seeks to nullify the awards made by the Special Arbitration Tribunals constituted under the 1984 Amendment Act, in exercise of the power conferred upon them by that Act itself. When, the awards made under the 1984 Amendment Act by the Special Arbitration Tribunals in exercise of the State judicial power conferred upon them which cannot be regarded as those merged in Rules of Court or judgments and decrees of Courts, are sought to be nullified by 1991 Amendment Act, it admits of no doubt that legislative power of the State Legislature is used by enacting impugned 1991 Amendment Act to nullify or abrogate the awards of the Special Arbitration Tribunals by arrogating to itself, a judicial power. [See Re: Cauvery Water Disputes Tribunal (1991) Supp. 2 SCR 497]. From this, it follows that the State Legislature by enacting the 1991 Amendment Act has encroached upon the judicial power entrusted to judicial authority resulting in infringement of a basic feature of the Constitution the Rule of Law. Thus, when the 1991 Amendment Act nullifies the awards of the Special Arbitration Tribunals, made in exercise of the judicial power conferred upon them under the 1984 Amendment Act, by encroaching upon the judicial power of the State, we have no option but to declare it as unconstitutional having regard to the well settled and



undisputed legal position that a legislature has no legislative power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid and not binding, for such powers, if exercised, would not be legislative power exercised by it, but judicial power exercised by it encroaching upon the judicial power of the State vested in a judicial Tribunal as the Special Arbitration Tribunals under 1984 Amendment Act. Moreover, where the arbitral awards sought to be nullified under the 1991 Amendment Act are those made by Special Arbitration Tribunals constituted by the State itself under 1984 Amendment Act to decide arbitral disputes to which State was a party, it cannot be permitted to undo such arbitral awards which have gone against it, by having recourse to its legislative power for grant of such permission as could result in allowing the State, if nothing else, abuse of its power of legislation.”

91. Further reliance has been placed on paras 12, 15 and 20 of judgment in **S.R. Bhagwat and others Vs. State of Mysore, (1995) 6 SCC 16**, which read as under:-

“12. It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance over-rules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect. We may only refer to two of these judgments.

...

....

...

15. We may note at the very outset that in the present case the High Court had not struck down any legislation which was sought to be re-enacted after removing any defect retrospectively by the impugned provisions. This is a case where on interpretation of existing law, the High Court had given certain benefits to the petitioners. That order of



mandamus was sought to be nullified by the enactment of the impugned provisions in a new statute. This in our view would be clearly impermissible legislative exercise.

.....

.....

.....

20. We, therefore, strike down Section 11 sub-section (2) as unconstitutional, illegal and void. So far as the underlined impugned portions of Section 4 sub-sections (2), (3) and (8) are concerned, they clearly conflict with the binding direction issued by the Division Bench of the High Court against the respondent-State and in favour of the petitioners. Once respondent-State had suffered the mandamus to give consequential financial benefits to the allottees like the petitioners on the basis of the deemed promotions such binding direction about payment of consequential monetary benefits cannot be nullified by the impugned provisions of Section 4. Therefore, the underlined portions of sub-sections (2), (3) and (8) of Section 4 will have to be read down in the light of orders of the court which have become final against the respondent-State and in so far as these provisions are inconsistent with these final orders containing such directions of judicial authorities and competent courts, these impugned provisions of Section 4 have to give way and to the extent of such inconsistency must be treated to be inoperative and ineffective. Accordingly the aforesaid provisions are read down by observing that the statutory provisions contained in sub-sections (2), (3) and (8) of Section 4 providing that such persons who have been given deemed promotions shall not be entitled to any arrears for the period prior to the date of their actual promotion, shall not apply in cases where directions to the contrary of competent courts against the respondent-State have become final."

92. Reliance has also been placed on paras 122 of **Secretary to Government of Kerala Irrigation Department and others Vs. James Varghese and others, (2022) 9 SCC 593**, which read as under:-



“122. A Constitution Bench of this Court in the case of *State of T.N. v. State of Kerala*, (2014) 12 SCC 696, after an elaborate survey of all the earlier judgments, has summed up the Law on “separation of powers doctrine” under the Constitution of India, as under: (SCC pp. 770-772, para 126)

“Summary of separation of powers doctrine under the Indian Constitution

....

.....

....

126.6 If the legislature has the power over the subject-matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law.

126.7. The law enacted by the legislature may apparently seem to be within its competence but yet in substance if it is shown as an attempt to interfere with the judicial process, such law may be invalidated being in breach of doctrine of separation of powers. In such situation, the legal effect of the law on a judgment or a judicial proceeding must be examined closely, having regard to legislative prescription or direction. The questions to be asked are:

- (i) Does the legislative prescription or legislative direction interfere with the judicial functions?
- (ii) Is the legislation targeted at the decided case or whether impugned law requires its application to a case already finally decided?
- (iii) What are the terms of law; the issues with which it deals and the nature of the judgment that has attained finality?

If the answer to Questions (i) and (ii) is in the affirmative and the consideration of aspects noted in Question (iii) sufficiently



establishes that the impugned law interferes with the judicial functions, the Court may declare the law unconstitutional.”

93. Mr. Sharma has also placed reliance on para 13 of ***Direct Recruit Class II Engineering Officers’ Association Vs. State of Maharashtra and others, (1990) 2 SCC 715***, which reads as under:-

“13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan's case was unsound and fit to be over-ruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter seniority has to conform to the principles of equality spelt out by articles 1 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appoint- ee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is



made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary. This principle has been followed in innumerable cases and has been further elaborated by this Court in several judgments including those in *Baleshwar Dass v. State of U.P. and others*, (1980) 4 SCC 226, and *Delhi Water Supply and Sewage Disposal Committee and others v. R.K. Kashyap*, 1989 Supp. 1 SCC 194, with which we are in agreement. In *Narender Chadha and others v. Union of India* (1986) 1 SCC 188, the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service."

94. Further reliance has been placed on para 22 of judgment of the Apex Court in ***Mahendra Lal Jaini Vs. State of Uttar Pradesh and others*, AIR (5) 1963, Supreme Court, 1019**, which reads as under:-

"22. Art. 13(2) on the other hand begins with an injunction to the State not to make a law which takes away or abridges the rights conferred by Part III. There is thus a constitutional prohibition to the State against making laws taking away or abridging fundamental rights. The legislative power of Parliament and the Legislatures of States under Art. 245 is subject to the other provisions of the Constitution and therefore subject to Art. 13(2), which specifically prohibits the State from making any law taking away or abridging the fundamental rights. Therefore, it seems to us that the prohibition contained in Art. 13(2) makes the State as much incompetent to make a law taking away or



abridging the fundamental rights as it would be where law is made against the distribution of powers contained in the Seventh Schedule to the Constitution between Parliament and the Legislature of a State. Further Art. 13(2) provides that the law shall be void to the extent of the contravention. Now contravention in the context takes place only once when the law is made, for the contravention is of the prohibition to make any law which takes away or abridges the fundamental rights. There is no question of the contravention of Art. 13(2) being a continuing matter. Therefore, where there is a question of a post-Constitution law, there is a prohibition against the State from taking away or abridging fundamental rights and there is a further provision that if the prohibition is contravened the law shall be void to the extent of the contravention. In view of this clear provision it must be held that unlike a law covered by Art. 13(1) which was valid when made, the law made in contravention of the prohibition contained in Art. 13 (2) is a stillborn law either wholly or partially depending upon the extent of the contravention. Such a law is dead from the beginning and there can be no question of its revival under the doctrine of eclipse. A plain reading therefore of the words in Art. 13(1) and Art. 13(2) brings out a clear distinction between the two. Art. 13(1) declares such pre-Constitution laws as are inconsistent with fundamental rights void. Art. 13 (2) consists of two parts; the first part imposes an inhibition on the power of the State to make a law contravening fundamental rights, and the second part, which is merely a consequential one, mentions the effect of the breach. Now what the doctrine of eclipse can revive is the operation of a law which was operative until the Constitution came into force and had since then become inoperative either wholly or partially; it cannot confer power on the State to enact a law in breach of Art. 13(2) which would be the effect of the application of the doctrine of eclipse to post-Constitution laws. Therefore, in the case of Art. 13(1) which applies to existing law, the doctrine of eclipse is applicable as laid down in *Bhikuji Narain Dhakras v. State of M.P.* AIR 1955 SC 781; but in the case of a law made after the Constitution came into force, it is Art. 13(2) which applies



and the effect of that is what we have already indicated and which was indicated by this Court as far back as *Saghir Ahmad v. State of U.P.*, AIR 1954 SC 728)."

95. Reliance has also been placed on paras 43 and 46 of the judgment of the Apex Court in ***K.K. Poonacha Vs. State of Karnataka and others, (2010) 9 SCC 671***, which read as under:-

"43. The Constitution Bench of this Court in *Mahendra Lal Jaini v. State of U.P.*, AIR 1963 SC 1019 reviewed various precedents and observed that the doctrine of eclipse will apply to pre-Constitution laws which are governed by Article 13(1) and would not apply to post-Constitution laws which are governed by Article 13(2). The Court rejected the argument that there should be no difference in the matter of the application of doctrine of eclipse to both the clauses of Article 13 and observed: (AIR pp. 1029-30, para 22)"

"22. Art. 13(2) on the other hand begins with an injunction to the State not to make a law which takes away or abridges the rights conferred by Part III. There is thus a constitutional prohibition to the State against making laws taking away or abridging fundamental rights. The legislative power of Parliament and the Legislatures of States under Art. 245 is subject to the other provisions of the Constitution and therefore subject to Art. 13(2), which specifically prohibits the State from making any law taking away or abridging the fundamental rights. Therefore, it seems to us that the prohibition contained in Art. 13(2) makes the State as much incompetent to make a law taking away or abridging the fundamental rights as it would be where law is made against the distribution of powers contained in the Seventh Schedule to the Constitution between Parliament and the Legislature of a State. Further Art. 13(2) provides that the law shall be void to the extent of the contravention. Now contravention in the context takes place only once when the law is made, for the contravention is of



the prohibition to make any law which takes away or abridges the fundamental rights. There is no question of the contravention of Art. 13(2) being a continuing matter. *Therefore, where there is a question of a post-Constitution law, there is a prohibition against the State from taking away or abridging fundamental rights and there is a further provision that if the prohibition is contravened the law shall be void to the extent of the contravention. In view of this clear provision it must be held that unlike a law covered by Art. 13(1) which was valid when made, the law made in contravention of the prohibition contained in Art. 13 (2) is a still-born law either wholly or partially depending upon the extent of the contravention. Such a law is dead from the beginning and there can be no question of its revival under the doctrine of eclipse.* A plain reading therefore of the words in Art. 13(1) and Art. 13(2) brings out a clear distinction between the two. Art. 13(1) declares such pre-Constitution laws as are inconsistent with fundamental rights void. Art. 13 (2) consists of two parts; the first part imposes an inhibition on the power of the State to make a law contravening fundamental rights, and the second part, which is merely a consequential one, mentions the effect of the breach. Now what the doctrine of eclipse can revive is the operation of a law which was operative until the Constitution came into force and had since then become inoperative either wholly or partially; it cannot confer power on the State to enact a law in breach of Art. 13(2) which would be the effect of the application of the doctrine of eclipse to post-Constitution laws. Therefore, in the case of Art. 13(1) which would be the effect of the application of the doctrine of eclipse to post-Constitution laws. Therefore, in the case of Art. 13(1) which applies to existing law, the doctrine of eclipse is applicable as laid down in *Bhikuji Narain Dhakras v. State of M.P. AIR 1955 SC 781*; but in the case of a law made after the Constitution came into force, it is Art. 13(2) which applies and the effect of that is what we have



already indicated and which was indicated by this Court as far back as *Saghir Ahmad v. State of U.P.*, AIR 1954 SC 728)."

(emphasis supplied)

96. Further reliance has been placed on para 61 of the judgment of Apex Court in ***Central Bureau of Investigation Vs. R.K. Kishore, (2023) 15 SCC 339***, which reads as under:-

"61. Under Article 13(1) all existing laws prior to the commencement of the Constitution, insofar as they are inconsistent with the provisions of Part-III, would be void to the extent of inconsistency. Further, according to Article 13(2), the State is prohibited from making any law which takes away or abridges the rights conferred by Part-III and further that any law made in contravention of this clause would be void to the extent of contravention. Article 13(2) prohibits making of any law so it would be relating to laws made post commencement of the Constitution, like the case at hand. In the present case, as it has been held that Section 6A of DSPE Act is violative of Article 14 of PartIII of the Constitution, as such, the same would be void. The word "void" has been interpreted in a number of judgments of this Court beginning 1951 till recently and it has been given different nomenclature such as "non est", "void ab initio" "stillborn" and "unenforceable"."

97. Mr. Sharma, Senior Advocate has also referred para 45 of ***Secretary, State of Karnataka and others Vs. Umadevi (3) and others, (2006) 4 SCC 1***, which has already been reproduced hereinbefore.



98. It has been submitted by Mr. Adarsh Vashisht, Advocate on behalf of petitioners that before regularisation, the contract appointee has no right for counting service benefits for pensionary benefits, however after regularisation the said right accrues.

99. It has been submitted by Mr. Adarsh Vashisht, Advocate that in cases being represented by him, no benefit of seniority has been extended to the contract appointees, who were appointed in consonance with policy framed by the State in the year 1996 and whose services were regularized after considerable period of more than 8 years and, therefore, plea of respondents-State that benefits, extended to these petitioners, are going to unsettle the settled position on account of revision of seniority is unfounded and baseless because no benefits of seniority have been extended to the petitioners being represented by him. It has been further submitted that claim of all these petitioners have attained finality after dismissal of SLPs preferred by the State against these employees and, therefore, verdict of the Court cannot be rendered useless by enacting law.

100. It has also been submitted that State had appointed large number of candidates as Para Teachers and after completion of requisite period of service, their services were converted into contract employees in the year 2015 and thereafter, giving benefit of regularisation of contract



service policy, they were regularized in the year 2018. In all these cases, State has accepted the claim of the employees for counting their service for pensionary benefits and increments, and judgments in these cases have been implemented by the State. Therefore, State is treating similarly situated employees with different yardsticks.

101. To substantiate his plea, Mr. Adarsh Vashisht, Advocate has placed reliance on para 47 of judgment of Apex Court in ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and others, (1990) 2 SCC 715***, wherein it has been held as under:-

“47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

*

*

*”

102. Mr. Adarsh Vashisht, Advocate has further submitted that in absence of provisions for contract appointment made by following the prescribed procedure in terms of Recruitment and Promotion Rules, the contract appointments has to be treated as regular from the first date of



initial appointment and such employees are entitled for all service benefits including seniority.

103. Mr. Abhimanyu Rathore, Advocate has submitted that provisions of the Act are in conflict with object and aims of the Act. It has been stated, in Object and Reasons of the Act for enactment of the Act, that impugned Act is for harmonizing the interests of regular employees and contract employees, whereas Section 6 of the Act states that service benefits shall be applicable only to the employees appointed on regular basis. It has been further submitted that Section 8 removes the words “on contract basis” through “by regularisation” and in such eventuality all persons appointed on contract basis are to be treated to have been appointed on regular basis because on removal of words of contract basis with retrospective effect, large number of employees appointed on contract basis shall not be considered in service, despite having been appointed through following due process prescribed under Recruitment and Promotion Rules, and further that word “by regularisation” itself indicates that there shall be appointment before regularisation, but except stating in Section 3 that recruitment to the public service in future shall be in the manner as may be prescribed, nothing has been prescribed till date after enactment of the Act and, therefore, there is inherent defect in the Act, which mandates the appointment to the public



service through backdoor entry, but not in consonance with the Recruitment and Promotion Rules framed under Article 309 of the Constitution of India. Therefore, it has been submitted that the Act ousts Public Service Commission from the recruitment process to the public service, which is violative of Constitutional Scheme and mandate and thus the Act is liable to be struck down. There is nothing in the Act that how initial appointment is to be made. The entry in the public service by regularization can only be possible if prior to regularisation person has been appointed.

104. It has been submitted by Mr. Rathore that Section 5 takes away claim of contract service and Section 6 provides that regularisation is to be related to initial appointment, but these provisions do not speak about the mode and method of initial entry in the public service before regularisation. The provisions for extending benefit only after regularisation infringes right to claim benefit of past service, which is exploitative in nature and change in nomenclature, by stating that entry in public service shall be according to mode as prescribed, makes no difference and change. The act of the State, making appointments dehors the Rules through backdoor entry, that too on exploitative terms is illegal because regularisation of appointment is only preceded by irregular appointment and in case initial appointment is regular, i.e. in accordance



with Recruitment and Promotion Rules, then it cannot be declared to be irregular and in case the State intends to make irregular appointments, then it is against the mandate of the Constitution. Further that Section 8 render the judgment, passed by the Court, as nullity. The Legislature has a power to reverse the law, but not the judicial pronouncement which has attained finality, at least between the parties. The State only can cure the defect, but the judgment attained finality between the parties on the basis of peculiar facts and circumstances, cannot be superseded or overruled or bypassed by the Legislature. Such an act is against the independence of Judiciary and mandate of the Constitution and is also violative of basic structure of the Constitution. The impugned Act is declaring the appointment, made in consonance with Article 309 of the Constitution, as not regular, whereas in present case and other similar cases, appointments were made by following due process prescribed in Recruitment and Promotion Rules framed in consonance with the Constitution mandate and Scheme, and, therefore, impugned Act is liable to be struck down.

105. Referring para 14 of the Apex Court judgment in ***Union of India and others Vs. Tushar Ranjan Mohanty and others, (1994) 5 SCC 450***, it has been submitted by Mr.Abhimanyu Rathore, Advocate that respondents-State cannot use the power of Legislature to justify arbitrary,



illegal and unconstitutional act of Executive, as in present case, by enacting the impugned Act, intention of the respondents-State is to deprive the contractual appointees of an accrued right vested in them. Legislature cannot render the said right and relief obtained from the Court, nugatory by enacting retrospective legislation.

106. With submission that there cannot be defiance to the decision of the Judicial Authority, Mr. Abhimanyu Rathore, Advocate has referred following para 25 of the Apex Court judgment in ***Medical Council of India vs. State of Kerala and others, (2019) 13 SCC 185:-***

“25. In *Cauvery Water Disputes Tribunal, In re, 1993 Supp (1) SCC 96 (2)*, a Constitution Bench of this Court has observed that it is open to change the law in general by changing the basis but it is not open to set aside an individual decision inter parties and thus affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power. This Court quashed the Ordinance and observed that by issuing the Ordinance the State of Karnataka has sought to take the law in its own hand and tried to be above the law. Such an act is an open invitation to lawlessness and anarchy. There cannot be defiance to the decision of the judicial authorities.”

107. To support the contention that State Legislature cannot encroach upon judicial field and try to overrule the judicial decision binding between the parties, paras 11 and 12 of judgment of the Apex Court in ***S.R. Bhagwat and others Vs. State of Mysore, (1995) 6 SCC 16***, have been referred which are as under:-



“11. Having given our anxious consideration to rival contentions we have reached the conclusion that the impugned provision of the Act, namely, Section 11 Sub-section (2) is clearly ultra vires the powers of the State Legislature as it encroaches upon the judicial field and tries to over-rule the judicial decision binding between the parties and consequently the relevant sub-sections of Section 4 which are also in challenge will have to be read down as indicated hereinafter in this judgment. Before we advert to the relevant provisions of the impugned Karnataka Act it will be appropriate to keep in view the settled legal position governing the present controversy.

12. It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance over-rules such judgment and is not in the realm of a legislative enactment which displaces the basis or foundation of the judgment and uniformly applies to a class of persons concerned with the entire subject sought to be covered by such an enactment having retrospective effect. We may only refer to two of these judgments.”

Respondents-State's submissions

108. Mr. Paramjit Singh Patwalia, Senior Advocate appearing on behalf of State defending the validity of impugned Act, has submitted that there is always a presumption in favour of legality, constitutionality and validity of a law enacted by the Legislature and an enactment can be struck down only when Legislature has no competence to enact the statute and/or it violates fundamental rights guaranteed in Part-III of the Constitution or any other Constitutional provisions. He has further submitted that a statute enacted by exercising the power conferred upon



the Legislature without violating any restriction on that power, has to be upheld irrespective of any other opinion of the Court. It has been contended that Legislature has power to nullify the effect of the judgment of the Court by removing the base of the judgment even by enforcing such enactment retrospectively, with further submission that unless there is manifest arbitrariness apparent on the face of the enactment, the Court should not strike down an enactment as Legislature represents the 'Will' of the people of the State and the Court must make every effort to uphold the constitutional validity of the statute even if it requires to give a strained construction or narrowing down the scope. It has been further submitted that in case some provisions warrant interference of the Court, in such eventuality the Court should not strike down the entire statute, but should make an effort to give harmonious consideration to the provisions of the Act and if it is so inevitable, to render such defective provision unconstitutional, but not the Act as a whole.

109. Mr. Patwalia has submitted that prior to 12.12.2003 there was no provision in Recruitment and Promotion Rules framed for recruitment of employees in different cadres in various Departments in the Himachal Pradesh for making appointments on contract basis, and a decision of the State was communicated vide communication No. PER(AP)C-B (19) 2/98-Part-II dated 12th December, 2003 by Department



of Personnel (AP-III), Government of Himachal Pradesh on behalf of Chief Secretary to the Government of Himachal Pradesh to all the Secretaries to the Government of Himachal Pradesh, all Heads of Department in Himachal Pradesh, all Divisional Commissioners in Himachal Pradesh and all Deputy Commissioners in Himachal Pradesh, conveying that it had been decided by the Government that the mode of recruitment by way of “contract recruitment” may also be prescribed in addition to other mode of recruitment in all Recruitment and Promotion Rules with request that all existing Recruitment and Promotion Rules where the mode of direct recruitment of the post had been prescribed, the same may be amended by amending the provision of Col. No. 10 of the Recruitment and Promotion Rules by providing mode as “By direct recruitment or on Contract basis.”

110. According to Mr.Patwalia there was financial constrain being faced by the State and, therefore, Government had taken a decision to make appointments on contract basis instead of direct recruitment at initial stage with policy of regularisation after 6 years of contract and in squeal to aforesaid communication Column No. 10 of Recruitment and Promotion Rules was amended and Column No. 15 A was added with method of recruitment on contract basis, terms and conditions of such contract service and performa of the contract to be signed by the



appointee at the time of his initial appointment, with the Government of Himachal Pradesh through Head of Office/Head of Department.

111. In order to substantiate the aforesaid plea letters/ correspondence, communicating the decision of the Government in regard to regularisation of contract appointees, bearing No. PER(AP)-C-B (2)-1/99 dated 9th September, 2008 issued on behalf of Government of Himachal Pradesh by Secretary Personnel to the Government of Himachal Pradesh and similar communications dated 29th August, 2009 and 7th May 2010 have been referred on behalf of State, which communicated the decision of the Government to regularize service of all contract appointees in all Departments, who had completed 8 years of continuous service as on 1st March, 2009 and 31st March, 2010.

112. Communications dated 17th August, 2012, 31st August, 2012, 4th April, 2013 and 28th June, 2014 referred on behalf of respondents-State, depict that period of contract to regularize the service of contract appointees was decreased from 8 years to 6 years.

113. Vide communications dated 7th May, 2015 and 22nd April, 2016 period of contract service required for regularisation was reduced from 6 years to 5 years contract service as on 31.3.2015.



114. Vide communication dated 4th May, 2017 the requisite service for regularisation of contract employee was reduced to 3 years and the same period of 3 years was made compulsory vide communications dated 11th May, 2018, 21st February, 2019 and 22nd April, 2019. The period for regularisation was reduced to 2 years was communicated vide letters dated 8th March, 2022, 30th April, 2023, 2nd December, 2023, 8th April, 2025 and 25th April, 2025.

115. Copy of Recruitment and Promotion Rules with amended Column No. 10 and 15 A has also been produced by the State as sample, wherein method of recruitment and terms and conditions of promotion has been provided.

116. Referring various terms and conditions of the Policy circulated by the State and proforma of the contract inserted in Recruitment and Promotion Rules in provision of 15 A, Mr.Patwalia has submitted that these terms and conditions of contract service make contract service different and distinct appointment and employment other than the persons appointed regularly on either post. Photocopy of Himachal Pradesh, Department of Personnel, Clerk, Class-III (Non-Gazetted), Ministerial Services, Common Recruitment and Promotion



Rules, 2017, has been placed on record, which includes amended Column 10 providing that 70% by direct recruitment on regular basis or by recruitment on contract basis, as the case may be. These Rules also contain newly added Rule 15-A alongwith terms and conditions of the contract appointment which is similar to the Recruitment and Promotion Rules of Assistant Professor referred supra.

117. Referring aforesaid documents, it has been advocated by Mr.Patwalia that contract service was outside and beyond the scope of Service Rules. The terms and conditions for appointment on contract, pay scale/pay pattern, entitlement for leave and in-applicability of medical reimbursement, LTC, EPF, GPF Rules and other provisions applicable to the regular appointees are different than regular appointees. It has been contended that even maternity leave to contract appointee is also available only for 12 weeks and contract service was liable to be terminated at any point of time for unauthorized absence from the duty without approval of Controlling Officer and contract services were renewable from year to year basis and it was not a permanent contract.

118. To substantiate the aforesaid plea, copy of Notification dated 31st May, 2010 offering appointment as Lecturers in Commerce (College Cadre) on contract basis, subject to terms and conditions indicated in the Notification, has also been relied alongwith Recruitment and Promotion



Rules with amended Rules 10 and 15-A as well as a copy of contract signed between appointee and the State. By referring terms and conditions of the Notification dated 31st May, 2010, it has been stated that contract appointees were not entitled to claim regularization as a matter of right and it was understanding of Rules that service benefits will be extendable to an employee only after date of regularisation, but not from a date before that, and intention and understanding of the Government was and is very much clear from the provisions made for contract appointment in the Recruitment and Promotion Rules by taking a policy decision on account of financial constrain, but the Courts by passing various judgments, especially judgment dated 3.8.2023 passed in *CWP No. 2004 of 2017*, titled as *Taj Mohammad and others Vs. State of H.P.* alongwith *CWP No. 629 of 2018*, titled as *State of H.P. & Another Vs. Lekh Ram and others*, has extended all service benefits including seniority, from the date of initial appointment on contract basis, to the contract appointees alongwith their regular service and thereafter various other judgments have been passed by the Court on the same line, whereas State on account of aforesaid judgments is facing problem and the base of the judgment is the provision made in the Recruitment and Promotion Rules for contract appointment. It has been submitted by Mr.Patwalia that the State despite sharing its problem with the Court, did



not get any satisfactory solution and, therefore, to alter the base of the judgment, State has enacted the impugned Act to resolve the problem by removing the very basis of the judgment in Taj Mohammad's case.

119. It has been submitted that policy of regularisation, orders of regularisation, appointment orders at the time of contract appointment as well as regularisation, were very clear that no benefit of contract service was available to the contract appointees on regularisation. But for extension of such benefits, including seniority, to candidates appointed on contract basis, after regularisation of contract appointees, has consequently impacted seniority of candidate appointed on regular basis prior to regularisation of contract appointees. It has been submitted that mandamus in Direct Recruit case has been wrongly applied in present case and even if it is considered to have been applied rightly, the State has right to remove such defect which is cause of troubling judgments.

120. It has been contended by Mr. Patwalia that in Taj Mohammad's case provisions of Recruitment and Promotion Rules, terms and conditions of contract, terms and conditions of appointment and regularisation were never considered and the said judgment has resulted in series of judgments in similar matters as well as Contempt Petitions against the Officers of the State, who are unable to disturb the long standing settled position since about more than 21 years.



121. With aforesaid submissions, it has been contended by Mr.Patwalia, Senior Advocate that State was facing mainly two problems because of mandate of the Court. First it was causing large number of serious seniority disputes amongst the employees and extending the consequential benefits of contract service at par with regular service including seniority shall be going to unsettle the settled position of several years to say more then 21 years, leading multiplicity of litigation, and Second it was causing huge financial liability, which was never envisaged by the State, rendering the State in serious trouble. It has been submitted that in aforesaid background impugned Act has been enacted within the limits of Legislature competence without infringing any constitutional right of any body. It has been submitted that seniority, increments and other service benefits are statutory rights, but not fundamental right and such statutory right does not entitle the petitioners to assail the statute enacted within the competence of the Legislature and as such Court has also no right as well as occasion to interfere with the action of the State Legislature in enactment of impugned Act.

122. It has been contended that appointment letters/orders, regularisation orders and terms and conditions therein, have never been assailed at any point of time, and despite clear intention of Government and the State, by ignoring the provisions of contract appointment in the



Recruitment and Promotion Rules, judgment in *Taj Mohammad* case have been passed and the respondents have competence to change the Rules on the basis of which judgments were suffered as these judgments are beyond the scope of contract signed by the contract appointees with the State which was also never assailed.

123. Referring preamble of the Act, it has been contended that on account of inclusion of contract appointment in Recruitment and Promotion Rules, contract appointments are being termed as regular appointments in consonance with R&P Rules despite the fact that service conditions of contract appointees were regulated as per agreement signed between the parties, and that various service Rules, applicable to Government employees, were not applicable to contract appointees and contract appointees were not part of public service and, therefore, to restore the balance between the interest of regular appointees and contract appointees and to secure the State Exchequer and harmonize the interest of the persons, appointed on regular basis in the public service and on contract basis, Act has been enacted. To substantiate the aforesaid plea, Statement of Objects and Reasons for enacting the impugned Statute, has been referred and it has been submitted that because of provisions of Recruitment and Promotion Rules, the contract employees were being treated as regular employees, and for revision of



seniority list, large number of employees may have to be demoted to adjust the contract appointees despite the fact that at the time of engagement on contract basis, they were aware that they were not entitled to seniority and other benefits of contract service period, and for acceptance of terms and conditions and signing of contract to this effect, the benefits extended to them were not available to them, whereas regular employees were already in service and had sufficient experience about the working of the Department and thus were not liable to be ignored and, therefore, to avoid huge burden on the State Exchequer and not to unsettle the settled position and to achieve the objects sought in the Statement of Objects and Reasons, impugned Act has been enacted, which is within the scope of competence of the Legislature. It has been submitted that to resolve the situation to overcome looming cloud of finance, the cause of judgments in Recruitment and Promotion Rules, has been removed.

124. It has been submitted by Mr. Patwalia that concept of contract is not equivalent to regular appointment, but is less than regular and the same had been clarified in initial appointment order as well as regularisation order issued in consonance with the provisions of Column No. 10 and 15-A of the Recruitment and Promotion Rules, and benefit of seniority and other consequential benefits for the period of contract



service are not on account of substantive provision of Recruitment and Promotion Rules and, therefore, Legislature was compelled to enact the impugned statute. It has been submitted that probation period of an employee starts from the date of regularisation when he becomes member of service and seniority of an employee has to be counted from the date from which he becomes member of service and as the contract appointment is not a substantive appointment, such benefit has to flow only from the date of regularisation and thus impugned Act has been rightly enacted. Further that the enactment is in consonance with principle of jurisprudence of civil appointment as temporary service as a contract employee does not confer any right or entitlement for regularisation as before regularisation he is not entitled to receive any benefits other than provided in the contract entered between the parties and, therefore, such employee is also not entitled for such service benefits after regularisation and contract appointments and regular appointments are qualitatively differed from each other.

125. By referring provisions of Section 2 (d), providing definition of Government employee, Section 3 Method of Recruitment to Public Service by Regularisation of Service and Sections 5, 6 and 8 limiting the entry to public service from the date of regularisation, it has been submitted that the impugned Act is in consonance with the Constitutional



Scheme with submission that in view of the provisions of Article 309 of the Constitution, there is presumption that there shall be no more contract appointments. It has been submitted that provisions of the Act deal with the ground realities and provide a way to overcome the present situation and burning problem caused on account of various judgments including Taj Mohammad, and future appointments shall be as may be prescribed by the Government and, therefore, by making the enactment grievance of large number of regular employees, likely to be suffered on account of extension of benefit of contract period of service from the initial date, has been address and redressed.

126. To substantiate the plea Mr.Patwalia has placed reliance on following paras of the judgment of the Apex Court in ***B.K. Pavitra and others Vs. Union of India and others, (2019) 16 SCC 129:-***

“76. The decision in B K Pavitra Vs. Union of India, (2017) 4 SCC 620 did not restrain the State from carrying out the exercise of collecting quantifiable data so as to fulfill the conditionalities for the exercise of the enabling power under Article 16 (4-A). The legislature has the plenary power to enact a law. That power extends to enacting a legislation both with prospective and retrospective effect. Where a law has been invalidated by the decision of a constitutional court, the legislature can amend the law retrospectively or enact a law which removes the cause for invalidation. A legislature cannot overrule a decision of the court on the ground that it is erroneous or is nullity. But, it is certainly open to the legislature either to amend an existing law or to enact a law which removes the basis on which a declaration of invalidity was issued in the



exercise of judicial review. Curative legislation is constitutionally permissible. It is not an encroachment on judicial power. In the present case, state legislature of Karnataka, by enacting the Reservation Act 2018, has not nullified the judicial decision in *B K Pavitra Vs. Union of India*, (2017) 4 SCC 620, but taken care to remedy the underlying cause which led to a declaration of invalidity in the first place. Such a law is valid because it removes the basis of the decision.

77. These principles have consistently been reiterated in a line of precedents emerging from this Court. In *Utkal Contractors and Joinery (P) Ltd. Vs. State of Orissa*, 1987 Supp 751, this Court held: (SCC p. 759, para 15)

“15....The legislature may, at any time, in exercise of the plenary power conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively. That of course, is subject to the legislative competence and subject to other constitutional limitations. The rendering ineffective of judgments or orders of competent courts by changing their basis by legislative enactment is a well-known pattern of all validating acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power. The legislature, however, cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision.”

[See also in this context: *Bhubaneshwar Singh v. Union of India* (1994) 6 SCC 77, *Indian Aluminium Co. v. State of Kerala* (1996) 7 SCC 637 (*“Indian Aluminium Co.”*), *State of H.P. V. Narain Singh* (2009) 13 SCC 165 and *Cheviti Venkanna Yadav V. State of Telangana*, (2017) 1 SCC 283.]

78. The legislature has the power to validate a law which is found to be invalid by curing the infirmity. As an incident of the exercise of this



power, the legislature may enact a validating law to make the provisions of the earlier law effective from the date on which it was enacted (*United Provinces v. Atiqa Begum* 1940 SCC OnLine FC 11 and *Rai Ramakrishna v. State of Bihar* (1964) 1 SCR 897). These principles were elucidated in the decision of this Court in *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality*, (1969) 2 SCC 283. The judgment makes a distinction between a law which simply declares that a decision of the court will not bind (which is impermissible for the legislature) and a law which fundamentally alters the basis of an earlier legislation so that the decision would not have been given in the altered circumstances. This distinction is elaborated in the following extract: (*Prithvi Cotton Mills Ltd. case*, SCC pp. 286-87, para 4)

4. ... Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal."

79. In *State of T.N. v Arooran Sugars Ltd.* (1997) 1 SCC 326, a Constitution Bench of this Court recognized the power of the legislature to enact a law retrospectively to cure a defect found by the Court. It was held that in doing so, the legislature did not nullify a writ or encroach upon judicial power. The legislature in remedying a deficiency in the law acted within the scope of its authority. This Court held: (SCC p. 341, Para 16)



“16...It is open to the legislature to remove the defect pointed out by the court or to amend the definition or any other provision of the Act in question retrospectively. In this process it cannot be said that there has been an encroachment by the legislature over the power of the judiciary. A court's directive must always bind unless the conditions on which it is based are so fundamentally altered that under altered circumstances such decisions could not have been given. This will include removal of the defect in a statute pointed out in the judgment in question, as well as alteration or substitution of provisions of the enactment on which such judgment is based, with retrospective effect.”

The same principle was formulated in the decision of this Court in *Virender Singh Hooda v State of Haryana (2004) 12 SCC 588*: (SCC p. 616, para 59)

“59. ...vested rights can be taken away by retrospective legislation by removing the basis of a judgment so long as the amendment does not violate the fundamental rights. We are unable to accept the broad proposition... that the effect of the writs issued by the courts cannot be nullified by the legislature by enacting a law with retrospective effect. The question, in fact, is not of nullifying the effect of writs which may be issued by the High Court or this Court. The question is of removing the basis which resulted in issue of such a writ. If the basis is nullified by enactment of a valid legislation which has the effect of depriving a person of the benefit accrued under a writ, the denial of such benefit is incidental to the power to enact a legislation with retrospective effect. Such an exercise of power cannot be held to be usurpation of judicial power.”

80. A declaration by a court that a law is constitutionally invalid does not fetter the authority of the legislature to remedy the basis on which the declaration was issued by curing the grounds for invalidity. While curing the defect, it is essential to understand the reasons underlying the declaration of invalidity. The reasons constitute the basis of the



declaration. The legislature cannot simply override the declaration of invalidity without remedying the basis on which the law was held to be ultra vires. A law may have been held to be invalid on the ground that the legislature which enacted the law had no legislative competence on the subject matter of the legislation. Obviously, in such a case, a legislature which has been held to lack legislative competence cannot arrogate to itself competence over a subject-matter over which it has been held to lack legislative competence. However, a legislature which has the legislative competence to enact a law on the subject can certainly step in and enact a legislation on a field over which it possesses legislative competence. For instance, where a law has been invalidated on the ground that the state legislature lacks legislative competence to enact a law on a particular subject – Parliament being conferred with legislative competence over the same subject – it is open for the Parliament, following a declaration of the invalidity of the state law, to enact a new law and to regulate the area. As an incident of its validating exercise, Parliament may validate the collection of a levy under the earlier law. The collection of a levy under a law which has been held to be invalid is validated by the enactment of legislation by a legislative body—Parliament in the above example—which has competence over the subject matter. Apart from legislative competence, a law may have been declared invalid on the ground that there was a breach of the fundamental rights contained in Part III of the Constitution. In that situation, if the legislature proceeds to enact a new law on the subject, the issue in essence is whether the re-enacted law has taken care to remove the infractions of the fundamental rights on the basis of which the earlier law was held to be invalid. The true test therefore is whether the legislature has acted within the bounds of its authority to remedy the basis on which the earlier law was held to suffer from a constitutional infirmity.

81. The petitioners have placed a considerable degree of reliance on the decision in *Madan Mohan Pathak v. Union of India*, (1978) 2 SCC 50, where a law –the Life Insurance Corporation (Modification of



Settlements) Act 1976 was enacted by Parliament to render ineffective a settlement which was arrived at between LIC and its employees for the payment of bonus. The law was challenged by the employees. In that case, there was a judgment of the Calcutta High Court which had given effect to the right of the employees to an annual cash bonus under an industrial settlement, by the issuance of a writ of mandamus. The mandamus bound the parties to the dispute. It was in this backdrop that the Constitution Bench observed that the effect of the mandamus issued by the High Court could not simply be nullified by enacting a law overriding the industrial settlement. This Court held: (Madan Mohan Pathak case, SCC p. 67, para 9)

“9. Here, the judgment All India Insurance Employees’ Assn. v. Union of India, 1976 SCC OnLine Cal 108 given by the Calcutta High Court, which is relied upon by the petitioners, is not a mere declaratory judgment holding an impost or tax to be invalid, so that a validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. But it is a judgment giving effect to the right of the petitioners to annual cash bonus under the Settlement by issuing a writ of mandamus directing the Life Insurance Corporation to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the remedy may be by way of appeal or review, but so long as the judgment stands, it cannot be disregarded or ignored and it must be obeyed by the Life Insurance Corporation. We are, therefore, of the view that, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the Life Insurance Corporation is bound to obey the writ of mandamus issued by the Calcutta High Court and to pay annual cash bonus for the year 1-4-1975 to 31-3-1976 to Class III and Class IV employees.’

82. The The decision in *Madan Mohan Pathak v. Union of India* (1978) 2 SCC 50 is hence distinguishable from the facts of the present



case. The above observations recognized the constitutional position that in the case of a declaratory judgment holding an action to be invalid, a validating legislation to remove the defect is permissible. Applying this principle, it is evident that the decision in *B K Pavitra (I)* declared the Reservation Act 2002 to be invalid and consequent upon the declaration of invalidity, certain directions were issued. If the basis on which Reservation Act, 2002 was held to be invalid is cured by a validating legislation, in this case the Reservation Act, 2018, this would constitute a permissible legislative exercise. The grounds which weighed in *Madan Mohan Pathak v. Union of India* (1978) 2 SCC 50 would hence not be available in the present case.

83. The decision in *Madan Mohan Pathak v. Union of India* (1978) 2 SCC 50 has been adverted to and clarified in several decisions of this Court rendered subsequently. These include:

83.1 *Sri Ranga Match Industries v. Union of India* 1994 Supp (2) SCC 726, where it was held that: (SCC pp. 736-37, para 14)

“14. While appreciating the ratio of the said opinions, it is necessary to bear in mind the basic fact that the settlement between the Corporation and its employees was not based upon any statute or statutory provision. Sub-sections (1) and (3) of Section 18 of the Industrial Disputes Act provide merely the binding nature of such settlements; they do not constitute the basis of the settlements. *The settlement between the parties was directed to be implemented by the High Court. In other words, it was not a case where the High Court either struck down a statutory provision nor was it a case where a statutory provision was interpreted in a particular manner or directed to be implemented. It was also not a case where the statutory provision, on which the judgment was based, was amended or altered to remove/rectify the defect.*” (emphasis supplied)

83.2 *Indian Aluminium Co. v. State of Kerala*, (1996) 7 SCC 637, where it was held that: (SCC p. 660, para 49)



“49. In *Madan Mohan Pathak v. Union of India* (1978) 2 SCC 50 From the observations made by Bhagwati, J. per majority, it is clear that this Court did not intend to lay down that Parliament, under no circumstance, has power to amend the law removing the vice pointed out by the court. Equally, the observation of Chief Justice Beg is to be understood in the context that as long as the effect of mandamus issued by the court is not legally and constitutionally made ineffective, the State is bound to obey the directions. Thus understood, it is unexceptionable. But it does not mean that the learned Chief Justice intended to lay down the law that mandamus issued by court cannot at all be made ineffective by a valid law made by the legislature, removing the defect pointed out by the court.”

(emphasis supplied)

83.3 CIT v. Goodricke Group Ltd. (2015) 8 SCC 399, where it has was held: (SCC p. 407, para 14)

“14. We are of the view that *Madan Mohan Pathak* case (1978) 2 SCC 50 would not apply to the facts in the present case for the simple reason that *what has been undone by Section 4-B and Section 78-C is not a mandamus issued by a superior court. What is undone is the very basis of the judgment in Buxa Dooars Tea Co. Ltd. v. State of W.B., (1989) 3 SCC 211* by retrospectively changing the levy of rural employment cess and education cess.”

(emphasis supplied)

84. *Madan Mohan Pathak* (1978) 2 SCC 50 involved a situation where a parliamentary law was enacted to override a mandamus which was issued by the High Court for the payment of bonus under an industrial settlement. The case did not involve a situation where a law was held to be ultra vires and the basis of the declaration of invalidity of the law was sought to be cured.



85. Dr Dhavan adverted to the legal basis of *B K Pavitra v. Union of India*, (2017) 4 SCC 620 as set out in the following extract from the conclusion: (SCC p. 641, para 30)

“30. In view of the above, we allow these appeals, set aside the impugned judgment *M. Nagaraj v. Union of India*, 2010 SCC ONLINE Kar 5407 and declare the provisions of the impugned Act to the extent of doing away with the “catch-up” rule and providing for consequential seniority under Sections 3 and 4 to persons belonging to SCs and STs on promotion against roster points to be *ultra vires Articles 14 and 16 of the Constitution.*”

(emphasis

supplied)

Dr. Dhavan is entirely correct, if we may say so with respect, in submitting “that what has to be shown is whether the Reservation Act, 2018 is, in law Articles 14 and 16 compliant”. This necessitates an examination of the constitutionality of the Reservation Act, 2018. That would require this Court to examine the challenge on the ground that there has been a violation of the equality code contained in Articles 14 and 16.”

127. Further reliance has been placed on judgment of the Apex Court in ***Dr. Jaya Thakur Vs. Union of India and others, (2023) 10 SCC 276***, which read as under:-

“70. It could thus be seen that this Court has held that the statute enacted by Parliament or a State Legislature cannot be declared unconstitutional lightly. To do so, the Court must be able to hold beyond any iota of doubt that the violation of the constitutional provisions was so glaring that the legislative provision under challenge cannot stand. It has been held that unless there is flagrant violation of the constitutional provisions, on the law made by Parliament or a State Legislature cannot be declared bad.



71. It has been the consistent view of this Court that legislative enactment can be struck down only on two grounds. Firstly, that the appropriate legislature does not have the competence to make the law; and secondly, that it takes away or abridges any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions. It has been held that no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or the other constitutional infirmity has to be found before invalidating an Act. It has been held that Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom.

72. It has been held by this Court that there is one and only one ground for declaring an Act of the legislature or a provision in the Act to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. It has further been held that if two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. It has been held that the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope.

73. It has consistently been held that there is always a presumption in favour of constitutionality, and a law will not be declared unconstitutional unless the case is so clear as to be free from doubt. It has been held that if the law which is passed is within the scope of the power conferred on a legislature and violates no restrictions on that power, the law must be upheld whatever a court may think of it.

74. It could thus be seen that the challenge to the legislative Act would be sustainable only if it is established that the legislature concerned had no legislative competence to enact on the subject it has enacted. The other ground on which the validity can be challenged is that such an enactment is in contravention of any of the fundamental rights stipulated in Part III of the Constitution or any other provision of



the Constitution. Another ground as could be culled out from the recent judgments of this Court is that the validity of the legislative act can be challenged on the ground of manifest arbitrariness. However, while doing so, it will have to be remembered that the presumption is in favour of the constitutionality of a legislative enactment.

75. In the present case, it is nobody's case that Parliament did not have power to enact on the subject on which the aforesaid Amendments have been enacted. As such, the said ground is not available to the petitioners.

*

*

*

114. It could, thus, clearly be seen that this Court has held that the effect of the judgments of this court can be nullified by a legislative act removing the basis of the judgment. It has further been held that such law can be retrospective. It has, however, been held that retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. It has been held that the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed. This Court has, however, clearly held that nullification of mandamus by an enactment would be impermissible legislative exercise. This Court has further held that transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India.”

128. Reliance has also been placed on judgment of the Apex Court in ***NHPC Limited Vs. State of Himachal Pradesh Secretary and others, (2023) 17 SCC 1***, which read as under:-

“24. Having heard learned counsel for the respective parties and on perusal of the material on record, the following points would emerge for our consideration:



24.1(i) Whether, by enacting the Amendment and Validation Act of 1997, the Himachal Pradesh State Legislature had validly removed the basis of the judgment of the Division Bench of the High Court dated 27 March, 1997, whereby the Act of 1955 had been held not to include within its scope the activity of the appellants of providing gratis transport facilities for their employees and their children?

*

*

*

33. Since these appeals concern, inter alia, the issue, as to, whether, by enacting the Amendment and Validation Act, 1997, the Himachal Pradesh State Legislature has validly removed the basis of the judgment of the Division Bench of the High Court dated 27-3-1997, NHPC Vs. State of H.P., CWP No. 1733 of 1995, it would be useful to discuss the law on the adoption of the legislative device of abrogation, to remove the basis of a judgment of a Court in a legislation.

34. In the following decisions, this Court has laid down the law with regard to the permissible extent and manner of removing the material basis of a judgment, by correcting the anomalies pointed out by a Court in a legislation:

34.1 In *Tirath Ram Rajendra Nath, v. State of U.P.* (1973) 3 SCC 585, this Court held that there is a distinction between encroachment on the judicial power and nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the legislature but the latter is within its permissible limits. In that case, the U.P. Sales Tax Act (Amendment and Validation) Act, 1970 was upheld by this Court.

34.2 In *Hindustan Gum and Chemicals Ltd. vs. State of Haryana*, (1985) 4 SCC 124, this Court held that it is permissible for a competent legislature to overcome the effect of a decision of a court setting aside the imposition of a tax by passing a suitable Legislation, by amending the relevant provisions of the statute concerned with retrospective effect, thus taking away the basis on which the decision of the court has been rendered and by enacting an appropriate provision validating the levy and collection of tax made before the decision in question was



rendered. In that decision, reliance was placed on *Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality*, (1969) 2 SCC 283, a Constitution Bench decision of this Court, which has laid down the requirements which a validating law should satisfy in order to validate the levy and collection of a tax which has been declared earlier by a court as illegal. The relevant portion of the said judgment reads as under:

“4.....When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning



binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralize the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the Legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a validating law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax."

34.3 In the case of *Indian Aluminium Company Co. vs. State of Kerala*, (1996) 7 SCC 637, the principles regarding the abrogation of a judgment of a court of law by a subsequent legislation were culled out in the following words: (SCC pp. 662-63, para 56)

"56. From a resume of the above decisions the following salient principles would emerge:

*

*

*

(6) The Court, therefore, need to carefully scan the law to find out: (a) whether the vice pointed out by the Court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the Legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.

*

*

*

34.7 In *Madras Bar Assn vs. Union of India*, (2022) 12 SCC 455, L. Nageswara Rao J. speaking for the majority (2:1) laid down the



following principles, as regards the permissibility of abrogation, to remove the basis of a judgment: (SCC p. 509, para 50)

“50 The permissibility of a legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:

50.1 The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. (*Lohia Machines Ltd. and Anr. v. Union of India and Ors.*, (1985) 2 SCC 1987).

50.2 The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed.

50.3 Nullification of mandamus by an enactment would be impermissible legislative exercise (See: *S.R. Bhagwat v. State of Mysore*, (1995) 6 SCC 16). Even interim directions cannot be reversed by a legislative veto (See: *Cauvery Water Disputes Tribunal, In re 1993 Supp (1) SCC 96* and *Medical Council of India v. State of Kerala and Ors.*, (2019) 13 SCC 185).

50.4 Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the Rule of law and of Article 14 of the Constitution of India.”

34.8 In a recent judgment of this Court in the case of *Dr. Jaya Thakur vs. Union of India*, (2023) 10 SCC 276, this Court held that a writ of mandamus could not be nullified by a subsequent legislation made by



the legislator. That a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance simply overrules a judgment unless the foundation of the judgment is removed. Referring to several judgments of this court on the Doctrine of Abrogation, the following principles as to the manner in which the device of abrogation could be employed, were identified as under: (SCC p. 318, para 114)

“114. It could, thus, clearly be seen that this Court has held that the effect of the judgments of this court can be nullified by a legislative act removing the basis of the judgment. It has further been held that such law can be retrospective. It has, however, been held that retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. It has been held that the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed. This Court has, however, clearly held that nullification of mandamus by an enactment would be impermissible legislative exercise. This Court has further held that transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India.”

35. What follows from the aforesaid judicial precedent is, a legislature cannot directly set aside a judicial decision. However, when a competent legislature retrospectively removes the substratum or foundation of a judgment to make the decision ineffective, the same is a valid legislative exercise provided it does not transgress on any other constitutional limitation. Such a legislative device which removes the vice in the previous legislation which has been declared unconstitutional is not considered to be an encroachment on judicial power but an instance of abrogation recognised under the Constitution of India. The decisions referred to above, manifestly show that it is open to the legislature to alter the law retrospectively, provided the alteration is



made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be removed, thereby resulting in a fundamental change of the circumstances upon which it was founded.

36. The power of a legislature to legislate within its field, both prospectively and to a permissible extent, retrospectively, cannot be interfered with by Courts provided it is in accordance with the Constitution. It would be permissible for the legislature to remove a defect in an earlier legislation, as pointed out by a constitutional court in exercise of its powers by way of judicial review. This defect can be removed both prospectively and retrospectively by a legislative process and previous actions can also be validated. However, where a legislature merely seeks to validate the acts carried out under a previous legislation which has been struck down or rendered inoperative by a Court, by a subsequent legislation without curing the defects in such legislation, the subsequent legislation would also be ultra vires. Such instances would amount to an attempt to “legislatively overrule” a Court’s judgment by a legislative fiat, and would therefore be illegal and a colourable legislation.

37. At this juncture, we must highlight that separation of powers, as crystalised under the Indian Constitution, is characterised by division of power and functions between the legislature, executive and the judiciary, which are the three co-equal organs of the State. The doctrine also necessarily postulates that each institution has some power to regulate the functions of the others; this is in the form of the ancillary principle of “checks and balances.” The role of the judiciary in galvanising our constitutional machinery characterised by institutional checks and balances, lies in recognising that while due deference must be shown to the powers and actions of the other two branches of the government, the power of judicial review may be exercised to restrain unconstitutional and arbitrary exercise of power by the legislature and executive organs. The power of judicial review is a part of the basic feature of our Constitution which is premised on the rule of law. Unless



a judgment has been set aside by a competent court in an appropriate proceeding, finality and binding nature of a judgment are essential facets of the rule of law informing the power of judicial review. In that context, we observe that while it may be open to the legislature to alter the law retrospectively, so as to remove the basis of a judgment declaring such law to be invalid, it is essential that the alteration is made only so as to bring the law in line with the decision of the Court. The defects in the legislation, as it stood before the Amendment and Validation Act of 1997 was enacted, must be cured by way of the amendments introduced retrospectively. Simply setting at naught a decision of a court without removing the defects pointed out in the said decision, would sound the death knell for the rule of law. The rule of law would cease to have any meaning if the legislature is at liberty to defy a judgment of a court by simply passing a validating legislation, without removing the defects forming the substratum of the judgment by use of a non-obstante clause as a technique to do so.

38. The legislative device of abrogation by enacting retrospective amendments to a legislation, as a means to remove the basis of a judgment and validate the legislation set aside or declared inoperative by a Court, must be employed only with a view to bring the law in line with the judicial pronouncement. Abrogation is not a device to circumvent any and all unfavourable judicial decisions. If enacted solely with the intention to defy judicial pronouncement, such an amendment Act may be declared to be ultra vires and as a piece of “colourable legislation.” The device of abrogation, by way of introducing retrospective amendments to remove the basis of a judgment, may be employed when a legislature is under the bonafide belief that a defect that crept into the legislation as it initially stood, may be remedied by abrogation. An act of abrogation is permissible only in the interests of justice, effectiveness and good governance, and not to serve the oblique agenda of defying a court’s order, or stripping it of its binding nature.



39. The Constitution of India precludes any interference by the legislature with the administration of justice and judicial determination of the validity of a legislation. The power of abrogation is to be exercised in the light of the said Constitutional mandate. The legislative device of abrogation must be in accordance with the following principles which are not exhaustive:

39.1. There is no legal impediment to enacting a law to validate a legislation which has been held by a court to be invalid, provided, such a law removes the basis of the judgment of the court, by curing the defects of the legislation as it stood before the amendment.

39.2. The validating legislation may be retrospective. It must have the effect that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the court at the time of rendering its judgment.

39.3. Retrospective amendment should be reasonable and not arbitrary and must not be violative of any Constitutional limitations.

39.4. Setting at naught a decision of a court without removing the defect pointed out in the said decision is opposed to the rule of law and the scheme of separation of powers under the Constitution of India.

39.5. Abrogation is not a device to circumvent an unfavourable judicial decision. If enacted solely with the intention to defy a judicial pronouncement, an Amendment and Validation Act of 1997 may be declared as ultra vires."

129. Competence of State for nullification of mandamus, Mr.Patwalia has referred judgments of the Apex Court in ***S.R. Bhagwat and others Vs. State of Mysore (1995) 6 SCC 16*** and ***Cauvery Water Disputes Tribunal, Special Reference No. 1 of 1991***, reported in ***1993 Supp (1) SCC 96(II)***.



130. With submission that petitioners have no vested right to claim service benefits for contract period of service, Mr. Patwalia has referred pronouncements of the Supreme Court in ***Punjab State Cooperative Agricultural Bank Limited Vs. Registrar Cooperative Societies and others, 2022 (5) SCC 445; Chairman Railway Board and others Vs. Crrangadhamaiah and others, 1997 (6) SCC 623; U.P. Raghavendra Acharya and others Vs. State of Karnataka and others 2006 (9) SCC 630; Bank of Baroda and Another Vs. G. Palani and others 2018 SCC OnLine SC 3691; State of Gujarat & Another Vs. Raman Lal Keshav Lal Soni & others, 1983 (2) SCC 33; Ex. Capt. K.C. Arora & Another Vs. State of Haryana & others, 1984 (3) SCC 281; T.R. Kapur & others Vs. State of Haryana & others, 1987 AIR 415; P.D. Aggarwal & others Vs. State of U.P. & others, 1987 SCC (3) 622 and K.R. Narayanan & others Vs. State of Karnataka & others (1994) Supp. 1 SCC 44.***

131. For competence of Legislature for overruling of the judicial mandate and to remove the defect in Rules, reliance has been placed by Mr. Patwalia, Senior Advocate on the judgments of the Apex Court in ***NHPC Vs. State of Himachal Pradesh Secretary and others, (2023) 17 SCC 1; Medical Council of India Vs. State of Kerela and others,***



(2019) 13 185 and **Janapada Sabha Chhindwara vs. The Central Provinces Syndicate Ltd. And another** reported in **(1970) 1 SCC 509**.

132. Apart from Mr. Patwalia, Senior Advocate, Learned Advocate General has also addressed arguments on behalf of the State.

133. For defending the enactment of the impugned Act by the Legislature, learned Advocate General, repeating the argument(s) of Mr. Patwalia, Senior Advocate, has referred the Statement of Object and Reasons with special reference that intention and purpose of engaging the persons on contract basis has been ignored by the Courts especially in *Taj Mohammad's* case and in case, contract appointee is treated as equivalent to the regular employee, then it will not only put a huge burden on the State Exchequer but also unsettle the settled position since 2003 and it will cause for revising of seniority list for the last more than 21 years and many employees may have to be demoted to adjust the contract employees, whereas persons engaged on contract basis were aware at the time of their engagement that they were not entitled to seniority and other service benefits for the period of contract service, and such persons had accepted these terms and conditions and signed the contract to this effect and further that most of regular employees were already in service and had sufficient experience about working of the Department and the said fact cannot be ignored, and to avoid huge burden on the State



Exchequer and not to unsettle the settled position, impugned Act was required to be enacted which was and is within the competence of the State Legislature and, therefore, the impugned Act has been enacted to remove the defect and the very basis of judgments of Court including *Taj Mohammad's* case, which otherwise has been passed without taking into consideration complete provisions of R&P Rules especially provision of Column 15A of R&P Rules, which is exception to all Rules, but only Column 10 of R&P Rules has been considered.

134. It has been submitted by Learned Advocate General that judgment in *Taj Mohammad's* case has been passed in ignorance of Rules and therefore, the same is *sub silentio* and *Per incuriam* and therefore the said judgment cannot be cited as a binding precedence or conclusive and thus, Legislature was compelled to frame the impugned Act.

135. To substantiate this plea, reliance has been placed on ***Odisha State Financial Corporation vs Vigyan Chemical Industries and others*** reported in ***2025 INSC 928; (2025) 9 SCR 1 and 2025 Live Law (SC) 772*** by referring paras 12 and 13 thereof, which read as under:-

“12. Undoubtedly, Respondent No. 1 instituted a money suit for recovery of dues from Respondent No. 2 on account of default in payment for the supply of goods. Initially, the appellant was not a party to the suit. Subsequently, Respondent No. 1 impleaded the appellant, a



State Financial Corporation, which took action under Section 29 of the S.F.C Act, 1951 against Respondent No. 2. The suit was decreed on 20.08.2001. Thereafter, Respondent No. 1 filed an application under Section 21 of the Limitation Act, 1963 before the trial Court, pending appeal. The trial Court allowed the application holding that the suit against the appellant was deemed to be initiated from the original date of filing the suit. By a subsequent order, it was held by the trial Court that the suit was not barred by limitation as against the appellant. The finding of the appellate court and the High Court on limitation alone, was upheld by this Court on 23.11.2017 in Civil Appeal No.2073/2010. It is pertinent to mention here that this Court confined its decision only to the issue of limitation and remained silent on all other material questions raised.

Doctrine of 'Sub silentio'

13. It is a settled principle that a judgment is an authority only for what it decides. When a judgment fails to address other issues raised, it is said to be 'sub silentio', and cannot be held as a binding precedent on those undecided issues. From the records, it is very clear that in the earlier judgment of this Court challenging the original decree, only the issue of limitation was adjudicated. Critical issues such as (i) the jurisdiction of the trial Court to entertain the suit against the appellant in the absence of a notice under Section 80 CPC, (ii) the maintainability of the suit, (iii) the power of the Court to modify the decree by entertaining an application under Section 21 of the Limitation Act, 1963, and (iv) the applicability of the Interest on Delayed payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 were not adjudicated. This is where the concept of 'sub silentio' assumes significance. It refers to a situation, where a rule or principle on a particular point of law is applied or passed upon by a court silently, without any consideration of the applicable law or without argument, and the judgment is rendered on another question of law or fact. According to the Black's Law Dictionary, "the precedents that pass sub silentio are of little or no authority". Literally, it means 'in silence' and is used to refer to something that is



not expressly stated. Therefore, it can safely be concluded that the judgment of this Court in Civil Appeal No.2073/2010 is silent on the issues now under consideration. When the judgment of a Court is silent on questions of law either raised earlier but not decided, or raised in the subsequent proceedings, it is settled law that constitutional courts are empowered to decide such questions of law independently and the earlier judgment cannot be cited as a binding precedent or conclusive. It will be useful to refer to the following judgments of this Court on this aspect.”

136. Learned Advocate General has submitted that base of *Taj Mohammad's* case is incorporation of word “contract” in Column 10 of R&P Rules, and though Column 15A of R&P Rules was not considered in the said judgment, even otherwise the State is competent to remove/omit/replace the word “Contract” as has been done by enacting the impugned Act by replacing the word “Contract” with “by regularization”.

137. It has been submitted by Learned Advocate General that Government Servant is governed by status and status is governed by Rule and Rule can be changed at any time prospectively as well as retrospectively. Whereas when employees engaged by entering into the written agreement then their rights shall not be governed by R&P Rules but by written contract between the parties i.e. contract between employee and State. Whereas, this position has been ignored by Courts in judgment passed in *Taj Mohammad's case* and therefore, there was



cause, reason and compulsion for the State to enact the Statute which is within the competence of Legislature under Constitutional provisions.

138. To substantiate the aforesaid plea, learned Advocate General has referred judgment passed by the Supreme Court in ***Union Public Service Commission vs. Girish Jayanti Lal Vaghela and others*** reported in ***(2006) 2 SCC 482***.

139. By submitting that though status of Government Servant is an ordinary contract but his status is more than that, but the employees appointed on simple contract is not enjoying such status being a person on contractual employment, learned Advocate General has referred judgment of Apex Court in ***Dinesh Chandra Sangma vs. State of Assam and others*** reported in ***(1977)4 SCC 441*** by citing following paras:

“11. Mr. Niren De submits that Article 310(2) supports his submission that the relationship between the Government servant and the Government is contractual. Sub-article (2) of Article 310 that notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or, as the case may be, of the Governor of the State, any contract under which a person, not being a member of defence service or of an all- India service or of a civil service of the Union or a State, is appointed under this Constitution to hold such a post may, if the President or the Governor, as the case may be, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed



period that post is abolished or he is, for reasons not connected with ,in.), misconduct on his part, required to vacate that post." 'The above is a special provision which deals with a special situation where I contract is entered between the Government and a person appointed under the Constitution to hold a civil post. But simply because there tie, in a given case, a contractual employment, as envisaged under Article 310(2) of the Constitution, the relationship of all other Government servants, as a class, and the Government, cannot be said to be contractual. It is well-settled that except in the case of a person who has been appointed under a written contract, employment under the Government is a matter of status and not of contract even though it may be said to have started. 'initially, by a contract in the sense that the offer of appointment is accepted by the employee.

12. The rubric of rule 119 of DISI Rules is "essential services". Indeed this rule occupies a place in Part XII of the DISI Rules with the title "Essential Supplies and Work". Sub-rule (1) of rule 119 applies to three broad categories of employment, namely, (1) employment under the Central Government, (2) employment under the State Governments and (3) employments declared by the Central and State Governments as essential. The third category may include even private employments which may be declared to be essential for the purpose of securing the objects specified in sub-rule (1) of rule 119. It may be sufficient, here, to refer to the notification of the Control Government S.O. 206(E) dated March 25, 1974 whereby "any employment under the Hindustan Construction Company Limited in the Haldia Dock Project" was declared by the Central Government an essential employment for the purpose of rule 119. It is because of the above mentioned third category of employment that Explanation 2 was considered necessary so as to extend the meaning of abandonment of employment by including the persons who by the terms of their contract could terminate their employment by notice. It goes without saying that in many employments, whether of private limited companies or public companies, contracts of employment are executed containing a terms or



termination of employment by notice. Such cases of contractual employment are different from those of Government employees whose employment is a matter of status and not of ordinary contract. The conditions of service of a Government servant are regulated by statute or statutory rules made under Article 309 of the Constitution. This Court observed in *Roshan Lal Tandon vs. Union of India* as follows :

"It is true that the origin of Government service is Contractual. There is an offer and acceptance in every case, But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by more agreement of the parties.

* * *

....it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the, nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest".

As Salmond and Williams put it

"In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status"

140. Learned Advocate General has also referred following paras of judgment of the Apex Court in ***State of Haryana and others vs. Charanjit Singh and others*** reported in **(2006)9 SCC 321:**



“22. One other fact which must be noted is that Civil Appeals Nos. 6648 of 2002, 6647 of 2002, 6572 of 2002 and 6570 of 2002 do not deal with casual or daily rated workers. These are cases of persons employed on contract. To such persons the principles of equal pay for equal work has no application. The Full Bench Judgment dealt only with daily rated and casual workers. Where a person is employed under a contract, it is the contract which will govern the terms and conditions of service. In the case of State of Haryana vs. Surinder Kumar and other, reported in (1997) 3 SCC 633, persons employed on contract basis claimed equal pay as regular workers on the footing that their posts were interchangeable. It was held that these persons had no right to the regular posts until they are duly selected and appointed. It was held that they were not entitled to the same pay as regular employees by claiming that they are discharging same duties. It was held that the very object of selection is to test eligibility and then to make appointment in accordance with rules. It was held that the Respondents had not been recruited in accordance with the rules prescribed for recruitment.

23. In the case of Union of India vs. K.V. Baby reported in (1998) 9 SCC 252, the question was whether Commission Bearers/Vendors are entitled to the same salary as regular employees. It was held that their appointment and mode of selection, their qualifications cannot be compared with regular employees. It was held that by their very nature of employment they cannot be equated with regular employees. It was held that recruitment rules and service conditions do not apply to such persons. It was held that their responsibilities cannot be equated with those of regular employees.

24. Thus it is clear that persons employed on contract cannot claim equal pay on basis on equal pay for equal work. Faced with this situation it was submitted that all these persons were in fact claiming that their respective appointments were regular appointments by the regular process of appointment but that instead of giving regular appointments they were appointed on contract with the intention of not paying them regular salary. It was admitted that the Petitions may be



badly drafted and such a contention not put forth specifically. The High Court has disposed of these Petitions also on the footing that the principle of equal pay for equal work applied. We therefore set aside the impugned orders in these cases also and remit the matters back to the High Court for disposal. The High Court shall permit these Petitioners to amend their Petitions to make necessary averments and will also permit the Respondents in these cases to file replies to the amended Petitions.”

141. To substantiate that where status of employee is of Government Servant, the R&P Rules will be applicable and where relationship is contractual the terms and conditions of the contract shall be applicable and such employee shall not be governed by Service Rules, para 16 of judgment of the Supreme Court in ***Union Public Service Commission vs. Dr. Jamuna Kurup and others*** reported in ***(2008)11 SCC 10*** has also been relied upon by learned Advocate General, which reads as under:-

“16. The learned counsel for appellant submitted that the advertisement granted age relaxation to employees of MCD and employees of government of India, and that the words ‘permanent’ or ‘regular’ were not used either with reference to “employees of government” or “employees of MCD”. It is pointed out that in *UPSC vs. Girish Jayanti Lal Vaghel* (2006)2 SCC 482, this Court while dealing with persons employed in identical circumstances, that is “engaged for a period of six months from the date of joining or till a candidate selected by UPSC joined on regular basis”, held that the term ‘government servant’ did not refer to or include persons employed on contract basis. It is argued that on the same principle, the term “employees of MCD” cannot include a contract employee of MCD. We cannot agree. Vaghela related to



contract employment by a government whereas in this case the contract employment is by a Municipal Corporation. The reason that weighed with this Court in Vaghela to hold that a contract employee was not a government servant, was in view of the special connotation of the term 'government servant'. This Court after referring to the decision of the Constitution Bench in Roshan Lal Tandan vs. Union of India 1968 (1) SCR 185, and the decision in Dinesh Chandra Sanpma vs. State of Assam 1977 (4) SCC 441, held that employment under the government is a matter of status and not a contract even though acquisition of such a status may be preceded by a contract; and that contract employees of the government were governed by the terms of contract and did not possess the status of government servants nor were governed by rules framed under Article 309 of the Constitution, nor enjoyed the protection under Article 311. But a Municipal Corporation is not 'government', and municipal employees are not government servants governed by Article 309 to 311. Though permanent employees of municipal corporation or other statutory bodies may be governed by statutory rules, they do not enjoy the status of government servants. Therefore, the decision in Vaghela, rendered with reference to government servants may not be of any assistance in interpreting the term "employees of MCD". In fact, for that very reason, these matters were de-linked from the hearing of Vaghela."

142. Learned Advocate General submits that keeping in view the financial constraints, Legislature of the State had and has competence to enact the law to cope with situation and to avoid setting the clock 20 years ago, by adopting, formulating or framing the Policy. He has submitted that this right has also been recognized by the Apex Court in ***State of Himachal Pradesh and others vs. Rajesh Chander Sood and others*** reported in (2016)10 SCC 77 wherein, according to him, it has



been held that the State is entitled to make a law/Rule applicable retrospectively in pursuant to subsequent administrative review based on financial health of State with contention that in present case also, the State has been compelled to enact the impugned statute to avoid the huge burden on the State Exchequer.

143. In this regard, the decision of the Apex Court in **Satish Chander Sharma vs. State of Himachal Pradesh and others** reported in **AIR 2025 SC 2050** has also been referred with submission that in case of financial viability situation, the State has right to review the situation and to take appropriate steps and such action of State cannot be described as arbitrary and violative of Article 14 of the Constitution, and in such a situation, the Court should not burden the State with financial liability whereas in present case, Court has burdened the State with huge financial liability despite the fact that contract employees were and are to be governed by terms of contract but not by R&P Rules.

144. By referring paras 11 and 14 of the pronouncement of the Apex Court passed in **National Institute of Rural Development vs. Shyam Sunder Prasad Sharma and others** reported in **(2023) 3 SCALE 397**, it has been contended that contract employees were to be governed as per contract Policy and terms and conditions of contract but not by R&P Rules. Referred paras read as under:-



“11. We may note here that the employment of respondent No. 1 was regularised by the office order dated 4th May 2012 which specifically records that the order will take effect from the date of issue of the order. The said condition has not been challenged by respondent No.1. Therefore, he cannot claim that his employment has been regularised with retrospective effect from the year 2002 when he was appointed on a contract basis as an Associate Professor. The exception carved out in Rule 6 provides that the main part of Rule 6 will not affect an employee initially appointed on a regular post who was presently holding a high academic post on a contract basis and who was subscribing to either CPF or GPF-cum-pension scheme of the appellant from the date of his initial regular appointment. This exception is applicable to a member of the academic staff who was regularly employed (not on a contract basis) earlier but was holding a high academic post on a contract basis when the Regularisation Rules came into force. The exception will not apply to an employee like respondent no.1, whose first appointment was also on a contract basis and the appointment to a higher academic post was also on a contract basis. Even assuming that the exception carved out is applicable to the case of respondent no.1, the exception does not permit a change of option from CPF to GPF-cum-Pension Scheme (old pension scheme). The exception protects the option earlier exercised by the employee so that the employee continues to be governed by the scheme for which he has already opted. Respondent no.1 had admittedly exercised the option of the CPF scheme.

.....

....

....

14. As noted earlier, Rule 6 clearly lays down that those who are regularised under the said Rules will not be entitled to benefit of any scheme other than the new pension scheme. Even when the exception carved out to Rule 6 is applicable, it enables the regularised employee to continue with either CPF or the old pension scheme as per the option already exercised by him. The Regularisation Rules under which the employment of respondent no.1 was regularised do not



permit the regularised employee to change his or her option from CPF to the old pension scheme. Clause 52 of the Bye-laws cannot override subsequent statutory Rules in the form of the Recruitment Rules. The Recruitment Rules are made for giving effect to the Resolution of the General Executive Council made on 18th February 2009 for the regularisation of the academic staff appointed on a contract basis. After having taken benefits of the Regularisation Rules, the entitlement of respondent no.1 will be governed by Rule 6 and not by Clause (a) (4) of Bye-law 52 of the Bye-laws.”

145. Learned Advocate General referring judgment of the Apex Court in ***The Reserve Bank of India vs. M.T. Mani and another (2025 INSC 769)*** reported in ***AIR 2025 SC 2885*** has submitted that in view of financial constraints, administrative exigency, economic condition and other relevant circumstances, referred in Statement and Object published at the time of enactment, the State is justified in enacting the impugned Act. Followings paras have been referred in this regard:-

“20. The Respondent, having unconditionally accepted all terms of these circulars and filled in the requisite forms etc. and fulfilled the conditions as laid down therein, cannot now be permitted to challenge unfavourable conditions. The Scheme as a whole had to be given effect to as a package deal.

21. An employer is entitled to consider several aspects while fixing a particular date for implementation of a scheme such as financial constraints, administrative exigencies, economic conditions, and other relevant circumstances. With these aspects in mind, the employer is fully justified in fixing some cut-off date, which cannot be said to be arbitrary. The various decisions as conveyed by the Government of India including its earlier refusal to allow a change of option, reflect



such a position with regard to the financial burden and liability which the RBI and the Government would have to bear. The final proposal which had been finally accepted, and the financial liability as projected therein, specifically took note of the fact that the arrears of pension would not be paid to the optees as per the 2020 Circular. The nominal interest of 3% charged on the refunded amount was merely for the purposes of covering the administrative expenses, inflation etc.

22. In support of the aspect regarding the policy decision and fixation of the cut-off date, dependent upon the financial liability apart from the administrative exigencies, reference has been made to the judgments of this Court in Mohammad Ali Imam and Others Vs. State of Bihar and Others (2020)5 SCC 685, State of Tripura and Others Vs. Anjana Bhattacharjee and Others (2022)19 SCC 705, Hirandra Kumar Vs. High Court of Judicature at Allahabad and Another (2020)17 SCC 401, State of Punjab and Others v. Amar Nath Goyal and Others (2005)6 SCC 754 and Himachal Road Transport Corporation and Another v. Himachal Road Transport Corporation Retired Employees Union (2021)4 SCC 502.

.....

.....

...

35. When this aspect is examined in the light of the law, as settled by this Court in the case of Mohammad Ali Imam and Others (supra), in Paragraph 11, this Court held thus:

“11. Apart from this, there may be other considerations in the mind of the executive authority while fixing a particular date i.e. economic conditions, financial constraints, administrative and other circumstances, and if no reason is forthcoming from the executive for fixation of a particular date, it should not be interfered with by the Court unless the cut-off date leads to some blatantly capricious or outrageous result. In such cases, it has been opined that there must be exercise of judicial restraint and such matters ought to be left to the executive authorities, to fix the cut-off date, and the Government thus, must be left with some leeway and



*free play at the joints in this connection. Even if no particular reasons are given for the cut-off date by the Government, the choice of cut-off date cannot be held to be arbitrary (unless it is shown to be totally capricious or whimsical) — State of A.P. v. N. Subbarayudu [State of A.P. v. N. Subbarayudu, (2008) 14 SCC 702 : (2009) 2 SCC (L&S) 172].” In **State of Punjab and Others (supra)**, in paragraphs 32, 33, 34 and 37, this Court held thus:-*

32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including the following two cases. In *State of Rajasthan v. Amrit Lal Gandhi* [(1997) 2 SCC 342 : 1997 SCC (L&S) 512 : AIR 1997 SC 782] this Court went so as far as to note that:

“Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cut-off date. In our opinion, it cannot be said that this cut-off date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions In *State of Tripura (supra)* the Supreme Court, in reaffirming its earlier rulings such as in *Amar Nath Goyal (supra)* and *T.N Electricity Board vs. R.Veeraram* Constitution. Accordingly, in the present case, the cutoff date fixed under the Pension Rules was constitutionally valid, and the High Court’s judgment striking it down was found to be erroneous. In *Hirandra Kumar (supra)* the Court clarified that individual hardships cannot justify altering a rule of general application and underscored that the determination of cut-off dates is a matter of policymaking. This function squarely lies within the domain of the rule-making authority, not the judiciary, as courts cannot assume



the role of framing or modifying policy decisions in the guise of judicial review and Others⁶, held that financial constraints can constitute a valid and non-arbitrary basis for fixing a cut-off date for extending pensionary benefits or pay revisions. It emphasized that economic considerations are germane to governmental policy decisions, and distinguishing between retirees based on such a date does not violate Article 14 of the and substituting the date of 1-1-1986 for 1-1-1990.” [Ibid., at AIR p. 784, para 17 : SCC p. 348, para 17

(emphasis supplied).]

33. More recently, in Veerasamy [(1999) 3 SCC 414 : 1999 SCC (L&S) 717] this Court observed that, financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis [Supra fn 2 SCC at p. 421 (para 15).] . In that case, the pension scheme applied differently to persons who had retired from service before 1-7-1986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes.

34. In State of Punjab v. Boota Singh [(2000) 3 SCC 733 : 2000 SCC (L&S) 435] (“Boota Singh”) after considering several judgments of this Court in D.S. Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] to K.L. Rathee v. Union of India [(1997) 6 SCC 7 : 1997 SCC (L&S) 1253] it was held that D.S. Nakara [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] should not be interpreted to mean that the emoluments of persons who retired after a notified date holding the same status,



must be treated to be the same [Supra fn 13 SCC at p. 735 (para 8).].

.....

37. In the instant case before us, the cut-off date has been fixed as 1-4-1995 on a very valid ground, namely, that of financial constraints. Consequently, we reject the contention that fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14."

In State of Tripura (supra) the Supreme Court, in reaffirming its earlier rulings such as in Amar Nath Goyal (supra) and T.N Electricity Board vs. R. Veerasamy and Others, (1999) 3 SCC 414, held that financial constraints can constitute a valid and non-arbitrary basis for fixing a cut-off date for extending pensionary benefits or pay revisions. It emphasized that economic considerations are germane to governmental policy decisions, and distinguishing between retirees based on such a date does not violate Article 14 of the Constitution. Accordingly, in the present case, the cutoff date fixed under the Pension Rules was constitutionally valid, and the High Court's judgment striking it down was found to be erroneous. In Hirandra Kumar (supra) the Court clarified that individual hardships cannot justify altering a rule of general application and underscored that the determination of cut-off dates is a matter of policymaking. This function squarely lies within the domain of the rule-making authority, not the judiciary, as courts cannot assume the role of framing or modifying policy decisions in the guise of judicial review."

146. Learned Advocate General has also submitted that issue was raised in Taj Mohammad's case as evident from para 7 of judgment



passed in CWP No. 2004 of 2017 that initial appointment of contract employees was on contract basis and therefore, they were not entitled for counting the said service for any purpose including the seniority and regularization of those employees was with prospective effect which was not challenged. According to learned Advocate General, this issue was not decided by the Court and Supreme Court has also decided the lis without touching the said issue and therefore, judgment is sub silentio to the Act. As the issue raised was not considered and decided, the State was forced to enact the law to take away the basis of judgment which is sub silentio for issuing direction to grant all service benefits including seniority by ignoring the issue raised by State.

147. In response to plea, raised on behalf of petitioners, that in view of Article 13 of the Constitution, the Act is dead Act and manifest arbitrariness is apparent on the face of it, learned Advocate General has submitted that Article 13 is crystal clear as it provides that law in violation of fundamental rights of citizens shall be void whereas impugned Act has been enacted by Legislature by exercising the power conferred under Article 309 of Constitution to promulgate such Act. Further that service benefits are not fundamental rights and therefore, Act is not violative of Article 13 of Constitution and Act has been made under Article 309 providing that regularization is condition precedent for entering into the



Government/public service which is within the scope of power conferred upon the Legislature by Constitution and therefore, there is no manifest arbitrariness in the impugned Act.

148. It has been submitted by learned Advocate General that impugned Act is a good Act as it is harmonious to all and it establishes Rule of law of the land.

149. It has been submitted by learned Advocate General that in pleadings of writ, plea, regarding manifest arbitrariness and judicial decision cannot be over turned by the Legislature, has not been demonstrated. However, Statement of Object and Reasons and Circumstances published in Statement of Object and Reasons and Circumstances, stated in preamble of enactment, are itself speaking that there is no arbitrariness in provisions of the Act much less manifest arbitrariness and in this regard, reliance has been placed on paras 60 and 62 of judgment of Apex Court in ***Khalsa University and another vs. State of Punjab*** reported in ***2024 SCC OnLine SC 2697*** which read as under:-

“60. The next ground on which the Impugned Act is challenged is that the Impugned Act suffers from manifest arbitrariness. Reliance in this respect is placed on the Constitution Bench judgment of this Court in the case of Shayara Bano (supra). In the said case, R.F. Nariman, J., speaking for himself and Uday U. Lalit, J., after referring to various earlier judgments, in para 70 onwards, observed thus:



“95. On a reading of this judgment in Natural Resources Allocation case [*Natural Resources Allocation*, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1] , it is clear that this Court did not read McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] as being an authority for the proposition that legislation can never be struck down as being arbitrary. Indeed the Court, after referring to all the earlier judgments, and Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] in particular, which stated that legislation can be struck down on the ground that it is “arbitrary” under Article 14, went on to conclude that “arbitrariness” when applied to legislation cannot be used loosely. Instead, it broad based the test, stating that if a constitutional infirmity is found, Article 14 will interdict such infirmity. And a constitutional infirmity is found in Article 14 itself whenever legislation is “manifestly arbitrary” i.e. when it is not fair, not reasonable, discriminatory, not transparent, capricious, biased, with favouritism or nepotism and not in pursuit of promotion of healthy competition and equitable treatment. Positively speaking, it should conform to norms which are rational, informed with reason and guided by public interest, etc.

96. Another Constitution Bench decision in Subramanian Swamy v. CBI [Subramanian Swamy v. CBI, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36] dealt with a challenge to Section 6-A of the Delhi Special Police Establishment Act, 1946. This section was ultimately struck down as being discriminatory and hence violative of Article 14. A specific reference had been made to the Constitution Bench by the reference order in Subramanian Swamy v. CBI [Subramanian Swamy v. CBI, (2005) 2 SCC 317 : 2005 SCC (L&S) 241] and after referring to several judgments including Ajay Hasia [Ajay Hasia v. Khalid Mujib Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] , Mardia Chemicals [Mardia



Chemicals Ltd. v. Union of India, (2004) 4 SCC 311] , Malpe Vishwanath Acharya [Malpe Vishwanath Acharya v. State of Maharashtra, (1998) 2 SCC 1] and McDowell [State of A.P. v. McDowell and Co., (1996) 3 SCC 709] , the reference, inter alia, was as to whether arbitrariness and unreasonableness, being facets of Article 14, are or are not available as grounds to invalidate a legislation.

97. After referring to the submissions of the counsel, and several judgments on the discrimination aspect of Article 14, this Court held: (Subramanian Swamy case [Subramanian Swamy v. CBI, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36] , SCC pp. 721-22, paras 48-49)

“48. In *E.P. Royappa* [*E.P. Royappa v. State of T.N.*, (1974) 4 SCC 3 : 1974 SCC (L&S) 165] , it has been held by this Court that the basic principle which informs both Articles 14 and 16 are equality and inhibition against discrimination. This Court observed in para 85 as under: (SCC p. 38)

“85. ... From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.”

Court's approach

49. Where there is challenge to the constitutional validity of a law enacted by the legislature, the Court must keep in view that there is always a presumption of constitutionality of



an enactment, and a clear transgression of constitutional principles must be shown. The fundamental nature and importance of the legislative process needs to be recognised by the Court and due regard and deference must be accorded to the legislative process. Where the legislation is sought to be challenged as being unconstitutional and violative of Article 14 of the Constitution, the Court must remind itself to the principles relating to the applicability of Article 14 in relation to invalidation of legislation. The two dimensions of Article 14 in its application to legislation and rendering legislation invalid are now well recognised and these are: (i) discrimination, based on an impermissible or invalid classification, and (ii) excessive delegation of powers; conferment of uncanalised and unguided powers on the executive, whether in the form of delegated legislation or by way of conferment of authority to pass administrative orders—if such conferment is without any guidance, control or checks, it is violative of Article 14 of the Constitution. The Court also needs to be mindful that a legislation does not become unconstitutional merely because there is another view or because another method may be considered to be as good or even more effective, like any issue of social, or even economic policy. It is well settled that the courts do not substitute their views on what the policy is.”

98. Since the Court ultimately struck down Section 6-A on the ground that it was discriminatory, it became unnecessary to pronounce on one of the questions referred to it, namely, as to whether arbitrariness could be a ground for invalidating legislation under Article 14. Indeed the Court said as much in para 98 of the judgment as under: (Subramanian Swamy case [Subramanian Swamy v. CBI, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36] , SCC p. 740)



“98. Having considered the impugned provision contained in Section 6-A and for the reasons indicated above, we do not think that it is necessary to consider the other objections challenging the impugned provision in the context of Article 14.”

99. However, in *State of Bihar v. Bihar Distillery Ltd.* [*State of Bihar v. Bihar Distillery Ltd.*, (1997) 2 SCC 453] , SCC at para 22, in *State of M.P. v. Rakesh Kohli* [*State of M.P. v. Rakesh Kohli*, (2012) 6 SCC 312 : (2012) 3 SCC (Civ) 481] , SCC at paras 17 to 19, in *Rajbala v. State of Haryana* [*Rajbala v. State of Haryana*, (2016) 2 SCC 445] , SCC at paras 53 to 65 and in *Binoy Viswam v. Union of India* [*Binoy Viswam v. Union of India*, (2017) 7 SCC 59] , SCC at paras 80 to 82, *McDowell* [*State of A.P. v. McDowell and Co.*, (1996) 3 SCC 709] was read as being an absolute bar to the use of “arbitrariness” as a tool to strike down legislation under Article 14. As has been noted by us earlier in this judgment, *McDowell* [*State of A.P. v. McDowell and Co.*, (1996) 3 SCC 709] itself is per incuriam, not having noticed several judgments of Benches of equal or higher strength, its reasoning even otherwise being flawed. The judgments, following *McDowell* [*State of A.P. v. McDowell and Co.*, (1996) 3 SCC 709] are, therefore, no longer good law.

100. To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore, violative of Article 14 of the Constitution. In *Cellular Operators Assn. of India v. TRAI* [*Cellular Operators Assn. of India v. TRAI*, (2016) 7 SCC 703] , this Court referred to earlier precedents, and held: (SCC pp. 736-37, paras 42-44)

“*Violation of fundamental rights*

42. We have already seen that one of the tests for challenging the constitutionality of subordinate



legislation is that subordinate legislation should not be manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. [See Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] , SCC at p. 689, para 75.]

43. The test of “manifest arbitrariness” is well explained in two judgments of this Court. In Khoday Distilleries Ltd. v. State of Karnataka [Khoday Distilleries Ltd. v. State of Karnataka, (1996) 10 SCC 304] , this Court held: (SCC p. 314, para 13)

‘13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14 of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably expected to emanate from an authority delegated with the law-making power. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian



Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121], this Court said that a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned under Article 14 on the ground that it is unreasonable; “unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary”. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say, “Parliament never intended the authority to make such rules; they are unreasonable and ultra vires”. In India, arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.’

44. Also, in *Sharma Transport v. State of A.P.* [*Sharma Transport v. State of A.P.*, (2002) 2 SCC 188] , this Court held: (SCC pp. 203-04, para 25)

‘25. ... The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression “arbitrarily” means: in an unreasonable manner, as fixed or done capriciously



or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.' "

(emphasis in original)

101. It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* [*Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

(emphasis supplied)

....

....

....

62. It can thus be seen that in the said case, it was held that the test of manifest arbitrariness as laid down by this Court in various judgments would also apply to invalidate legislation as well as subordinate legislation under Article 14. It was held that manifest arbitrariness must



be something done by the legislature capriciously, irrationally and/or without adequate determining principle. It further goes on to hold that when something is done which is excessive and disproportionate, such a legislation would be manifestly arbitrary. It, in unequivocal terms, held that arbitrariness in the sense of manifest arbitrariness would apply to negate legislation under Article 14 of the Constitution. In para 95, it was observed that the case of ***Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1*** did not lay down a proposition that legislation can never be struck down as being arbitrary. This Court, after referring to all the earlier judgments including ***Ajay Hasia and Others v. Khalid Mujib Sehravardi and Others, (1981) 1 SCC 722***, stated that legislation can be struck down on the ground that it is arbitrary under Article 14 of the Constitution. However, arbitrariness when applied to legislation cannot be used loosely."

150. It has been submitted by learned Advocate General that final seniority in *Taj Mohammad's* case was published in 1997 and thereafter, it was re-revised and is as such since 2008 onwards. The contract employees were appointed in the year 2003 on contract basis and their services were regularized in 2008, whereas other employees had already been promoted, whereas there were no provisions of appointment on contract in R&P Rules prior to 2003 and therefore, the appointment of petitioners in *Taj Mohammad's* case was de hors Rules and thus they are not entitled for seniority from initial date of appointment and further that settled seniority cannot be unsettled after such long period. It has been submitted that regularization of contract employees in *Taj Mohammad's* case was prospectively which was accepted and was



not challenged by them till date and filing the writ petition for seniority was suffering from delay and laches and therefore, the said judgment led to the initiation for enactment of impugned Act because it is established principle of jurisprudence in the service law that settled position cannot be unsettled after inordinate long period, and State can restrict the service benefits on account of financial constraints. Further that for acceptance of their regularization by contract employees without any protest at the relevant point of time, such employees were not entitled for benefit of period of contract service and therefore, the cause of judgment in Taj Mohammad was to be removed and thus, impugned Act has been rightly enacted. Learned Advocate General has also stated that State does not say that judgment is bad in law but implementation of this judgment is going to unsettle the settled position and going to cause huge burden on public expenditure and therefore, petitions are liable to be dismissed.

151. To substantiate such plea, learned Advocate General has placed reliance on judgment dated 1.12.2002 passed by Division Bench of this High Court in *CWP No. 1218 of 2021 titled Suresh Kapoor and others vs. State of HP*.

152. It has been submitted that State has framed the Act to mitigate the financial constraints and even otherwise the contract employee were and are not entitled for seniority or other benefits for the



period of service on contract basis. Learned Advocate General submitted that Article 162 of the Constitution empowers the State Legislature to make laws in all affairs on which State Legislature can make laws and in present case, State has made law with respect to service conditions of employees for which State has jurisdiction and competence to frame.

153. Learned Advocate General, referring pronouncement of the Supreme Court in ***Janapada Sabha Chhindwara vs. The Central Provinces Sydicate Ltd and another*** reported in ***(1970)1 SCC 509*** has submitted that in view of principle laid down in para 10 of this judgment, State is competent to enact the impugned Act with retrospective effect. (reproduced supra).

In rebuttal

154. In rebuttal, Learned Senior Counsel for the petitioners confronts the State's two principal contentions — first, that the judgments in *Taj Mohammad* and related cases are per incuriam, and second, that the impugned Act changes the legal basis of those judgments. The petitioners' response is that plea that judgment in *Taj Mohammad's* case is per incuriam, is misplaced and in *Taj Mohammad's* judgment the Court has specifically referred to the relevant rules including Column 15 and the contractual appointment provision, Column 15-A and has reached its conclusion after dealing with the selection process; even if Rule 15-A is



now considered, the result would remain the same. On the second point, it is contended that the impugned legislation is not a merely validating Statute designed to cure defects identified by the Courts and it does not change the fundamental basis of the previous judgments interpreting the Constitutional scheme.

155. Learned Senior Counsel for the petitioners has submitted that the argument that the judgment in *Taj Mohammed* and other cases is per incuriam though is not relevant in this lis, however, this plea is not correct. It has also been submitted that Court in paras 3, 11 to 16 of *Taj Mohammad's* case has specifically referred to the Rules in question in order to observe that the appointment was made on contract basis after following the procedure meant for substantive appointments, against available vacancies, and from open market. Selection process prescribed for direct recruitment (Rule 15) and contractual appointment (Rule 15-A) happens to be same and the perusal of judgment in *Taj Mohammad* shows that the Court has made its observations after specifically referring the Rules. Even otherwise, if presently, Rule 15-A is considered, it leads to same conclusion. It has been submitted that the impugned legislation is not a validating Act. The judgment had not pointed out any defects in any Act but had simply interpreted the Constitutional Scheme after taking into consideration the binding precedents of the



Apex Court in Direct Recruits, Aghore Nath and Siraj Ahmed cases. The impugned Act does not change the basis of any judgment. To substantiate the plea reliance has been placed on paras 2, 147, 148, 165, 181.4 of judgment of the Apex Court in ***Bajaj Alliance General Insurance Company Limited vs. Rambha Devi and others***, reported in **(2025) 3 SCC 95**, which read as under:-

“2. Before we set out the relevant provisions, a brief overview of the legal journey that has led us to the above quest would be appropriate. The vexed question was first noticed by a two-judge Bench of Justice Kurian Joseph and Justice Arun Mishra, JJ. in *Mukund Dewangan v. Oriental Insurance Co. Ltd.* (2016) 4 SCC 298 [for short “*Mukund Dewangan* (2016)”. It took note of the conflicting views in 8 different judgments of this Court and framed the following questions for determination by a three-Judge Bench: (SCC p. 341, para 59)

“59. 59.1. What is the meaning to be given to the definition of “light motor vehicle” as defined in Section 2(21) of the MV Act? Whether transport vehicles are excluded from it?

59.2. Whether “transport vehicle” and “omnibus” the “gross vehicle weight” of either of which does not exceed 7500 kg would be a “light motor vehicle” and also motor car or tractor or a roadroller, “unladen weight” of which does not exceed 7500 kg and holder of licence to drive class of “light motor vehicle” as provided in Section 10(2)(d) would be competent to drive a transport vehicle or omnibus, the “gross vehicle weight” of which does not exceed 7500 kg or a motor car or tractor or roadroller, the “unladen weight” of which does not exceed 7500 kg?

59.3. What is the effect of the amendment made by virtue of Act 54 of 1994 w.e.f. 14-11-1994 while substituting clauses (e) to (h)



of Section 10(2) which contained “medium goods vehicle”, “medium passenger motor vehicle”, “heavy goods vehicle” and “heavy passenger motor vehicle” by “transport vehicle”? Whether insertion of the expression “transport vehicle” under Section 10(2) (e) is related to the said (2016) 4 SCC 298 substituted classes only or it also excluded transport vehicle of light motor vehicle class from the purview of Sections 10(2)(d) and 2(41) of the Act?

59.4. What is the effect of amendment of Form 4 as to operation of the provisions contained in Section 10 as amended in the year 1994 and whether procedure to obtain driving licence for transport vehicle of class of “light motor vehicle” has been changed?”

.....

.....

.....

147. Shifting gears, we may recall that the decision in *Mukund Dewangan*(2017) *Mukund Dewangan v. Oriental Insurance Co. Ltd.* (2017) 14 SCC 663 was doubted for not noticing certain provisions of the MV Act and MV Rules. These include, inter alia, Section 4(1), 7, 14, the second proviso to Section 15 and Section 180 and 181 of the MV Act. It was therefore argued before this Court that the said decision is per incuriam. To begin with, it is useful to refer to some decisions that have expounded on the principle of per incuriam.

148. The term per incuriam is a Latin term which means “by inadvertence” or “lack of care”. English Courts have developed this principle in relaxation of the rule of stare decisis. In *Halsbury's Laws of England Halsbury's Laws of England* (4th Edn.). Vol. 26, the concept of per incuriam was explained as under:

“A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of



the terms of a statute or rule having statutory force. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, or because the court had not the benefit of the best argument, and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake.”

(emphasis supplied)

.....

.....

.....

165. It is true that *Mukund Dewangan v. Oriental Insurance Company Ltd.* (2017) 14 SCC 663 did not analyse the provisions that distinguish transport and non-transport vehicles, as noted in the reference orders. The statutory scheme of MV is more nuanced than the simple weight-based distinction made in the said judgment. Moreover, the Court failed to notice Section 31(2) and 31(3) which specify “Transport” and “Non-Transport” vehicles. However, the judgment gave due consideration to the important statutory provisions. We have carefully looked at the relevant and the wide ranging provisions in our analysis in this decision. A harmonious interpretation, as we have explained earlier, would lead us to the same conclusion but fortified with some additional reasoning based on the consideration of all the relevant provisions. The overlooked provisions would not, in our considered opinion, alter the eventual pronouncement. Importantly, we do not notice any glaring error or omission that would alter the outcome of the case. Therefore, the ratio in *Mukund Dewangan v. Oriental Insurance Company Ltd.* (2017) 14 SCC 663 should not be disturbed by applying the principles of per incuriam.

.....

.....

.....



181.4. The decision in *Mukund Dewangan v. Oriental Insurance Company Ltd.* (2017) 14 SCC 663 is upheld but for reasons as explained by us in this judgment. In the absence of any obtrusive omission, the decision is not per incuriam, even if certain provisions of the MV Act and MV Rules were not considered in the said judgment”

156. Reliance has also been placed on the Apex Court judgment in ***NHPC vs. State*** reported in **(2023) 17 SCC 1** (*quoted supra*).

Analysis and Conclusion

157. The Apex Court in its pronouncement in ***Janapada Sabha Chhindwara Vs. The Central Provinces Syndicate Ltd. and Another, 1970 (1) SCC 509*** has held that It is open to the Legislature within certain limits to amend the provisions of an Act retrospectively and do declare what the law shall be deemed to have been, but it is not open to the Legislature to say that a judgment of a Court properly constituted and rendered in exercise of its powers in a matter brought before it shall be deemed to be ineffective and the interpretation of the law shall be otherwise than as declared by the Court as it is not open to Legislature to overrule or set aside the decision of the Supreme Court.

158. In ***State of Tamil Nadu and others Vs. M. Rayappa Gounder and others***, reported in **1971 (3) SCC 1**, the Apex Court by referring judgment in *Janapada Sabha Chhindwara's* case, has held as under:-



“6. In *Mahal Chand Seihia Vs. State of West Bengal*, Criminal Appeal No. 75 of 1969, decided on September 10, 1969 (SC) Mitter, J., speaking for the Court stated the legal position in these words :

“The argument of counsel for the appellant was that although it was open to the State legislature by an Act and the Governor by an Ordinance to amend the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, it was incompetent for either of them to validate an order of transfer which had already been quashed by the issue of a writ of certiorari by the High Court and the order of transfer being virtually dead, could not be resuscitated by the Governor or the Legislature and the validating measures could not touch any adjudication by the Court.

It appears to us that the High Court took the correct view and the Fourth Special Court had clearly gone wrong in its appreciation of the scope and effect of the Validating Act and Ordinance. A legislature of a State is competent to pass any measure which is within the legislative competence under the Constitution of India. Of course, this is subject to the provisions of Part III of the Constitution. Laws can be enacted either by the Ordinance making power of a Governor or the Legislature of a State in respect of the topics covered by the entries in the appropriate List in the Seventh Schedule to the Constitution. Subject to the above limitations laws can be prospective as also retrospective in operation. A court of law can pronounce upon the validity of any law and declare the same to be null and void if it was beyond the legislative competence of the legislature or if it infringed the rights enshrined in Part III of the Constitution. Needless to add it can strike down or declare invalid any act or direction of a State Government which is not authorised by law. The position of a Legislature is however different. It cannot declare any decision of a court of law to be void or of no effect.”



159. In ***S.R. Bhagwat and others Vs. State of Mysore, (1995) 6***

SCC 16, it has been held by the Apex Court as under:-

“15. We may note at the very outset that in the present case the High Court had not struck down any legislation which was sought to be re-enacted after removing any defect retrospectively by the impugned provisions. This is a case where on interpretation of existing law, the High Court had given certain benefits to the petitioners. That order of mandamus was sought to be nullified by the enactment of the impugned provisions in a new statute. This in our view would be clearly impermissible legislative exercise.”

160. The Apex Court in ***S.T. Sadiq Vs. State of Kerala and others, (2015) 4 SCC 400*** has held as under:-

“13. It is settled law by a catena of decisions of this Court that the legislature cannot directly annul a judgment of a court. The legislative function consists in "making" law (see Article 245 of the Constitution) and not in "declaring" what the law shall be (see Article 141 of the Constitution). If the legislature were at liberty to annul judgments of courts, the ghost of bills of attainder will revisit us to enable legislatures to pass legislative judgments on matters which are inter- parties. Interestingly, in England, the last such bill of attainder passing a legislative judgment against a man called Fenwick was passed as far back as in 1696. A century later, the US Constitution expressly outlawed bills of attainder (see Article 1 Section 9).

14. It is for this reason that our Constitution permits a legislature to make laws retrospectively which may alter the law as it stood when a decision was arrived at. It is in this limited circumstance that a legislature may alter the very basis of a decision given by a court, and if an appeal or other proceeding be pending, enable the Court to apply the law retrospectively so made which would then change the very basis of the earlier decision so that it would no longer hold good. However, if such is



not the case then legislation which trenches upon the judicial power must necessarily be declared to be unconstitutional.”

161. In ***State of Karnataka and others Vs. Karnataka Pawn Brokers Association and others (2018) 6 SCC 363***, the Apex Court has held as under:-

“24. On analysis of the aforesaid judgments it can be said that the Legislature has the power to enact validating laws including the power to amend laws with retrospective effect. However, this can be done to remove causes of invalidity. When such a law is passed the Legislature basically corrects the errors which have been pointed out in a judicial pronouncement. Resultantly, it amends the law, by removing the mistakes committed in the earlier legislation, the effect of which is to remove the basis and foundation of the judgment. If this is done, the same does not amount to statutory overruling.

25. However, the Legislature cannot set at naught the judgments which have been pronounced by amending the law not for the purpose of making corrections or removing anomalies but to bring in new provisions which did not exist earlier. The Legislature may have the power to remove the basis or foundation of the judicial pronouncement but the Legislature cannot overturn or set aside the judgment, that too retrospectively by introducing a new provision. The legislature is bound by the mandamus issued by the Court. A judicial pronouncement is always binding unless the very fundamentals on which it is based are altered and the decision could not have been given in the altered circumstances. The Legislature cannot, by way of introducing an amendment, overturn a judicial pronouncement and declare it to be wrong or a nullity. What the Legislature can do is to amend the provisions of the statute to remove the basis of the judgment.”

26.

27. Therefore, the State, in so far as it has made the amended provisions retrospective, has attempted to nullify the writ of mandamus



issued by the Court in favour of the respondents. This mandamus could not have been set at naught by making the provisions retrospective. This would be a direct breach of the doctrine of separation of powers as laid down in *State of T.N. Vs. State of Kerala*, (2014) 12 SCC 696. We are clearly of the view that the State Legislature could not have nullified the judgment passed in *Manakchand Motilal Vs. State of Karnataka*, 1991 SCC OnLine Kar 139, by retrospectively amending the Acts. Therefore, the validating Acts in so far as they are retrospective, are held to be illegal.”

162. In ***Medical Council of India Vs. State of Kerala and others***, reported in **(2019) 13 SCC 185**, the Apex Court has observed as under:-

“45. It is crystal clear in the instant case that the State Government has exceeded its powers and has entrenched upon the field reserved for the judiciary. It could not have nullified the judgment. The online procedure was laid down by the judgment. The provision of any existing law framed by legislation has not been changed by the State Government by the impugned Ordinance but illegalities found in the admissions were sought to be got rid of. What was laid down in the judgment for ensuring the fair procedure which was required to be followed was sought to be undone, it was nothing but the wholly impermissible act of the State Government of sitting over the judgment and it could not have promulgated the Ordinance setting at naught the effect of the judgment.

46. It is also apparent that what the State Government has done by way of the impugned Ordinance is not only impermissible and beyond legislative competence it also has the effect of perpetuating illegality and arbitrariness committed by the colleges in question by not following the mandate of law laid down by the High Court as affirmed by this Court. An effort has been made to cover up the arbitrariness and illegality in an illegal and impermissible manner for which the State Government had



no competence. The provisions made in the Ordinance are otherwise also quite illegal and arbitrary besides being in violation of the doctrine of separation of powers enshrined under Article 50 of the Constitution of India.”

163. The Apex Court after taking into consideration numerous judgment passed by the Apex Court earlier, in ***Dr. Jaya Thakur Vs. Union of India and others***, reported in **(2023) 10 SCC 276** has concluded in para 114 that though effect of the judgments of this court can be nullified by a legislative act removing the basis of the judgment and such law can be retrospective, however retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. It has been held that the defect pointed out should have been cured so that the basis of the judgment pointing out the defect is removed, but nullification of mandamus by an enactment would be impermissible legislative exercise. It has been further held that transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the Rule of Law and of Article 14 of the Constitution of India.

164. Statement of object and reasons, preamble and various provisions of the impugned Act, especially Sections 3, 5 to 9, clearly depict that this Act provides pre-service engagement as it excludes direct



recruitment and introduces appointment by regularisation, meaning thereby that pre-regularisation engagement shall be there against the public post, but without conferring the status to the person so engaged as a person in service of the State. He will be in service of the State after regularisation. The Act is completely silent about the manner in which pre-regularisation engagement shall be made. It confirms status of public servant only on regularisation and confers service benefits only from the date of regularisation and service benefits already extended contrary to this Act shall stand withdrawn and it replaces contractual appointments with regularisation retrospectively notwithstanding anything contained in judgment etc.

165. Not only above referred Sections of the impugned Act, but the Statement of Object and Reasons as well as Preamble of the Act are also either misconceived or mischievous.

166. In statement of object and reasons, though there is a reference of Article 309 of the Constitution of India, providing for making law for regulating the recruitment and condition of service of persons appointed to public service and posts in connection with affairs of State, but the Act provides contrary as it contemplates engagement of a person performing the job of a Government employee against to the public service and post in connection with affairs of the State, but without



treating him as a person in public service, because status of such person as a appointee to public service and posts in connection with the affairs of the State shall be conferred on regularisation only, but not before that. It contemplates some irregularity in itself in initial appointment which is to be set right on regularisation. Therefore, on one hand statement of object and reasons gives impression that Act is being made for regulating the recruitment and condition of service of persons appointed to public service, but on the other hand it prohibits appointments of a person to public service and posts from its initial date by providing entry in public service on regularisation. The regularisation can be of a person who prior to regularisation is in irregular service.

167. It has been further stated in the statement of object and reasons that since the service condition of the person working on contract basis are regulated as per the agreement signed between the parties, various service Rules applicable to Government employees do not apply to such persons and such contract appointees are not part of public services, with further averment that on account of inclusion of contract appointments in Recruitment and Promotion Rules, these appointments were being treated as appointments to the public services wrongly, which was against the intention and purpose of engaging the persons on contract basis, and it created necessity to harmonize the interest of



persons appointed on regular basis to the public services and contract appointees. It has been further stated that treating the contract appointees as equivalent to regular employees will not only put huge burden on State exchequer, but also unsettle the settled position, because the contract appointments have been made since 2003 and treating them equivalent to regular employees will result to revising the seniority list for last more than 21 years and many employees may have to be demoted to adjust the contract persons. Whereas persons engaged on contract basis were aware at the time of their engagement and they were not entitled to seniority and other service benefits for the period of contract service. Therefore, to avoid huge burden on the State exchequer and not to unsettle the settled position, the Act was purposed, processed and enacted.

168. It is evident from various pronouncements of the Courts including this High court which have been affirmed and upheld by the Apex Court, that in none of the judgments it was ever directed by the Courts to regularise the service of contract appointees or to treat the contract appointees as regular appointees by extending service benefits to them while they were and are serving on contract. From the very beginning, in all its pronouncements, Courts have directed to extend service benefits, to the incumbents, of the contract period of service only



after their regularisation by the respondents-State/Department. It is contrary to record to say that persons engaged on contract basis during their contract engagement were directed to be treated at par with the regular appointees. Therefore, the very object and reasons, for which the impugned Act has been promulgated and enacted, are without foundation and based on incorrect and misconceived notion and smacks malafide, as a prudent man, after going through the pronouncements of the Courts and taking into consideration entire facts and circumstances, can easily understand that in none of the judgments, the Courts had and have directed to regularise the contract service of the appointees contrary to terms of contract unless there is a policy of the State for such regularisation, and the persons approaching the Courts were being discriminated by refusing extension of benefits of Policy to such persons.

169. In the preamble of the Act there is repetition of statement of object and reasons. It a hard fact that the Government, instead of making the appointments according to Recruitment and Promotion Rules framed under Article 309 of the Constitution of India, always intended and intends to make appointments de hors Rules according to whims and fancies of the persons in power and also to avoid the payment of service benefits to employees. The Government had been in practice of making appointments on ad hoc or tenure basis at the first instance, but by giving



artificial breaks after 89 days and thereafter re-engaging such persons. When Courts interfered and directed the State to make appointments to the public service and post by following the prescribed procedure as envisaged under Article 309 of the Constitution of India, the State devised various methods including framing numerous policies for appointment of persons to the public service and post on temporarily basis by changing its nomenclature as already referred supra.

170. From the submissions made by Mr. Patwalia, Senior Advocate as well as learned Advocate General, it is more than apparent that impugned Act has been enacted to supersede, overrule and overreach the pronouncements of the Courts including the Apex Court, wherein after adjudication by the competent Court, lis has been decided and law has been declared by interpreting the provisions of law, and contract appointees, after regularisation without any interruption in the service, on the same post, have been held entitled for all service benefits as available to regular employees in terms of CCS Rules, but after regularisation only. The seniority etc has also been extended only after regularisation, that too only in those cases wherein contract appointments were made by following the prescribed procedure and in conformity with minimum eligibility required for the said post by following the Constitutional Scheme. It has been held by the Courts that when the



contract appointee was appointed by undergoing the same rigour as were applicable for regular appointment and had been serving on substantial sanctioned post, on regularisation, he shall be entitled for all benefits like regular candidate including the seniority because the only difference between the regular appointee and the persons on contract service is that one was appointed on regular basis and another on contract basis.

171. The Act envisages pre-regularisation engagement to the public service and post which is in conflict with and contrary to Constitutional Scheme. In *Uma Devi's* case, followed in *Baldev Singh's* case (supra) by this High Court, there are unambiguous directions to the State to ensure appointments to the public services and post on regular basis by following the prescribed procedure in terms of Recruitment and Promotion Rules framed under Article 309 of the Constitution of India, but State of Himachal Pradesh, everytime, has devised a method to avoid regular appointments and legislation has been enacted in order to nullify mandamus issued by the Courts in favour of petitioners, despite the fact that rights of the petitioners have been adjudicated and affirmed as well as upheld by the Apex Court. It is a breach of the basic structure of the Constitution and independence of Judiciary. Act and conduct of the respondents is violative of Article 14 of the Constitution, being ex-facie arbitrary, capricious and colourable exercise of powers.



Undoubtedly, the Act has been enacted to supersede, overrule, nullifying the pronouncements of Courts including the mandamus of the Apex Court which amounts to statutory overruling of judgment passed in accordance with law by competent Court.

172. Section 3 of the Act provides method of recruitment providing three modes of recruitment in the public service, i.e. (a) regularisation of service (b) by promotion (c) in the manner as may be prescribed. From clauses (a) and (b), it is apparent that there shall not be direct recruitment to the public services and post, but the direct recruitment shall only be made on regularisation of service which per-supposes that before regularisation no one will be in public service, but he shall be performing the job of Government servant without entering in service. Provision for recruitment as may be prescribed is vague, unbridled and arbitrary.

173. Section 5 of the Act provides regularisation of person working of contract and Section 6 of the Act provides that service benefits like seniority, increment, promotion etc. will only be admissible to the employees appointed on regular basis, whether they had been appointed prior to 12.12.2003 or after the said date. However, Section 6(2) provides that such employee shall not be entitled for service benefits like seniority, increment, promotion etc. This Section indicates that a person recruited through H.P. Public Service Commission after fulfilling required eligibility



criteria shall continue to serve the State in such temporary capacity for an indefinite period and will not be called a public servant. Amendment in Section 8 nullifies, overrule and supersede the mandate of the Court by providing that the word on “contract basis” shall be replaced by words “by regularisation”.

174. After considering the pronouncements of the Supreme Court right from the **Janapada Sabha Chhindwara** till date, it is consistent view that Legislature is incompetent to enact the Act as, has been done by the Legislature by enacting the impugned Act. It amounts to transgression of power by one limb, i.e. Legislature by intrusion in the ambit, scope and role of the Judiciary. The impugned legislative Act is not an Act removing the basis of the judgment, but it amounts to superseding or overruling the judgment, which is not permissible under the Constitution Scheme. It is not a case where law has been modified from retrospective date, but it is a case where mandate issued by the competent Courts and law declared by the Court has been superseded and overruled, whereas nullification of mandamus by an enactment is impermissible by Legislative exercise and it amounts to transgression of Constitution limitations and intrusion into the Judicial Power by the Legislature in violation of principle of separation of power envisaged as a basic stricture of the Constitution, the Rule of Law and of the Article 14 of the Constitution of India. Such breach is



impermissible under law and, therefore, enactment of the impugned Act is beyond the competence of the State Legislature. The Act purports to annul the final judgments referred supra and, therefore, this Act of Legislature has to be declared unconstitutional, because annulment of earlier judgments of the Court by subsequent Legislature is impermissible.

175. It has been strongly contended on behalf of respondents-State that the judgments passed by the Courts including the Apex Court were and are causing huge financial burden on the State and due to financial constrain, it would not be possible to implement the judicial verdict and, therefore, by exercising the power to legislate with respect to service condition as provided under Article 309 of the Constitution of India, the State is competent and justified in enacting the impugned Act.

176. Financial constrain or paucity of funds is no ground for the State to shirk from performing its statutory duty. In this regard following para of judgment of the Apex Court in ***All India Judges' Association and others Vs. Union of India and others***, reported in ***(1993) 4 SCC 288***, is relevant to be referred:-

“16. The contention with regard to the financial burden likely to be imposed by the directions in question, is equally misconceived. Firstly, the courts do from time to time hand down decisions which have financial implications and the Government is obligated to loosen its



purse recurrently pursuant to such decisions. Secondly, when the duties are obligatory, no grievance can be heard that they cast financial burden. Thirdly, compared to the other plan and non-plan expenditure, we find that the financial burden caused on account of the said directions is negligible. We should have thought that such plea was not raised to resist the discharge of the mandatory duties. The contention that the resources of all the States are not uniform has also to be rejected for the same reasons. The directions prescribe the minimum necessary service conditions and facilities for the proper administration of justice. We believe that the quality of justice administered and the calibre of the persons appointed to administer it are not of different grades in different States, Such contentions are ill-suited to the issues involved in the present case."

177. It would be apt to refer following paras of the judgment of the Apex Court in ***Dharam Singh & others Vs. State of U.P. & Another, 2025 INSC 998:-***

"1. When public institutions depend, day after day, on the same hands to perform permanent tasks, equity demands that those tasks are placed on sanctioned posts, and those workers are treated with fairness and dignity. The controversy before us is not about rewarding irregular employment. It is about whether years of ad hoc engagement, defended by shifting excuses and pleas of financial strain, can be used to deny the rights of those who have kept public institutions running. We resolve it by insisting that public employment should be organised with fairness, reasoned decision making, and respect for the dignity of work.

....

....

....

8. The State's refusal of 11.11.1999 cites "financial constraints" and the subsequent decision of 25.11.2003 (taken after the High Court's direction to reconsider) adverts to financial crisis and a ban on creation of posts. Neither decision engages with relevant considerations placed



on record, namely, the Commission's 1991 resolution and repeated proposals, the acknowledged administrative exigencies of a recruiting body handling large cycles, the continuous deployment of these very hands for years, and the existence of attendant work that is primarily perennial rather than sporadic. While creation of posts is primarily an executive function, the refusal to sanction posts cannot be immune from judicial scrutiny for arbitrariness. We believe that a non-speaking rejection on a generic plea of "financial constraints", ignoring functional necessity and the employer's own long- standing reliance on daily wagers to discharge regular duties, does not meet the standard of reasonableness expected of a model public institution.

.....

.....

.....

17. Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason and the duty to organise work on lawful lines."

178. In recent judgment in ***State of West Bengal & Another Vs. Confederation of State Government Employees West Bengal and others, Civil Appeal Nos. 792-794 of 2026 (2026 INSC 123)***, the Apex Court has dealt with the issue that "whether does paucity of funds defeat a legal right", wherein findings of the Court are as under:-

"50. One of the implications of accepting the respondent's contention as submitted by the appellant - State is that it will lead to an incidence of



thousands of crores on the State, thereby having a great negative impact on the economy and financial security of the State. We find this position difficult to accept. This is so because once a legal right has been established, as is the undoubted position in this case by virtue of the 'Judgment In Round One', as also our discussion supra, irrespective of whether it pertains to salary, pension, gratuity or other statutory benefits, it is not within the realm of permissible actions for the State to refuse payment of the same on account of financial inability/paucity of funds. The least that is expected of a State in a democracy is that it honours its obligations and commitments, arising from a legislation or judicial decisions, for such obligations are not discretionary in any way, shape or form. This clear position protects such statutory obligations for, if such a ground of limited financial ability was readily available to the State Government, which may undoubtedly in certain situations face tough times, it would render these obligations illusory. When it comes to employees' dues, this proposition would be extremely dangerous and stifling since the amounts received thereby are not handouts or acts of charity but are earned compensation / consideration for services given, and denial of such consideration would have a direct impact on the right to life and livelihood enshrined in Article 21 of the Constitution. In **State of H.P. v. H.P. State Recognised & Aided Schools (1995) 4 SCC 507**, it has been held by a bench of three judges that constitutional duties cannot be evaded on the ground of paucity of funds. Granted, we have not given any finding with respect to DA being a facet of Article 21 but at the same time it has to be acknowledged that DA is an integral part of salary which is the means by which various other facets of right to life under Article 21 can be seen to a logical and desirable end.

(a) In **Haryana State Minor Irrigation Tubewells Corpn. v. G.S. Uppal, (2008) 7 SCC 375**, this Court observed as under:

"33. The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so. Whatever may be the factual position, there appears to



be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in *M.M.R. Khan v. Union of India* [1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541] and *Indian Overseas Bank v. Staff Canteen Workers' Union* [(2000) 4 SCC 245 : 2000 SCC (L&S) 471] . . .”

(Emphasis Supplied)

(b) In ***State of A.P. v. Dinavahi Lakshmi Kameswari, (2021) 11 SCC 543***:

“13. The direction for the payment of the deferred portions of the salaries and pensions is unexceptionable. Salaries are due to the employees of the State for services rendered. Salaries in other words constitute the rightful entitlement of the employees and are payable in accordance with law. Likewise, it is well settled that the payment of pension is for years of past service rendered by the pensioners to the State. Pensions are hence a matter of a rightful entitlement recognised by the applicable rules and regulations which govern the service of the employees of the State. ...”

(Emphasis Supplied)

(c) In ***Punjab State Coop. Agricultural Development Bank Ltd. v. Coop. Societies, (2022) 4 SCC 363***, this Court observed:

“57. In our view, non-availability of financial resources would not be a defence available to the appellant Bank in taking away the vested rights accrued to the employees



that too when it is for their socio-economic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the appellant to divert the resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour.”

51. It has often been recognised that the State must set an example for other employers in the country by behaving as a ‘model employer’. Such a position should not be difficult to attain given all the advantages that it has. Its power lies in the volume of employment, its sovereign/constitutional authority to tax, ability to borrow and manage public finances. In embodying the ‘model employer’ the State not only fulfils its obligation but also instils and maintains public confidence in the rule of law, governance and administration of justice. Leading by example, fulfilling its financial duties in times of fiscal strain, gives it the moral authority to wield the sword of law against private entities, should they not do so. The position stated by us above has been recognised in a number of judgments of this Court. In **Bhupendra Nath Hazarika v. State of Assam, (2013) 2 SCC 516**, a coordinate Bench took note of various past pronouncements as follows:

“61. Before parting with the case, we are compelled to reiterate the oft stated principle that the State is a model employer and it is required to act fairly giving due regard and respect to the rules framed by it. But in the present case, the State has atrophied the rules. Hence, the need for hammering the concept.

62. Almost a quarter century back, this Court in *Balram Gupta v. Union of India* [1987 Supp SCC 228 : 1988 SCC (L&S) 126 : (1987) 5 ATC 246] had observed thus: (SCC p. 236, para 13)

“13. ... As a model employer the Government must conduct itself with high probity and candour with its employees.”



In *State of Haryana v. Piara Singh* [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] the Court had clearly stated: (SCC p. 134, para 21)

“21. ... The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16.” ...

... ..

65. We have stated the role of the State as a model employer with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where⁵². In that view of the matter, it is not open for the appellant State to shirk away from its responsibility from paying DA on

the count of financial difficulty that it may face in doing so. It is an obligation arising out of the statute of its own creation and it must be met. e hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretised. We say no more.”

52. In that view of the matter, it is not open for the appellant-State to shirk away from its responsibility from paying DA on the count of financial difficulty that it may face in doing so. It is an obligation arising out of the statute of its own creation and it must be met.”



179. In present case, petitioners are agitating for their legal rights which have been affirmed and approved by the Apex Court vide judgments/verdict passed in their favour directing to grant them benefits of service as per their entitlement and there is a vested and accrued legal right in their favour in consonance with provisions of Articles 14 and 16 of the Constitution of India, which are fundamental rights under Part-III of the Constitution, therefore, denial of benefits based on such fundamental, legal and vested rights, by enacting a Statute, being arbitrary, is not permissible, and the State cannot shirk away its duty and liability to extend such benefits. Thus impugned Act is in conflict with and in violation of Constitutional mandate.

180. Article 141 of the Constitution of India mandates that law declared by the Supreme Court shall be binding on all Courts.

181. Article 142 of the Constitution provides enforcement of the decree and order of the Supreme Court as well as to pass any order as is necessary for doing complete justice. In present case as referred supra, the issues, on the basis of which judgment in *Taj Mohammad* case is being criticized, have already been dealt with by the Apex Court in various cases and verdict in those cases is binding on all including the State and are to be enforced by the respondents for doing complete justice. As



already stated supra, similarly situated contract employees have been extended benefits which are being denied to the petitioners herein under the garb of enactment of impugned Act.

182. Article 144 of the Constitution of India mandates that all authorities Civil and Judicial in territory of India shall act in aid of the Supreme Court. Therefore, any act, conduct, omission and commission on the part of respondents which is contrary to verdict of the Apex Court, is in conflict with this provision of the Constitution. Therefore, enactment of the impugned Act to supersede, overrule, bypass or render the mandamus redundant, taking away the benefits extended, declared to be available to the employees in terms of such mandamus, is an arbitrary act and is liable to be interfered with.

183. Plea raised by learned Advocate General by stating that judgment in *Taj Mohammad case* is *sub silentio* and *per incuriam* by advancing arguments that the said judgment has been passed without taking into consideration Column 15A of the Recruitment and Promotion Rules, and that contract service has to be governed on the basis of terms and conditions of the contract agreed and signed between the appointees and the State, is also misconceived, for the discussion hereinafore and after.

184. In present cases in none of the judgments passed by the Courts, service benefits at par with the regular employees have ever been



extended to the contract employees during their service period on contract. It is only after regularisation, the employees who were appointed initially on contract basis, the Courts have extended certain benefits for the period of contract by applying and interpreting relevant law applicable.

185. Depending upon nature and mode of initial contract appointment, there are three types of verdict of the Courts.

186. In first category of the employees they had been appointed without following the procedure prescribed in Recruitment and Promotion Rules or any Policy formulated by the State with fair and transparent procedure for appointment. In their cases Courts have categorically declared that they are not entitled for any benefits of past contract service, even after regularisation.

187. In second category, the employees were engaged on contract basis in pursuance to the Policy of the State, duly notified, providing method of appointment in fair and transparent manner, but without following the procedure provided in Recruitment and Promotion Rules. This category of employees, after regularisation, have been extended certain service benefits like counting of contract period service for pensionary benefits and grant of increments for that period on notional



basis for calculating pension, but this set of employees have not been granted any benefit of seniority.

188. Third category of employees is where employees, though appointed on contract, but by following the procedure prescribed in statutory Recruitment and Promotion Rules, after advertising the post and undergoing the rigour of the said process by competing in open market in the test/interview conducted by the prescribed agency, i.e. Public Service Commission. The process adopted for their appointment was identical to the procedure prescribed and adopted for regular appointment and, therefore, they were held entitled for all service benefits including seniority like regular appointees, but after regularisation.

189. The Courts, after regularisation of the employees, but not before the regularisation, being not only similarly situated, but identically situated with respect to eligibility, process of recruitment through prescribed agency and facing of rigour of overcompetitive exam conducted by the Recruitment Agency prescribed in Recruitment and Promotion Rules and nature of offer of appointment, had extended all service benefits including seniority to such employees. It is apt to record that this category of employees were selected and appointed after issuing advertisement in consonance with Recruitment and Promotion Rules, but one set of employees was offered regular appointment but other set of



employees was offered appointment on contract basis in terms of Column 15-A of the Recruitment and Promotion Rules. Not only in *Taj Mohammad's* case, but in all other matters, every aspect has been taken into consideration, including Column No. 15 A of Recruitment and Promotion Rules, which contains the terms and condition of the contract service.

190. In any case, plea of *sub silentio* and *per incuriam* does not justify the enactment of imugned Act. Merits of the judgments have already been upheld by the Apex court. Further this issue is not relevant to present lis, but competency of the respondents-State to enact a Statute to overrule the judgments, is the subject matter of present lis, otherwise also plea that judgment in *Taj Mohammad's* case is *sub silentio* and *per incuriam* is also not sustainable, as the Courts have taken into consideration entire Recruitment and Promotion Rules including Column 15-A thereof. The Courts have not interfered with the terms and conditions of the contract service, but on regularisation of such service, appointees have been held entitled for certain service benefits for their past contract service followed by regular service without interruption. During currency of contract service, none of the Courts had directed to grant any service benefits to such employees over and above the terms and conditions holding the Field in the in the subject matter.



191. Legislature has been authorized by the Constitution to enact any law with respect of service condition to public services and post as provided under Article 309 of the Constitution. However, at the same time, it is beyond the competence of the Legislature to frame and enact law in conflict with mandate of the Constitution as well as essence of Article 309 of the Constitution. The Legislature has a right to enact a Statute in consonance with the Constitutional mandate and provision, but not in conflict therewith, and being in conflict with the Constitutional mandate, the impugned Act clearly depicts manifest arbitrariness on the part of State in exercising the power to Legislate.

192. Though, time and again it has been stated that impugned Act has been enacted to remove the defect and foundation of the verdict of the Courts and it has not been enacted for superseding, overruling or defying any orders/verdict of the Courts, however for arguments addressed on behalf of respondents by Mr.Patwalia, learned Senior Advocate and Mr. Anup Rattan, learned Advocate General, it is clear that impugned Act has been enacted to render the judgment of the Courts including the Apex Court ineffective by superseding and overruling the same.

193. As discussed supra, the impugned Act has been enacted to render the judgments of the properly constituted Courts, delivered by the



such Courts in exercise of its power in a matter before the Courts, ineffective and to give interpretation of law otherwise than as declared by the Courts. Manifest arbitrariness is writ large at the face of it in the Statement of Objects and Reasons, Preamble and various Sections of the impugned Act as discussed supra.

194. From the past history, it is apparent that Government, irrespective of person in power, had been resorting to exploitative practices by restricting the service benefits to the persons appointed against regular sanctioned functional post and also resorting to backdoor entry to adjust their near, dears and supporters by engaging persons at the whims and fancies of the persons in power, and such practice has been continued despite repeated mandamus issued by the Court including by the Apex Court, whereby Government was repeatedly directed to make appointments to the public services and post in consonance with Constitutional Scheme.

195. The State was and is repeatedly making temporary appointments de hors of Recruitment and Promotion Rules and without adhering to the prescribed procedure in terms of Constitutional mandate. Being bound by verdict of the Courts including the Apex Court whereby respondents were directed to make regular appointments in terms of Recruitment and Promotion Rules, the State was incapacitated to make



contract appointments without following the Recruitment and Promotion Rules. Therefore, it is not a case where basis of the judgments is being removed, but it is a case where respondents-State in order to resort again for not only irregular, but illegal appointments in conflict with the mandate of the Constitution, has enacted the impugned Act and, therefore, it is not a case covered where judgments of the Court is being nullified by legislative act, removing the basis of the judgment. In fact provisions of the impugned Act indicating intention of the State to appoint persons before entry in the public service without following the Constitutional Scheme, and its retrospective effect is not only arbitrary, but also violative of fundamental rights guaranteed under Articles 14 and 16 of the Constitution. It is a case where mandamus of the Courts in numerous judgments is nullified by legislative exercise by an enactment by undertaking impermissible legislative exercise. It is also breach of basic feature of the Constitution, attacking on the independence of Judiciary by transgression of Constitutional limits and intrusion into the judicial power by the Legislature. The impugned Act is violative of 'Principle of Separation of powers', 'Rule of Law' and Article 14 of the Constitution of India.

196. Article 309 of the Constitution of India empowers the State to frame Act and Rules dealing with appointment to public service and post.



But impugned Act provides that a person will be in public service only after regularisation. Certainly, appointment of a person can be regularised if he is already in service irregularly. Therefore, the impugned Act not only impliedly, but explicitly provides that there shall be pre-regularisation engagement dehors of Recruitment and Promotion Rules, which shall be regularised and thereafter only persons engaged will be the part of the public service. As Article 309 of the Constitution empowers the State for framing rules related to service condition of the appointees to public service and the post, provisions of Article 309 of the Constitution of India shall not be applicable to the persons, who are not in public service, therefore, Act also ousts jurisdiction of Article 309 of the Constitution with respect to pre-regularisation engagement. As already discussed, there is nothing on record how and in what manner pre-regularisation engagement shall be made, even if such appointments are made through Service Commission, that will not cure the defect, because it is mandate of the impugned Act that a persons shall be in public service only after regularisation. On this count, State has created a mess and, therefore, also being vague and arbitrary, the impugned Act deserves to be quashed.

197. The impugned Act is also discriminatory in nature, as it takes away benefits or nullify the judgments/orders passed by the Courts with



respect to persons appointed on contract on or after 12.12.2003, whereas contract appointments were being made by respondents since 1996. The appointees on contract between 1996 and 12.12.2003 are also being benefited by the judgments of the Courts by extending service benefits, except seniority, to such contract employees and mandamus in their favour is being complied with. Whereas with respect to employees appointed after 12.12.2003, plea is taken that their contract service period shall be governed by the contract signed by them. The same plea is not being raised with respect to contract appointees engaged before 12.12.2003. It is also apt to record that after 12.12.2003, maximum contract appointees were selected through open competition after advertisement of the post through prescribed agency as per Recruitment and Promotion Rules, who were having full eligibility to be appointed as regular incumbent, whereas before 12.12.2003 most of the contract appointees were appointed on contract basis on the basis of Policy decision, but not resorting to procedure prescribed in Recruitment and Promotion Rules and some times eligibility condition was also compromised. It appears that persons appointed on whims and fancies are being extended benefits, whereas persons appointed through procedure prescribed under R&P Rules are being denied the same right. State has extended benefits to thousands of its contract employees, who



were appointed before 12.12.2003 dehors of Recruitment and Promotion Rules, but on the basis of various Policies and examples in this regard are cases of ***Om Prakash Vs. State of H.P. and others and connected matters, CWP No. 7602 of 2010*** and ***Yashwant Kumar Vs. State of Himachal Pradesh and others and connected matters, CWP No. 8148 of 2022***, in which judgments of the Courts passed on similar lines, have been implemented by the State. Therefore, provisions of impugned Act are manifestly arbitrary on this count also.

198. Respondents-State is bound to extend service benefits to its employees by adhering to equality clause provided under Article 14 of the Constitution of India. Judgments, rendered to be ineffective because of the impugned Act, have been passed in consonance with the Constitutional mandate and are binding on the respondents-State. Therefore, impugned omission and commission of the respondents-State, instead of implementing the judgments and verdict, are unconstitutional being in conflict with the provisions of the Constitution and thus the impugned Act is liable to be quashed.

199. The provisions of Section 8 of the Act incorporating amendment in Column-10 of the Recruitment and Promotion Rules is also going to create mess as after replacing the words “on contract basis” by “regularisation” with retrospective effect would mean that the previous



appointments made on the basis of Recruitment and Promotion Rules on contract basis would be rendered irregular, but at the same time there are pronouncements of the Courts including the judgments referred supra that in absence of any specific provision for contract appointments or temporary appointments, the appointments made by following the procedure prescribed in Recruitment and Promotion Rules have to be considered appointments as provided under the Recruitment and Promotion Rules. In clause-10, apart from the words “on contract basis” there is a provision of “direct recruitment” and for amendment made in clause-10 the appointment shall be made on the basis of direct recruitment or by regularisation and thus all earlier appointments made on contract basis in terms of Recruitment and Promotion Rules, after replacement of word on ‘contract basis’ by ‘regularisation’ shall be deemed to have been made as direct recruitment, again entitling such appointees for all benefits like regular appointees. However, Sections 3 and 6 read with Section 8 of the Act indicate that the pronouncements to that effect have also been rendered ineffective by providing in Section 8 that persons shall be in public service by regularisation only and shall not be entitled for any benefits extended by the judgments of the Courts prior to that. For these reasons we are of the opinion that entire Act lacks



competence of the State Legislature to enact the same and, therefore, also, entire Act is liable to be quashed.

200. There is nothing in the Act, which can be saved, as Constitutional, despite permissibility of validity and Constitutionality of the Statute enacted by the Legislature. For discussion herein above, we are of the considered opinion that the entire Act must go to maintain the Rule of Law.

201. Normally Courts refrain from declaring an enactment unconstitutional, however, it is also settled law that when an enactment is in breach of Constitutional Scheme transgressing the powers by interfering in the Judicial powers, the legislation must go. It is also true that where it is possible, quashing of entire Act should be avoided by declaring the offending provisions of the Statute unconstitutional, which are in conflict with the Constitutional mandate. In present case Sections 3, 5 to 9 are in conflict with the Constitutional frame work and after declaring these Sections only as unconstitutional, nothing substantial will remain in the remaining provisions and, therefore, we are constrained to declare that entire Legislation (impugned Act) deserves to be quashed and set aside.



202. Accordingly, in view of above discussion and considering the ratio of law laid down by the Apex Court, the impugned Act is quashed and set aside.

203. In view of quashing of the impugned Act, all consequential action, omission and commission of the respondents-State and its functionaries, based on the impugned Act, are declared illegal, unconstitutional and nullify, and resultantly orders/rejection/directions, withdrawal, denying benefits or proposing recovery of already granted reliefs, based on the impugned Act, in conflict with the mandate of the Court are also quashed and set aside and competent authority(ies) is directed to ensure extension of benefits to the employees in terms of judgments passed by the competent Courts, latest by three months from today by issuing appropriate orders, if so required, in consonance with the Constitutional mandate and verdict of the Court(s).

All petitions are disposed of in aforesaid terms alongwith pending applications, if any.

**(Vivek Singh Thakur),
Judge.**

**(Romesh Verma),
Judge.**

25th April, 2026
(MS/Keshav/Pardeep/susheel)