A. Umarani vs Registrar, Cooperative Societies And ... on 28 July, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4504, 2004 (7) SCC 112, 2004 AIR SCW 4462, 2004 LAB. I. C. 3206, 2004 (4) SLT 947, 2004 (6) ACE 413, 2004 (4) LABLN 8.2, 2004 (6) SCALE 350, 2004 (3) LRI 618, (2004) 3 KHCACJ 384 (SC), (2004) 2 CGLJ 176, (2004) 6 JT 110 (SC), 2004 (7) SRJ 199, (2004) 107 FJR 79, (2005) 1 MAD LJ 6, (2004) 5 SERVLR 395, (2005) 1 ANDHLD 33, (2004) 6 SUPREME 143, (2004) 6 SCALE 350, (2004) 3 ESC 432, (2004) CURLR 85, (2004) 22 INDLD 476, 2004 SCC (L&S) 918

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Bench: N. Santosh Hegde, S.B. Sinha, A.K. Mathur

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           CASE NO.:
Appeal (civil)  1413 of 2003

PETITIONER:
A. Umarani

RESPONDENT:
Registrar, Cooperative Societies and Ors.

DATE OF JUDGMENT: 28/07/2004

BENCH:
N. Santosh Hegde,S.B. Sinha & A.K. Mathur.

JUDGMENT:
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J U D G M E N T With CIVIL APPEAL NOs. 3774, 3775, 3776, 4446, 6415, 6416, 7282, 9854, 9933, 10244-10245 of 2003, C.A. No.4495 of 2004 (@ S.L.P.(C) No. 1096 of 2004), Civil Appeal No. 447 of 2004 S.B. SINHA, J:

Leave granted in S.L.P. (C) No. 1096 of 2004.

These appeals are directed against a judgment and order dated 24.10.2002 passed by a Division Bench of the High Court of the Judicature at Madras whereby and whereunder several writ appeals filed by the Appellants herein and writ petitions filed by the Private Respondents were disposed of.

The basic fact of the matter is not in dispute.

Cooperative Societies and Land Development Banks constituted and registered in the State of Tamil Nadu used to be governed under Tamil Nadu Cooperative Societies Act, 1961 (for short "the 1961 Act") and the Tamil Nadu Land Development Banks Act, 1934. The State framed rules under the 1961 Act known as Madras Cooperative Societies Rules, 1963.

The 1961 Act and 1934 Act were repealed and replaced by Tamil Nadu Cooperative Societies Act, 1983 (for short "the 1983 Act"). Pursuant to or in furtherance of the powers conferred thereunder, the State framed rules known as the Tamil Nadu Cooperative Societies Rules, 1988 (for short "the 1988 Rules"). The 1983 Act and the 1988 Rules came into force with effect from 13.4.1988.

It is not in dispute that a large number of employees, i.e., about 39% of the total strength of the employees of the cooperative societies in the State of Tamil Nadu, were appointed without notifying the vacancies to the Employment Exchanges and without following the other mandatory provisions of the Act and the Rules framed thereunder relating to recruitment.

It is not in dispute that a large number of appointees furthermore did not have the requisite educational qualification or other qualification like cooperative training etc. The reservation policy of the State was also not followed by the cooperative societies. The Recruitments were made beyond the permissible cadre strength.

With a view to condone the serious lapses on the part of the Cooperative Societies in making such appointments in illegal and arbitrary manner, the Government of the State of Tamil Nadu issued various orders from time to time in terms whereof such appointments were sought to be regularised fixing a cut off date therefor. Firstly, G.O.Ms No. 790 dated 5.7.1971 was issued ratifying the irregular appointments made otherwise than through employment exchange upto 5.7.1971. Further, by G.O.Ms No. 1352 dated 7.11.1978, the cut off date was extended upto 31.12.1977. Yet again, by G.O.Ms. No. 605 dated 3.6.1980, the cut off date was extended upto 31.12.1979. By G.O.Ms. No. 312 dated 30.11.1987 the cut off date was furthermore extended upto 8.7.1980. Ultimately, by G.O.Ms. No. 86 dated 12.3.2001 the cut off date was extended upto 11.3.2001 and thereby the Government of Tamil Nadu sought to regularise appointments made after 8.7.1980 in the Cooperative Societies without notifying the Employment Exchange in respect of those employees who had completed 480 days of service in two years purported to be in terms of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 (for short 'the 1981 Act').

Relying on or on the basis of the said G.O.Ms No. 86 dated 12.3.2001, several writ petitions were filed in the High Court of Judicature at Madras praying for issuance of appropriate directions regularising the services of the employees working in the Cooperative Societies of the State of Tamil Nadu. Some writ petitions were dismissed whereagainst writ appeals were filed. A large number of writ petitions were also placed before the Division Bench for hearing.

The legality and/ or validity of the aforementioned GOMs No. 86 dated 12.3.2001 fell for consideration before the Division Bench in the said writ appeals and writ petitions.

Having regard to rival contentions the Division Bench of the High Court framed the following issues for its consideration:

> "(i) whether the writ petitions are maintainable?
>
> (ii) whether the cooperative societies are covered by the provisions of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981 as also the Industrial Disputes Act, 1947?
>
> (iii) Whether G.O.Ms. No. 86, dated 12.3.2001 aims at regularizing all the staff appointed to cooperative societies regardless of any defect or any violation of the Rule 149 of the Tamil Nadu Cooperative Societies Rules, 1988, as amended in 1995?
>
> (iv) in the alternative, are the illegal appointees entitled for statutory protection of regularization and permanent status by virtue of Section 3 of the Permanency Act subject to their completion of 480 man days in a continuous period of 2 years? And
>
> (v) whether personnel not covered by clause (iv) are entitled for protection under the Industrial Disputes Act, 1947?"

As regard Issue No. 1, it was held that the writ petitions are maintainable. Issue No. 2 was also decided in favour of the writ petitioners holding that the 1981 Act is applicable to the employees of the Cooperative Societies.

Issues No. 3, 4 and 5 were taken up for consideration together.

The Division Bench by reason of the impugned judgment opined that the provisions of the 1981 Act would not be applicable as regard appointments made in violation of the statute or statutory rules. It was further held that in any event in terms of the 1981 Act and the G.O.Ms. No. 86 dated 12.3.2001 what had been exempted by the Government was the condition relating to the statutory obligation on the part of the Cooperative Societies to notify the Employment Exchange as regard the existing vacancies and not other statutory conditions. The Division Bench held:

> "(i) that GOMs No. 86, Cooperation, Food and Consumer Protection Department, dated 12.3.2001, has got the effect of only authorizing the regularization of the employees recruited by the cooperative societies for the period from 9.7.1980 to 11.3.2001 exempting the intervention of employment exchange;
>
> (ii) that GOMs No. 86, Cooperation, Food and Consumer Protection Department, dated 12.3.2001, shall not operate for regularization of any employee recruited by the cooperative societies in violation of Sub-Rule (1) of Rule 149 of the Tamil Nadu Cooperative Societies Rules, as amended by GOMs No. 212, Cooperation, Food and Consumer Protection Department, dated 4.7.1995;

(iii) in societies, where the cadre strength has not been fixed, direct them to adopt the special bye-

law in conformity with sub-Rule (1) of Rule 149 of the Tamil Nadu Cooperative Societies Rules, as amended by GOMs No. 212, Cooperation, Food and Consumer Protection Department, dated 4.7.1995;

(iv) direct the Registrar of Cooperative Societies to issue a circular within a week from today calling upon all the cooperative societies in the State of Tamil Nadu to comply with the direction in clause

(iii) supra;

(v) direct that within two months of the approval of the special bye laws under sub-rule (1) of the Rule 149 of the Rules, the respective Deputy Registrars of Cooperative Societies having jurisdiction over the cooperative societies in their Divisions, shall enquire by issuing notice to the entire staff recruited from 9.7.1980 to 11.3.2001, and decide as to whether the said recruitment is in conformity with the special bye laws approved by the Registrar of Cooperative Societies and terminate the services of such staff members, whose appointments are in contravention of the special bye laws so approved by the Registrar of Cooperative Societies;

It is made clear that while considering the validity or otherwise of the appointment of the staff cooperative societies, the requirement of notifying the vacancies to employment exchange shall not be taken cognizance of.

(vi) that no cooperative staff member appointed subsequent to G.O.Ms. No. 86, Cooperation, Food and Consumer Protection Department, dated 12.3.2001 otherwise than through employment exchange shall be continued in service and their services shall be terminated forthwith.

(vii) that either the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 or the Industrial Disputes Act, 1947, or the settlements entered under Sections 12 or 18 thereof, shall have no application to the staff of the cooperative societies appointed without adequate qualifications or beyond the cadre strength for the period from 9.7.1980 to 11.3.2001. This is equally applicable to the staff appointed to the cooperative societies, otherwise than through employment exchange, for the period from 12.3.2001 onwards."

Mr. S. Balakrishanan, learned senior counsel appearing on behalf of the appellant relying on or on the basis of the decision of this Court in Jacob M. Puthuparambil and Others Vs. Kerala Water Authority and Others [(1991) 1 SCC 28] would submit that having regard to the fact that the appellants had been working in the cooperative societies for a long time, the High Court committed a serious error in not holding that they had acquired a right for regularization.

In any event, Mr. Balakrishnan would contend that each employee was individually entitled to be given an opportunity of being heard so as to enable the competent authority to come to the conclusion as to whether they had fulfilled the requirements contained in the aforementioned GOMs

No. 86 dated 12.3.2001 or not. Reliance in this behalf has been placed on Olga Tellis and Others Vs. Bombay Municipal Corporation and Others [(1985) 3 SCC 545].

The learned counsel appearing on behalf of the respondents, on the other hand, supported the judgment of the High Court.

The primal question which arises for consideration in these appeals is as to whether the State had the requisite authority to direct regularisation of services of the employees of the cooperative societies by reason of the impugned GOMs No. 86 dated 12.3.2001.

The 1983 Act was enacted inter alia to make better provision for, the organization, management and supervision of cooperative societies in the State of Tamil Nadu as also for providing for an orderly development of the cooperative movement in accordance with cooperative principles. Indisputably, in terms of the provisions of the 1983 Act, the cooperative societies are required to be registered thereunder and are also liable to comply with the provisions thereof as also the rules framed thereunder. Before the High Court source of the power of the State to issue the said G.O.Ms. No. 86 dated 12.3.2001 was traced to Sections 182 and 170 of the 1983 Act as also Article 162 of the Constitution of India.

Section 170 of the Act provides for power of the Government to exempt registered societies from any of the provisions of the Act other than clause (b) of sub-section (1) of section 88 and sub-section (1) of section 89 of this Act, or of the rules, subject to such conditions as may be specified and direct that such provisions of the rules shall apply to such society with such modifications as may be specified in the order. It is not the case of any of the parties that any such order of exemption had been passed in favour of any of the cooperative societies. Section 170 of the 1983 Act, therefore, does not confer any power upon the State to issue the impugned order.

In any view of the matter such an order could not have been passed with retrospective effect condoning the actions on the part of the cooperative societies which were in flagrant violations of the provisions of the Act and the Rules made thereunder.

Section 182 of the 1983 Act reads as under:

> "182. Power of Government to give directions.-(1) The Government may, in the public interest, by order, direct the Registrar to make an inquiry or to take appropriate proceedings under this Act, in any case specified in the order, and the Registrar shall report to the Government the result of the inquiry made or the proceedings taken by him within a period of six months from the date of such order or such further period as the Government may permit.
>
> (2) In any case, in which a direction has been given under sub-section (1), the Government may, notwithstanding anything contained in this Act, call for and examine the record of the proceedings of the Registrar and pass such orders in the case as they may think fit:

> Provided that before passing any order under this sub-section the person likely to be affected by such order shall be given an opportunity of making his representation."

A bare perusal of the aforementioned provision would clearly go to show that the impugned Government Order could not have been issued by the State in terms thereof as the same can be taken recourse to only for the purposes mentioned therein and not for any other. It is not a case where the Government directed the Registrar to make an enquiry against a person in the public interest. Article 162 of the Constitution of India provides for extension of executive power to the matters with respect of which the Legislature of the State has power to make laws. Article 162 of the Constitution by no stretch of imagination is attracted as the source of the power of the State to pass an appropriate order must be traced to the provisions of the Act itself. If the State had no power to issue the said GOMs No. 86 dated 12.3.2001 the same must be held to be a nullity.

Let us now consider the extent to which the provisions of the 1981 Act would apply to the fact of the present case.

The 1981 Act applies only to industrial establishments. Industrial Establishment has inter alia been defined to mean "an establishment as defined in clause (6) of Section 2 of the Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947)".

Establishment has been defined in Section 2(6) of the Tamil Nadu Shops and Establishments Act, 1947 as under:

> "'Establishment' means a shop, commercial establishment, restaurant, eating house, residential hotel, theater or any place of public amusement or entertainment and includes such establishment as the State Government may by notification declare to be an establishment for the purpose of this Act."

Mr. Balakrishnan urged that the cooperative societies are Commercial Establishments.

Whether a Cooperative Society would be a commercial establishment or not would essentially be a question of fact. It cannot be said keeping in view the legislative intent that all cooperative societies would be 'commercial establishments' within the meaning of the Tamil Nadu Shops and Establishments Act, 1947. It, therefore, appears that the impugned Government Order has been issued by the State without proper application of mind. It has furthermore not been stated in the impugned Government Order that all the cooperative societies are commercial establishments within the meaning of Section 2(6) of the Tamil Nadu Shops and Establishments Act, 1947.

The Cooperative Societies and the Land Development Banks are governed by the statutes under which they have been created as also the Rules and bye laws framed thereunder. The cooperative societies are obligated to follow the cooperative principles as laid down in the Act and the Rules framed thereunder.

The State had framed rules in exercise of its power conferred upon it under Section 180 of the 1983 Act in the year 1988. Rule 149 of the 1988 Rules provides for a complete code as regard the mode and manner in which appointments were required to be made and the process of appointments is required to be carried out. In terms of the said Rule, requirements to possess educational qualification and other qualifications had been laid down. One of the essential qualifications laid down for holding certain posts is 'undergoing cooperative training and previous experience'.

At this juncture, we may notice some of the provisions contained in Rule 149 of the 1988 Rules.

Sub-rule (3) of Rule 149 read as under:

> "(a) No appointment by direct recruitment to any post shall be made except by calling for from the societies applications from their employees who possess the qualifications for the post and unless the Government have accorded special sanction for recruitment by advertisement in dailies, by also calling for a list of eligible candidates from the Employment Exchange.
>
> (b) Where the Employment Exchange issues a non-availability certificate or the Government have accorded special sanction for recruitment by advertisement in dailies, the society shall invite applications from candidates including those working in other societies by advertisements in one English daily and two Tamil dailies having circulation within the area of operations of the society approved by the Government for the purposes of issue of Government advertisements.
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> (c) Every appointment by direct recruitment shall be made by holding written examination and interview or by holding only interview as decided by the board and on the basis of the rank given with reference to the marks obtained in the written examination, if any, and the marks awarded in the interview:
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> Provided that nothing contained in this sub-rule shall apply to any of the posts for the recruitment of which a Recruitment Bureau has been constituted under section 74 or in respect of which common cadre of service has been constituted under section 75;
>
> Provided further that nothing contained in this sub- rule shall apply to appointments of dependents of the employees of any society who died or medically invalidated while in service."

Sub-rule (4) of Rule 149 mandates that no person shall be appointed to the service of a society if he has on the date on which he joins the post, attained the age of thirty years and in the case of persons belonging to Scheduled Castes and Scheduled Tribes thirty-five years.

Sub-rule (25) of Rule 149 provides that the principle of reservation of appointment for Scheduled Castes/ Scheduled Tribes and Backward Classes followed by the Government of Tamil Nadu for recruitment to the State shall apply.

No appointment, therefore, can be made in deviation of or departure from the procedures laid down in the said statutory rules.

The terms and conditions of services are also laid down in the said rules.

The 1983 Act was furthermore amended in the year 1995 providing for cadre strength which is directly relatable to the income of the cooperative societies.

Provisions of the Act and the Rules framed thereunder reflect the legislative recruitment policy. The said provisions are, thus, mandatory in nature.

Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a Statutory Act or the Rules framed thereunder. It is also now well-settled that an appointment made in violation of the mandatory provisions of the Statute and in particular ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See State of H.P. Vs. Suresh Kumar Verma and Another, (1996) 7 SCC 562).

It is equally well-settled that those who come by backdoor should go through that door. (See State of U.P. and Others Vs. U.P. State Law Officers Association & Others, (1994) 2 SCC 204) Regularisation furthermore cannot give permanence to an employee whose services are ad-hoc in nature.

The question came up for consideration before this Court as far back in 1967 in State of Mysore & Anr. Vs. S.V. Narayanappa [(1967) 1 SCR 128] wherein this Court observed "Before we proceed to consider the construction placed by the High Court on the provisions of the said order we may mention that in the High Court both the parties appear to have proceeded on an assumption that regularisation meant permanence. Consequently it was never contended before the High Court that the effect of the application of the said order would mean only regularising the appointment and no more and that regularisation would not mean that the appointment would have to be considered to be permanent as an appointment to be permanent would still require confirmation. It seems that on account of this assumption on the part of both the parties the High Court equated regularisation with permanence."

This Court yet again in R.N. Nanjundappa Vs. T. Thimmaiah & Anr. [(1972) 2 SCR 799], it was held:

> " If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

The said decisions of this Court have received approval of a 3-Judge Bench of this Court in B.N. Nagarajan and Others Vs. State of Karnataka and Others [(1979) 4 SCC 507] it was held that the procedures for appointment as contained in the Rules framed under Article 309 of the Constitution of India must be complied with.

No regularisation is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory Rules.

R.N. Nanjundappa (supra) has also been followed by this Court in several decisions in Ramendra Singh and Others, etc. Vs. Jagdish Prasad and Others [AIR 1984 SC 885], K. Narayanan and others Vs. State of Karnataka and others [AIR 1994 SC 55] and V. Sreenivasa Reddy and others Vs. Govt. of Andhra Pradesh and others [AIR 1995 SC 586].

The said decisions have been recently noticed by a Division Bench of this Court in Sultan Sadik Vs. Sanjay Raj Subba and Others [(2004) 2 SCC 377].

In State of M.P. and Another Vs. Dharam Bir [(1998) 6 SCC 165], it was observed that the government services are essentially a matter of status rather a contract and in that context it was observed:

> "26. Whether a person holds a particular post in a substantive capacity or is only temporary or ad hoc is a question which directly relates to his status. It all depends upon the terms of appointment. It is not open to any government employee to claim automatic alteration of status unless that result is specifically envisaged by some provision in the statutory rules. Unless, therefore, there is a provision in the statutory rules for alteration of status in a particular situation, it is not open to any government employee to claim a status different than that which was conferred upon him at the initial or any subsequent stage of service.
>
> 27. Applying these principles to the instant case, since the respondent, admittedly, was appointed in an ad hoc capacity, he would continue to hold the post in question in that capacity "

It is trite that appointments cannot be made on political considerations and in violation of the government directions for reduction of establishment expenditure or a prohibition on the filling up of vacant posts or creating new posts including regularization of daily-waged employees. (See Municipal Corporation, Bilaspur and Another Vs. Veer Singh Rajput and Others [(1998) 9 SCC 258]) Yet again, in Nazira Begum Lashkar and Others Vs. State of Assam and Others [(2001) 1 SCC 143], it was noticed:

> "14 The decisions cited by Mr. Parikh, in support of his contention, not only do not support his contention but on the other hand, appears to us to be against his contention. In Ashwani Kumar case ((1997) 2 SCC 1 : 1997 SCC (L&S) 267) this Court in no uncertain terms held that as the appointments had been made illegally and

> contrary to all recognised recruitment procedures and were highly arbitrary, the same were not binding on the State of Bihar. This Court further went on to hold in the aforesaid case that the initial appointments having been made contrary to the statutory rules, the continuance of such appointees must be held to be totally unauthorised and no right would accrue to the incumbent on that score. The Court had also held that it cannot be said that the principles of natural justice were violated or full opportunity was not given to the employees concerned to have their say in the matter before their appointments were recalled and terminated "

This Court has considered this aspect of the matter in various other decisions, viz., Jawahar Lal Nehru Krishi Vishwa Vidyalaya, Jabalpur, M.P. Vs. Bal Kishan Soni and Others [(1997) 5 SCC 86], Ashwani Kumar and Others Vs. State of Bihar and Others [(1997) 2 SCC 1], Dr. Arundhati Ajit Pargaonkar Vs. State of Maharashtra and Others [(1994) Suppl. 3 SCC 380], J&K Public Service Commission and Others Vs. Dr. Narinder Mohan and Others [(1994) 2 SCC 630], and Dr. Surinder Singh Jamwal and Another Vs. State of J & K and Others [(1996) 9 SCC 619].

Even recently in Suraj Prakash Gupta and others Vs. State of J & K and others [(2000) 7 SCC 371], this Court opined:

> "28.The decisions of this Court have recently been requiring strict conformity with the Recruitment Rules for both direct recruits and promotees. The view is that there can be no relaxation of the basic or fundamental rules of recruitment."

It was further observed:

> "29. Similarly, in State of Orissa v. Sukanti Mohapatra ((1993) 2 SCC 486 : 1993 SCC (L&S) 607 : (1993) 24 ATC 259) it was held that though the power of relaxation stated in the rule was in regard to "any of the provisions of the rules", this did not permit relaxation of the rule of direct recruitment without consulting the Commission and the entire ad hoc service of a direct recruit could not be treated as regular service. Similarly, in M. A. Haque (Dr.) v. Union of India ((1993) 2 SCC 213 : 1993 SCC (L&S) 412 : (1993) 24 ATC
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> 117) it was held that for direct recruitment, the rules relating to recruitment through the Public Service Commission could not be relaxed. In J&K Public Service Commission v. Dr. Narinder Mohan ((1994) 2 SCC 630 : 1994 SCC (L&S) 723 :
>
> (1994) 27 ATC 56) it was held that the provisions of the J&K Medical Recruitment Rules could not be relaxed for direct recruitment. The backdoor direct recruitments, could not be permitted. (See also Arundhati Ajit Pargaonkar (Dr.) v. State of Maharashtra (1994 Supp (3) SCC 380 : 1995 SCC (L&S) 31 : (1994) 28 ATC 415).) In Surinder Singh Jamwal (Dr.) v. State of J&K ((1996) 9 SCC 619 : 1996 SCC (L&S) 1296) this Court directed the direct recruits to go before the Public Service Commission."

In Dr. Chanchal Goyal (Mrs.) Vs. State of Rajasthan [(2003) 3 SCC 485] this Court categorically held that there was no scope of regularization unless the appointment was made on a regular basis.

In Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others [(1992) 4 SCC 99] the Court emphasized how judicial sympathy to the workmen could boomerang upon the purpose wherefor Schemes like Jawahar Rozgar Yojna have been framed, and thereby in the larger context, deny the limited benefit extended by the State to the unemployed which would not be available but for such schemes. (See also Executive Engineer (State of Karnataka) Vs. K. Somasetty and Others, (1997) 5 SCC 434) In M.D., U.P. Land Development Corporation and Another Vs. Amar Singh and Others [(2003) 5 SCC 388], this Court noticed a large number of earlier decisions of this Court wherein it had been held that once employees are appointed for the purpose of Scheme, they do not acquire any vested right to continue after the project is over.

In State of Haryana and Another Vs. Tilak Raj and Others [(2003) 6 SCC 123] a Division Bench of this Court held that a person appointed as daily wager holds no post and thus, not entitled to claim the benefit of equal pay for equal work. (See also Orissa University of Agriculture and Technology and Another Vs. Manoj K. Mohanty, (2003) 5 SCC 188).

In State of Himachal Pradesh through the Secretary, Agriculture to the Govt. of Himachal Pradesh Vs. Nodha Ram and Others [AIR 1997 SC 1445], this Court stated the law in the following terms:

> "4. It is seen that when the project is completed and closed due to non-availability of funds, the employees have to go along with its closure. The High Court was not right in giving the direction to regularise them or to continue them in other places. No vested right is created in temporary employment. Directions cannot be given to regularise their services in the absence of any existing vacancies nor can directions be given to the State to create posts in a non-existent establishment. The Court would adopt pragmatic approach in giving directions. The directions would amount to creating of posts and continuing them despite non availability of the work. We are of the considered view that the directions issued by the High Court are absolutely illegal warranting our interference. The order of the High Court is therefore, set side."

A Division Bench of this Court in Surendra Kumar Sharma Vs. Vikas Adhikari and Another [(2003) 5 SCC 12] upon noticing the decision of this Court in Delhi Development Horticulture Employees' Union (supra) observed:

> " A good deal of illegal employment market has developed, resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in government departments, public undertakings or agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularization has been that many of the

> agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardized on both counts."

Yet again in Haryana Tourism Corporation Ltd. Vs. Fakir Chand and Others [(2003) 8 SCC 248], noticing that the respondents were not recruited through the employment exchange or through any other accepted mode of selection and further noticing that it was also not known whether there was any advertisement calling for applications for these appointments, the prayer for reinstatement of service was rejected.

Although we do not intend to express any opinion as to whether the cooperative society is a "State" within the meaning of Article 12 of the Constitution of India but it is beyond any cavil of doubt that the writ petition will be maintainable when the action of the cooperative society is violative of mandatory statutory provisions. In this case except the Nodal Centre functions and supervision of the cooperative society, the State has no administrative control over its day to day affairs. The State has not created any post nor they could do so on their own. The State has not borne any part of the financial burden. It was, therefore, impermissible for the State to direct regularization of the services of the employees of the cooperative societies. Such an order cannot be upheld also on the ground that the employees allegedly served the cooperative societies for a long time.

In Jawaharlal Nehru Technological University Vs. T. Sumalatha (Smt.) and Others [(2003) 10 SCC 405], a Division Bench of this Court rejected a similar contention stating:

> "8 The learned counsel therefore contends that there is every justification for absorbing the respondents concerned on regular basis in recognition of their long satisfactory service. The learned counsel further contends that the ad hoc arrangement to employ them on consolidated pay should not go on forever. The contention of the learned counsel cannot be sustained for more than one reason and we find no valid grounds to grant the relief of regularization. There is nothing on record to show that the employees concerned were appointed after following due procedure for selection. Apparently, they were picked and chosen by the university authorities to cater to the exigencies of work in the Nodal Centre."

In Jacob M. Puthuparambil (supra) whereupon Mr. Balakrishnan placed strong reliance, a 3-Judge Bench of this Court noticed that by reason of the statutory rules, regularization was sought to be made of such employees who were appointed under posts required to be filled if (i) it is necessary in public interest and (ii) where an emergency has arisen to fill any particular post which has fallen vacant, immediately. Therein it was further noticed that Clause (e) of Rule 9 provided for regularization of service of any person appointed under clause (i) of sub-rule (a) if he had completed continuous service of two years on December 22, 1973, notwithstanding anything contained in the rules.

Jacob M. Puthuparambil (supra) has been distinguished by this Court in several decisions including 3-Judge Bench of this Court in Director, Institute of Management Development, U.P. Vs. Pushpa Srivastava (Smt.) [(1992) 4 SCC 33] and Ashwani Kumar (supra).

We do not intend to say any more on the subject as even constitutionality of such a provision is pending for consideration before the Constitution Bench of this Court. (See Secretary, State of Karnataka & Ors. Vs. Umadevi and Ors. 2003 (10) SCALE 388).

We are also of the opinion that in a case of this nature, where the validity or otherwise of a government order is in question, the principles of natural justice will have no role to play and in any event recourse thereto would result in futility.

In Civil Appeal No. 1413 of 2003 an additional ground has been raised to the effect that as the appellant was appointed on a compassionate ground, this Court on sympathetic consideration should issue appropriate directions directing the respondents to regularize her services. It appears that the appellant was appointed as supervisor in 3rd respondent Bank by the President of the Bank on a consolidated pay of Rs. 2500/- by an order dated 5.03.2001. Her appointment is said to have been made on compassionate ground on the plea that her husband had deserted her. It has not been shown before us that there exists a scheme in terms whereof deserted woman can be appointed on compassionate grounds. Even such appointment, in our opinion, would be illegal.

In State of Manipur Vs. Md. Rajaodin [(2003) 7 SCC 511], this Court observed that the purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the breadwinner in the family.

In a case of this nature this court should not even exercise its jurisdiction under Article 142 of the Constitution of India on misplaced sympathy.

In Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and Others [(2004) 2 SCC 130], it is stated:

> "We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extra-ordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order, which would be in contravention of a statutory provision.
>
> As early as in 1911, Farewell L.J. in Latham vs. Richard Johnson & Nephew Ltd. [1911-13 AER reprint p.117] observed :
>
> "We must be careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous Will O' the Wisp to take as a guide in the search for legal principles."

Yet again recently in Ramakrishna Kamat & Ors. Vs. State of Karnataka & Ors. [JT 2003 (2) SC 88], this Court rejected a similar plea for regularization of services stating :

> " We repeatedly asked the learned counsel for the appellants on what basis or foundation in law the appellants made their claim for regularization and under what rules their recruitment was made so as to govern their service conditions. They were not in a position to answer except saying that the appellants have been working for quite some time in various schools started pursuant to resolutions passed by zilla parishads in view of the government orders and that their cases need to be considered sympathetically. It is clear from the order of the learned single judge and looking to the very directions given a very sympathetic view was taken. We do not find it either just or proper to show any further sympathy in the given facts and circumstances of the case. While being sympathetic to the persons who come before the court the courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment ."

For the reasons aforementioned, we do not find any merit in these appeals which are dismissed accordingly. No costs.