Amarendra Kumar Mohapatra & Ors vs State Of Orissa & Ors on 19 February, 2014

Equivalent citations: AIR 2014 SUPREME COURT 1716, 2014 (4) SCC 583, 2014 AIR SCW 1894, 2014 LAB. I. C. 1655, 2014 (2) SCALE 589, 2014 (1) ESC 79, (2014) 4 KCCR 358, (2014) 1 CLR 626 (SC), (2014) 3 ADJ 14 (SC), (2014) 3 SERVLR 496, AIR 2014 SC (CIVIL) 1155, (2014) 2 SCT 304

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Bench: Vikramajit Sen, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.8322 OF 2009

Amarendra Kumar Mohapatra & Ors. …Appellants

Versus

State of Orissa & Ors. …Respondents

WITH

Civil Appeals No.8323-8331 of 2009, 1768 of 2006 and 1940 of 2010.

J U D G M E N T

T.S. THAKUR, J.

1. Common questions of law arise for consideration in these appeals which were heard together and shall stand disposed of by this common order. The primary issue that falls for determination touches the Constitutional validity of what is described as the Orissa Service of Engineers (Validation of Appointment) Act, 2002 by which appointment of 881 ad hoc Assistant Engineers belonging to Civil, Mechanical and Electrical Engineering Wings of the State Engineering Service have been validated, no matter all such appointments were in breach of the Orissa Service of Engineers' Rules, 1941. The High Court of Orissa has in a batch of writ petitions filed before it struck down the impugned Legislation on the ground that the same violates the fundamental rights guaranteed to the writ petitioners under Articles 14 and 16 of the Constitution. We shall presently formulate the questions that arise for determination more specifically but before we do so, we

consider it necessary to set out the factual matrix in which the entire controversy arises.

2. In a note submitted to the State Cabinet on 15th May 1990 the problem of over 2000 unemployed degree-holders in various branches of Engineering who had passed out from several Engineering colleges since the year 1984 was highlighted and a proposal for utilizing the manpower so available for the benefit of the State economy mooted. The proposal envisaged a twofold action plan for absorbing the unemployed graduate Engineers. The first part of the action plan provided for withdrawal of 127 posts of Assistant Engineers that had been referred to the Public Service Commission and advertised by it to be filled up by appointing unemployed degree holder Engineers in a non-class II rank. The second part of the proposal envisaged creation of 614 posts of Junior Engineers in different Departments to accommodate the unemployed degree holders. These 614 posts comprised 314 new posts proposed to be created, one for each block in the State. Similarly, 100 posts were to be created in the Irrigation Department for survey and investigation to accelerate the pace of investigation. Yet another 200 posts were to be created for initial infrastructure work in connection with Paradip Steel Plant.

3. The note submitted to the Cabinet suggested that degree-holder Engineers could be recruited against all the 741 (127 + 614) posts mentioned above to be designated as Junior Engineers or Stipendiary Engineers in the first phase on a consolidated stipend of Rs.2,000/- per month. The proposal further envisaged absorption of Engineers so appointed on regular basis after two years, after assessing their performance.

4. The Council of Ministers considered the proposal mooted before it and approved the same. Decision taken in the 2nd Meeting of the Council of Ministers held on 15th May, 1990 with regard to 'Problems of Un-employed Degree Engineers' was forwarded to the Secretaries to the Government in terms of a memo dated 21st May 1990, the relevant portion whereof reads as under:

"Item No.5:	Problems of Un-employed Degree Engineers. The problems were discussed at length and the following decisions were taken. All posts of Assistant Engineers referred to the Orissa Public Service Commission and advertised by them may be withdrawn. 314 posts of Stipendiary Engineers may be created one in each Block. 100 posts of Stipendiary Engineers may be created in the Irrigation Department for survey and investigation. 200 posts of Stipendiary Engineers may be created for the initial infrastructure work of Paradip Port-based Steel Plant. In all, 741 posts of Stipendiary Engineers will be available, for

		recruiting from the unemployed Degree
		Engineers. A Stipendiary Engineer may
		be paid a consolidated stipend of
		Rs.2,000/- per month. Absorption into
		regular posts may be considered after
		two years on the basis of their
		performance.
		The criteria for selection are to be
		worked out separately, so that
		Stipendiary Engineers are recruited on
		merit basis batch by batch.
		The rest of the unemployed Degree
		Engineers are proposed to be engaged
		in various construction works by
		formation of Groups Companies and
		Cooperatives, which will get
		preference in award of work by the
		Department/Corporations."

5. As a sequel to the above decision, the Government invited applications from unemployed graduate Engineers of all disciplines for empanelment as Stipendiary Engineers for placement in different Government departments, projects, public sector undertakings, co-operative societies and industries etc. By another resolution dated 22nd September 1990, the Government stipulated the procedure to be adopted for discipline-wise empanelment of the unemployed graduate Engineers for appointment as Stipendiary Engineers against the vacancies in different departments and undertakings. The procedure evolved was to the following effect :

> "2. Government have since decided that the following procedure should be adopted for discipline wise empanelment of the unemployed Graduate Engineers for appointment as Stipendiary Engineers against the vacancies in different government Department and undertakings:
>
> 1) 25 percent of the posts shall be filled up on merit basis and for this purpose equal number will be taken from each batch starting from the batch of 1984 up to the batch of 1989.
>
> 2) A point system will be adopted for empanelment on merit basis, for which out of a total 100 marks the performance in HSC will be given 15 marks, the performance in I. Sc.

and Diploma will be given 25 marks and the performance at the final Engineering Degree Examination will be given 60 marks.

3) After the empanelment on merit basis is done for 25% of the vacancies, empanelment will be done batch-wise starting from 1984 for the remaining vacancies. The Inter se position of candidates

in the batch wise panel will again be on the basis of merit computed as in (2) above.

4) There shall also be separate empanelment on merit basis for SC/ST, Physically handicapped and ex-servicemen covering all the batches to facilitate filling up of reserved vacancies. The rules regarding reservation of vacancies will apply to these appointments.

5) Applications received on or before 10.7.1990 will alone be considered for empanelment. Similarly graduate Engineers who have passed out before 1984 or those who have obtained degree after 1989 will not be eligible for empanelment.

6) The following committee will undertake the work of scrutiny and empanelment of the unemployed graduate Engineers.

Secretary Steel & Mines	Chairman of the Committee
Engineer-in-Chief and Secretary, Works	Member
Engineer-in-Chief (Irrigation)	Member
Chief Engineer Electricity and electrical Projects	Member
Chief Engineer, PHD	Member
Chief Engineer, RLEGP	Member
Managing Director, IPICOL	Convenor

7) The panels from the Scrutiny Committee will be maintained in the Department of Planning and Coordination who will sponsor candidates to various Government Departments and Undertakings according to the requirement as indicated by them. The undertakings will send indents through the concerned Administrative Departments.

8) As regards Civil & Mechanical Engineers, the Government Departments will intimate the requirement to Irrigation Department who will the panel names from P & C Department to fill up the vacancies. In case of these Engineers, the appointment orders will be issued by the Department of Irrigation and when required they will be sent on deputation to the other Departments.

9) If there is no candidate to be recommended against reserve vacancies for the reason that the panels of such candidates are exhausted, the Department of P & C will give a non-

availability certificate to the indenting organizations so that they can take steps to de-reserve the vacancies and give appointment to general candidates in their place.

10) The normal requirement for new appointment under Government viz. production of original certificates, Medical Certificate, Schedule Caste/Scheduled Tribe Certificate etc. shall be applicable to these appointments and the verification of these documents shall be the responsibility of the

Employing Departments/Undertakings.

11) In some cases relaxation of age limit for entry into Government service may have to be done and this will be attended to by the Employing Departments/Undertakings as a matter of course.

ORDER Ordered that the Resolution be published in the Orissa Gazette for general information.

Ordered also that copies of the Resolution be forwarded to all Departments of Government, Member, Board of Revenue, All Heads of Departments, All District Collectors, Secretary to Governor, Registrar, Orissa High Court Secretary, OPSC, Principal Secretary to the Chief Minister and Director of Printing, Stationary and Publication, Orissa Cuttack and 50 copies of Planning & Coordination Department.

BY ORDER OF THE GOVERNOR S.SUNDARARANJAN ADDITIONAL DEVELOPMENT COMMISSIONER AND SECRETARY TO GOVERNMENT"

6. Applications received from unemployed graduate Engineers for appointment as Stipendiary Engineers were in terms of the above resolution and considered by the Committee constituted for the purpose and appointment of eligible candidates found suitable for such appointments made between 1991 to 1994. Appointment orders issued to the candidates made it clear that degree holder Engineers were being engaged as Stipendiary Engineers in the concerned Department and shall be paid a consolidated stipend of Rs.2000/- only. It further stated that the engagement was purely temporary and terminable at any time and without any notice.

7. In August 1992, Minister for Irrigation, Government of Orissa mooted a further proposal to the following effect:

> a) The promotion quota may continue at 33% of annual vacancy.
>
> b) In addition, there should be a selection quota of 30%. This quota will have two components – 5% for Junior Engineers who have acquired an Engineering Degree or equivalent qualification and 25% which will be earmarked exclusively for Stipendiary Engineers.
>
> c) Direct recruitment quota will be 37%. Stipendiary Engineers can also compete against this quota. They may be allowed age relaxation up to five years. This will ensure that Stipendiary Engineers have the facility of recruitment, both against the selection quota and direct recruitment quota.
>
> d) Departments may not fill up vacancies in the post of Stipendiary Engineers caused by appointment of the incumbents as Assistant Engineers, if they want to do so, they may obtain candidates from the panel of the P & C Department.

e) This will be a transitional provision because appointment of Stipendiary Engineers may not be a permanent feature.

After such time as, Government may decide the present quotas of recruitment will be restored.

f) Public Sector Undertakings should frame their own recruitment rules which should broadly correspond to Government's policy of promotion of Junior Engineers and appointment of Stipendiary Engineers through selection. If there are no Stipendiary Engineers or Junior Engineers with Degree or equivalent qualification quotas for these categories will be added to direct recruitment quota."

8. It is evident from the above that while the Government did not propose to reduce the 33% quota reserved for promotees, out of the remaining 67% meant for direct recruitment, it proposed to carve out what was described as selection quota of 30% for absorption of the Stipendiary Engineers to the extent of 25% of the vacancies and degree holder Junior Engineers against the remaining 5% of the vacancies. The balance of 37% of the vacancies was, however, left to be filled up by direct recruitment from the open market.

9. Based on the above, the Government appears to have made a reference to the Orissa Public Service Commission on 5th June 1996 for approval of the draft Orissa Engineering Service (Recruitment & Condition of Service) Rules, 1994 which were already approved by the State Council of Ministers on 3rd December 1994. The Orissa Public Service Commission, however, struck a discordant note. In its opinion, since the Stipendiary Engineers did not constitute a cadre in the formal sense it was not desirable to treat it as a feeder grade for Assistant Engineers. So also the proposal to reserve 5% of the vacancies in the grade of Assistant Engineers to be filled by degree holder Junior Engineers from the Subordinate Service was also considered to be inadvisable. The Commission opined that since persons with higher qualifications serve practically in all fields of administration including technical services such as Medical and Engineering, it was neither necessary nor desirable to provide for them a route for promotion to the higher level except the one available to all those serving in the feeder grade. In the opinion of the Commission, the correct way of rewarding those with higher qualification was to give them advance increments at the time of entry. The Commission also suggested that if in the opinion of the Government the quota for promotion of Junior Engineers to the level of Assistant Engineers required to be higher than 33% in consideration of the larger body of Junior Engineers some of whom were degree holders, it could increase the same to 40%, but the fragmentation of the Junior Engineers into degree holders and non-degree holders was not advisable. The Commission suggested that the remainder of the 60% vacancies for direct recruitment could be utilized by recruiting degree holder Engineers from the open market including Stipendiary Engineers and that candidates could be given suitable weightage while judging their inter se relevant merit.

10. The Government had, in the meantime, passed a resolution on 12th March, 1996 stating that the Stipendiary Engineers could be appointed as Assistant Engineers on ad hoc basis in the pay scale of Rs.2000-3500/- or any similar post on ad hoc basis against regular vacancies. It also resolved to regularize the service of such ad hoc Assistant Engineers through a Validation Act. Some Stipendiary

Engineers who were working in different State Governments and statutory bodies were also proposed to be appointed to the post of Assistant Engineer or equivalent posts carrying the same scale, subject to their suitability and satisfactory performance. The relevant portion reads as under:

> "In consideration of the above decision of the Government, the appointing authority of Departments of Government will appoint the Stipendiary Engineers of different disciplines as Assistant Engineers against existing vacancies of Assistant Engineers on ad hoc basis for a period of one year, except Civil & Mechanical, to be appointed on ad hoc basis by the Department of Water Resources.
>
> XXX XXX XXX Stipendiary Engineers who are already working in different State Government Undertakings, Corporations,, Semi-Government Organizations & Statutory Boards may also be appointed as Assistant Engineers or in equivalent posts carrying the same scale, subject to their suitability and satisfactory performance."

11. The resolution notwithstanding, the Government does not appear to have appointed any Stipendiary Engineers as Assistant Engineers on ad hoc basis. Aggrieved, the Stipendiary Engineers filed O.J.C. Case No.8373 of 1995 Jayanta Kumar Dey and Ors. v. State of Orissa and Ors. for a writ of mandamus directing the Government to comply with the resolution and the order issued by it. This petition was allowed by the Division Bench of the High Court of Orissa at Cuttack by an order dated 18th December 1996. The High Court directed the Government to take expeditious steps to implement resolution dated 12th March 1996, preferably within a period of four months. It further directed the State Government to appoint Stipendiary Engineers as Assistant Engineers in the scale of Rs.2000-3500 on ad hoc basis. In compliance with the directions aforementioned, the Stipendiary Engineers were appointed as Assistant Engineers on ad hoc basis between the years 1997 and 2001. What is important is that pursuant to its initial proposal of allocating 5% vacancies for those working as degree holder Junior Engineers in different departments, the Government had between 1996 and 1997 promoted 86 degree holder Junior Engineers on an ad hoc basis as Assistant Engineers.

12. Five Stipendiary Engineers working in the Water Resources Department whose names had been recommended along with others for appointment as Assistant Engineers on ad hoc basis by the Screening Committee set up for the purpose in the meantime filed O.J.C. No.1563 of 1998 before the Orissa High Court making a grievance that despite the recommendations made in their favour, the Government had not appointed them as Assistant Engineers. That petition was allowed and disposed of by an order dated 6th May, 1998 directing the State Government to consider the case of the writ-petitioners in the light of its earlier order passed in Jayant Kumar's case (supra). Since the said directions were not carried out by the Government, two of the Stipendiary Engineers filed O.J.C. Nos.6354 and 6355 of 1999 in which they complained about the non-implementation of the directions issued by the High Court earlier and prayed for their regularisation. This petition was disposed of by the High Court by a common order dated 2nd July, 2002 in which the High Court noted that the petitioners had been appointed as Assistant Engineers on ad hoc basis in the pay scale of Rs.2000-3500/- by the Water Resources Department Notification dated 11th December, 1998. The High Court further held that since the Government was on principle committed to

regularising the appointments of Stipendiary Engineers there was no reason why the Government should not treat them as direct recruits since the year 1991, in which they were appointed, and compute their service from that year for the purpose of in-service promotion, pension and other service benefits except financial benefits and to absorb them on regular basis according to law.

13. It was in the above backdrop that the Government finally came up with a proposal for validation of the appointment of Stipendiary Engineers as Assistant Engineers. Memorandum dated 28th November, 2002 referred to appointment of 846 Stipendiary Engineers in Civil, 61 Stipendiary Engineers in Mechanical and 25 Engineers in Electrical wings making a total of 932 Stipendiary Engineers in different Departments. We are informed at the Bar that the present number of such Stipendiary Engineers is limited to 881 only as the rest have either resigned, retired or died. The proposal made in the Memorandum also took note of the information given by the Orissa Public Service Commission and the repeated demands of ad hoc Assistant Engineers engaged from Stipendiary Engineers for regularization. The proposal stated that no regular appointments were made by the Orissa Public Service Commission and that the validation of appointments of Stipendiary Engineers as Assistant Engineers will immensely benefit the State in execution of several ongoing development works. The proposal further stated that having rendered more than 10 years of service, these Stipendiary Engineers currently working as Assistant Engineers on ad hoc basis will have no avenues for employment as they had already gone beyond the upper age limit prescribed for direct recruitment.

14. It is in the above backdrop that the State Legislature eventually enacted Orissa Service of Engineers (Validation of Appointment) Act, 2002 which comprises no more than three sections. Section 3 of the legislation reads as under:

> "3(1) Notwithstanding anything contained in the Recruitment Rules, seven hundred ninety-nine Assistant Engineers belonging to the discipline of Civil, fifty-seven Assistant Engineers belonging to the discipline of Mechanical and twenty-five Assistant Engineers belonging to the discipline of Electrical as specified in the Schedule with their names, dates of birth, dates of appointment and the names of the Departments under which they are working on ad hoc basis since the date of such appointment shall be deemed to be validly and regularly appointed under their respective Department of the Government against the direct recruitment quota of the service with effect from the date of commencement of this Act and, accordingly, no such appointment shall be challenged in any court of law merely on the ground that such appointments were made otherwise than in accordance with the procedure laid down in the Recruitment Rules.
>
> (2) The inter-se-seniority of the Assistant Engineers whose appointments are so validated shall be determined according to their dates of appointment on ad hoc basis as mentioned in the Schedule and they shall be enblock junior to the Assistant Engineers of that year appointed to the service in the respective discipline in their cadre in accordance with the provisions of the Recruitment Rules.

> (3) The services rendered by the Assistant Engineers whose appointments are so validated, prior to the commencement of this Act shall, subject to the provisions in sub-section (2), count for the purpose of their pension, leave and increment and for no other purpose."

15. A batch of writ petitions being Writ Petitions No.9514 of 2003, 12495 of 2005, 12495 of 2005, 12627 of 2005, 12706 of 2006 and 8630 of 2006, were then filed by the Degree holder Junior Engineers appointed as Assistant Engineers on ad hoc basis between 1996 and 1997 challenging the validity of the above legislation, inter alia, on the ground that the same suffered from the vice of discrimination inasmuch as while ad hoc Assistant Engineers, who were earlier appointed on stipendiary basis, had been regularised under the Validation Act, those appointed against 5% quota reserved for Junior Engineers holding a degree qualification were left out.

16. Writ Petition No.11093 of 2006 was similarly filed by Junior Engineers who had not been appointed as Assistant Engineers claiming parity with Degree holder Junior Engineers already appointed as Assistant Engineers on ad hoc basis against 5% quota disapproved by the Public Service Commission for such Engineers.

17. Writ Petition No.16742 of 2006 was filed by Junior Engineers promoted as Assistant Engineers against 33% quota reserved for such Engineers whose grievance primarily was that regularisation/validation of the appointments of Stipendiary Engineers in the cadre of Assistant Engineers was illegal and unconstitutional and adversely affected them in terms of their seniority.

18. The above writ petitions were heard by a Division Bench of the High Court of Orissa who allowed the same by its order dated 15th October, 2008 striking down the impugned Legislation primarily on the ground that the same brought about discrimination between Assistant Engineers similarly situate and, therefore, fell foul of Articles 14 and 16 of the Constitution. The High Court observed:

> "There is no reason as to why appointments of a few persons working as Assistant Engineers on ad hoc basis have been validated ignoring the other similarly situated persons working on ad hoc basis as Assistant Engineers. There cannot be discrimination or classification amongst the persons working on ad hoc basis or the post of Assistant Engineers. Once unequal became equal, the State has no authority to discriminate them and make equals as unequal."

19. The present appeals assail the correctness of the above judgment and order of the High Court. While Civil Appeals No.8324 to 8331 of 2009 have been filed by the State of Orissa, Civil Appeals No.8322, 8323 of 2009 and 1940 of 2010 have been preferred by Stipendiary Engineers who are adversely affected by the judgment of the High Court on account of striking down of the Validation Act under which they were regularized as Assistant Engineers. Civil Appeal No.1768 of 2006 has, however, been filed by the Degree holder Junior Engineers who have already been promoted as Assistant Engineers against 33% quota reserved for them to challenge the judgment of the High Court in OJC Nos.6354 and 6355 of 1999 directing the State Government to regularise the services of the writ-petitioners in those petitions as Assistant Engineers from the date of their appointment

as Stipendiary Engineers with all consequential benefits except financial benefits.

20. Several intervention applications have been filed in these appeals including intervention application filed by the SC/ST candidates who were directly recruited as Assistant Engineers in the year 2004 onwards.

21. We have heard learned counsel for the parties as also those appearing for the interveners. The following three questions of law arise for consideration:

> 1. What is the true nature and purport of the impugned legislation? More particularly is the impugned legislation a validation enactment or is it an enactment that grants regularisation to those appointed on ad hoc basis?
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> 2. If the impugned enactment simply grants regularisation, does it suffer from any constitutional infirmity?
>
> 3. Does Section 3(2) of the impugned legislation suffer from any unconstitutionality, insofar as the same purports to grant Stipendiary Assistant Engineers seniority with effect from the date they were appointed on ad hoc basis?

Re. Question No.1

22. Black's Law Dictionary (9th Edition, Page No.1545) defines a Validation Act as "a law that is amended either to remove errors or to add provisions to conform to constitutional requirements". To the same effect is the view expressed by this Court in Hari Singh & Others v. The Military Estate Officer and Anr. (1972) 2 SCC 239, where this Court said "The meaning of a Validating Act is to remove the causes for ineffectiveness or invalidating of actions or proceedings, which are validated by a legislative measure". In ITW Signode India Ltd. v. Collector of Central Excise (2004) 3 SCC 48, this Court described Validation Act to be an Act that "removes actual or possible voidness, disability or other defect by confirming the validity of anything which is or may be invalid".

23. The pre-requisite of a piece of legislation that purports to validate any act, rule, action or proceedings were considered by this Court in Shri Prithvi Cotton Mills Ltd. and Ann v. Broach Borough Municipality and Ors. (1969) 2 SCC 283. Two essentials were identified by this Court for any such legislation to be valid. These are:

> (a) The legislature enacting the Validation Act should be competent to enact the law and;
>
> (b) the cause for ineffectiveness or invalidity of the Act or the proceedings needs to be removed.

24. The Court went on to enumerate certain ways in which the objective referred to in (b) above could be achieved by the legislation and observed :

> "..... 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 neutralise 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."

(emphasis supplied)

25. Judicial pronouncements regarding validation laws generally deal with situations in which an act, rule, action or proceedings has been found by a Court of competent jurisdiction to be invalid and the legislature has stepped in to validate the same. Decisions of this Court which are a legion take the view that while adjudication of rights is essentially a judicial function, the power to validate an invalid law or to legalise an illegal action is within the exclusive province of the legislature. Exercise of that power by the legislature is not, therefore, an encroachment on the judicial power of the Court. But, when the validity of any such Validation Act is called in question, the Court would have to carefully examine the law and determine whether (i) the vice of invalidity that rendered the act, rule, proceedings or action invalid has been cured by the validating legislation (ii) whether the legislature was competent to validate the act, action, proceedings or rule declared invalid in the previous judgments and

(iii) whether such validation is consistent with the rights guaranteed by Part III of the Constitution. It is only when the answer to all these three questions is in the affirmative that the Validation Act can be held to be effective and the consequences flowing from the adverse pronouncement of the Court held to have been neutralised. Decisions of this Court in Shri Prithvi Cotton Mills Ltd. and Anr. V. Broach Borough Municipality and Ors. (1969) 2 SCC 283, Hari Singh v. Military Estate Officer (1972) 2 SCC 239, Madan Mohan Pathak v. Union of India (1978) 2 SCC 50, Indian Aluminium Co. etc. v. State of Kerala and Ors. (1996) 7 SCC 637, Meerut Development Authority etc. v. Satbir Singh and Ors. etc. (1996) 11 SCC 462, and ITW Signode India Ltd. v. Collector of Central Excise (2004) 3 SCC 48 fall in that category. Even in the realm of service law, validation enactments have subsequent to the pronouncement of competent Courts come about validating the existing legislation. Decisions of this Court in I.N. Saksena v. State of Madhya Pradesh (1976) 4 SCC 750, Virender Singh Hooda and Ors. v. State of Haryana and Anr. (2004) 12 SCC 588 and State of Bihar

and Ors. v. Bihar Pensioners Samaj (2006) 5 SCC 65 deal with that category of cases.

26. In the case at hand, the State of Orissa had not suffered any adverse judicial pronouncement to necessitate a Validation Act, as has been the position in the generality of the cases dealt with by this Court. The title of the impugned Legislation all the same describes the legislation as a Validation Act. The title of a statute is no doubt an important part of an enactment and can be referred to for determining the general scope of the legislation. But the true nature of any such enactment has always to be determined not on the basis of the label given to it but on the basis of its substance.

27. In M.P.V. Sundararamier & Co. v. State of A.P. & Anr. AIR 1958 SC 468 this Court was considering whether the impugned enactment was a Validation Act in the true sense. This Court held that although the short title as also the marginal note described the Act to be a Validation Act, the substance of the legislation did not answer that description. This Court observed:

> "It is argued that to validate is to confirm or ratify, and that can be only in respect of acts which one could have himself performed, and that if Parliament cannot enact a law relating to sales tax, it cannot validate such a law either, and that such a law is accordingly unauthorised and void. The only basis for this contention in the Act is its description in the Short Title as the "Sales Tax Laws Validation Act" and the marginal note to s. 2, which is similarly worded. But the true nature of a law has to be determined not on the label given to it in the statute but on its substance. Section 2 of the impugned Act which is the only substantive enactment therein makes no mention of any validation. It only provides that no law of a State imposing tax on sales shall be deemed to be invalid merely because such sales are in the course of inter-State trade or commerce. The effect of this provision is merely to liberate the State laws from the fetter placed on them by Art. 286(2) and to enable such laws to operate on their own terms." (emphasis supplied)

28. We may also refer to Maxwell on Interpretation of Statutes (12th Edn., page 6), where on the basis of authorities on the subject, short title of the Act has been held to be irrelevant for the purpose of interpretation of statutes. Lord Moulton in Vacher and Sons Ltd. v. London Society of Compositors [1913] AC 107 described the short title of an Act as follows:

> "A title given to the act is solely for the purpose of facility of reference. If I may use the phrase, it is a statutory nickname to obviate the necessity of always referring to the Act under its full and descriptive title....Its object is identification and not description." (emphasis supplied)

29. Dr. Dhawan, learned senior counsel appearing for the appellants fairly conceded that the impugned legislation could not be described as a simple Validation Act. According to him, the Act achieved a dual purpose of (a) validating the invalid ad hoc appointments and (b) appointing the Stipendiary Engineers working as ad hoc Assistant Engineers on a substantive basis by regularising their appointments. While we have no difficulty in agreeing with the latter part of the contention urged by Dr. Dhawan and holding that the legislation regularises the appointment of Stipendiary

Engineers as Assistant Engineers, we have not been able to appreciate the rationale behind the Legislature considering it necessary to validate the ad hoc appointments, especially when such appointments had been made by the Government pursuant to the directions issued by the High Court in the writ petitions filed by the Stipendiary Engineers. Validation of the ad hoc appointments of the Stipendiary Engineers as Assistant Engineers would even otherwise have served no purpose. That is because whether the appointments were officiating/ad hoc/temporary or described by any other expression, the fact that the Stipendiary Engineers had worked for a long period of time as Assistant Engineers in temporary/ad hoc/officiating capacity would have in itself been a ground for the State to regularise them, subject of course to such regularisation otherwise meeting constitutional requirements. It was not as if any such regularisation was legally impermissible unless the "ad hoc appointments" granted to Stipendiary Engineers were themselves validated. It is quite evident that the legislation with which we are concerned was in substance aimed at regularising the services of such persons as had worked in the capacity of Assistant Engineers. If that was the true purport of the legislation, it would be inaccurate to describe the same as a validation enactment.

30. The matter can be viewed from yet another angle. The enactment came de hors any compulsion arising from a judicial pronouncement regarding the invalidity attached to the appointment of Assistant Engineers on ad hoc basis and only because of the State's anxiety to appoint/absorb the Stipendiary Engineers, subsequently appointed as ad hoc Assistant Engineers on a substantive/regular basis without following the route mandated by the Service Rules of 1941 applicable for making any such appointments. Having said that, we must hasten to add that a prior judicial pronouncement declaring an act, proceedings or rule to be invalid is not a condition precedent for the enactment of a Validation Act. Such a piece of legislation may be enacted to remove even a perceived invalidity, which the Court has had no opportunity to adjudge. Absence of a judicial pronouncement is not, therefore, of much significance for determining whether or not the legislation is a validating law.

31. There was in the above context some debate at the Bar whether or not the impugned enactment is a validating enactment as it purports to be. As seen above, Dr. Rajiv Dhawan and even Shri Narasimha, did not see the impugned enactment as a validating legislation, no matter it carries a label to that effect. Mr. Patwalia & Mr. Sisodia, senior advocates, appearing for the opposite parties were also not supportive of the legislation being a validating enactment and in our opinion rightly so. That is because the essence of a validating enactment is a pre-existing act, proceeding or rule, being found to be void or illegal with or without a judicial pronouncement of the Court. It is only when an act committed or a rule in existence or a proceeding taken is found to be invalid that a validating act may validate the same by removing the defect or illegality which is the basis of such invalidity. There is no question of validating something that has not been done or that has yet to come in existence. No one can say that an illegality which has not yet been committed can or ought to be validated by legislation. Existence of an illegal act, proceedings or rule or legislation is the sine qua non for any validating legislation to validate the same. There can be no validation of what has yet to be done, suffered or enacted.

32. Applying the above to the case at hand a Validation Act may have been necessary if the Government had appointed the ad hoc Assistant Engineers on a substantive basis in violation of the relevant recruitment Rules. For in that case, the Government would have done an act which was legally invalid requiring validation by a legislative measure. But a legislation that did not validate any such non-existent act, but simply appointed the ad hoc Assistant Engineers as substantive employees of the State by resort to a fiction, could not be described as a validating law.

33. The legislation under challenge was in that view not a Validation Act as it purported to be but an enactment that regularised the appointment of graduate Stipendiary Engineers working as ad hoc Assistant Engineers as Assistant Engineers. Reliance upon the decision of this Court in Satchidananda Mishra v. State of Orissa and Ors. (2004) 8 SCC 599 is, in our opinion, of no assistance to the respondents. In Satchdinanda's case (supra) the High Court had struck down the validation act which order was confirmed by this Court in appeal. What is significant, however, is that while affirming the view taken by the High Court that the validation law was not constitutionally sound, this Court proceeded on the assumption that the legislation with which it was dealing with was a validation act in the true sense. It was on that assumption that this Court looked into the invalidity and held that the validation act did nothing except validating the appointments without removing the basis on which such appointments could be invalidated. We have not proceeded on any such assumption in the instant case especially because learned counsel for some of the parties have argued that the legislation under challenge is not a Validation Enactment. The Enactment in the case at hand deals with the law relating to regularisation of incumbents holding public office on ad hoc or temporary basis, much in the same way as regularisation of such temporary appointments is ordered in terms of a scheme for that purpose. The only difference is that while a regularisation scheme can be framed by the Government in exercise of its executive power, the regularisation ordered in the case at hand is by way of a legislation. It is trite that what could be achieved by the Government by exercise of its executive power could certainly be achieved by legislation, as indeed it has been achieved in the case at hand. Question No.1 is answered accordingly.

Re. Question No.2

34. A Constitution Bench of this Court in Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors. (2006) 4 SCC 1 ruled that regularisation of illegal or irregularly appointed persons could never be an alternative mode of recruitment to public service. Such recruitments were, in the opinion of this Court, in complete negation of the guarantees contained in Articles 14 and 16 of the Constitution. Having said so, this Court did not upset the regularisations that had already taken place, regardless of whether such regularisations related to illegal or irregular appointments. The ratio of the decision in that sense was prospective in its application, leaving untouched that which had already happened before the pronouncement of that decision. This is evident from the following passage appearing in the decision:

> "We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly

appointed as per the constitutional scheme."

35. The above is a significant feature of the pronouncement of this Court in Umadevi's case (supra). The second and equally significant feature is the exception which this Court made in para 53 of the decision permitting a one-time exception for regularising services of such employees as had been irregularly appointed and had served for ten years or more. The State Government and its instrumentalities were required to formulate schemes within a period of six months from the date of the decision for regularisation of such employees. This is evident from a reading of para 53 of the decision which is reproduced in extenso:

> "One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa (supra), R.N. Nanjundappa (supra), and B.N. Nagarajan (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date..." (emphasis supplied)
>
> 36. Dr. Dhawan, learned senior counsel, appearing for the appellants in some of these appeals argued, and in our opinion rightly so, that both the aspects referred to above bear considerable significance to the case at hand. He submitted that regularisations granted by the State or its instrumentalities given in regard to appointments that were strictly speaking illegal had not been upset by this Court in Umadevi's case (supra). That being so, the impugned Enactment by which the appointment of the appellants- Stipendiary Engineers were regularised as Assistant Engineers must also be treated to have been saved from the rigour of the view taken in Umadevi's case (supra). There is merit in that contention.

The decision in Umadevi's case (supra) stated the true legal position on the subject but having regard to the fact that several earlier decisions of this Court had sanctioned regularisation of those not regularly appointed, this Court was of the view that upsetting such regularisations would not only unsettle what stood settled but also gravely prejudice those who are benefitted from such orders of regularisation. There is no gainsaying that most of such persons who entered the public service initially without going through any open competitive selection process would have lost by passage of time their prospects of entering public service by legal course even if vacancies were

available for such appointments. In some of the decisions the continuance of employees on ad hoc, temporary or daily-wage basis for an indefinite period was seen by this Court also to be a violation of the fundamental right to life apart from being discriminatory. Considering the magnitude of the problem that would arise if all such appointments were to be unsettled, this Court in Umadevi's case (supra) left such regularisation alone and declared that in the future such orders of appointments dehors rules would not qualify for the grant of regularisation in public employment.

37. Equally important is the fact that even after declaring the true legal position on the subject and even after deprecating the practice of appointing people by means other than legitimate, this Court felt that those who had served for ten years or so may be put to extreme hardship if they were to be discharged from service and, therefore, directed the formulation of a scheme for their regularisation. This was no doubt a one- time measure, but so long as the appointment sought to be regularised was not illegal, the scheme envisaged by para 53 of the decision (supra) extracted above permitted the State to regularise such employees. Dr. Dhawan argued that the appellants- Stipendiary Engineers had, by the time the decision in Umadevi's case (supra) was pronounced, qualified for the benefit of a scheme of regularisation having put in ten years as ad hoc Assistant Engineers and fifteen years if their tenure was to be counted from the date of their employment as Stipendiary Engineers. He contended that even in the absence of a Validation Act, Stipendiary Engineers appointed on ad hoc basis as Assistant Engineers, who had worked for nearly ten years to the full satisfaction of the State Government would have been entitled to regularisation of their services in terms of any such scheme.

38. On behalf of the diploma holder Junior Engineers, it was contended by Mr. Sisodia that the appointment of Stipendiary degree holders as ad hoc Assistant Engineers was not irregular but illegal. It was contended that Stipendiary Engineers were appointed on ad hoc basis without following the procedure permitted under the rules which, inter alia, entitled the degree holder Junior Engineers also to compete. He submitted that although diploma holder Junior Engineers were not entitled to compete against the vacancies on the direct recruitment quota in the cadre of Assistant Engineers, yet they were entitled to argue that any appointment to the cadre ought to be made in accordance with the rules especially when regularisation of degree holder Stipendiary Engineers would give them advantage in seniority to the prejudice of the diploma holder Junior Engineers who may at their own turn be promoted in the cadre of Assistant Engineers. We have no hesitation in rejecting that contention. Diploma holder Junior Engineers were not, admittedly, eligible to be appointed as Assistant Engineers in the direct recruitment quota. They could not make a grievance against regularisation simply because of the fact that those regularised may figure above them in seniority. Seniority is an incident of appointment to the cadre which must be regulated by the relevant rules. Any possible prejudice to diploma holders in terms of seniority would not, therefore, make the regularisation unconstitutional or illegal and hence beyond the purview of para 53 in Umadevi's case (supra).

39. Mr. Patwalia, learned senior counsel appearing for the degree holder Junior Engineers who were also appointed on ad hoc basis as Assistant Engineers against 5% quota which the Government resolution had provided for, argued that although degree holder Junior Engineers are eligible for appointment against the vacancies in direct recruits quota, that opportunity was not available to his

clients when the degree holder Junior Engineers were appointed as Assistant Engineers. He contended that Junior Engineer degree holders who were appointed as ad hoc Assistant Engineers against 5% quota reserved for them under the Government resolution would have no objection to the regularisation being upheld provided degree holder Junior Engineers who had served for a relatively longer period as Assistant Engineers on ad hoc basis were also given a similar treatment. He submitted that the exclusion of degree holder Junior Engineers from the legislative measure aimed at regularising the Stipendiary degree holders was clearly discriminatory and that the High Court was on that count justified in holding that the Validation Act itself was ultra vires. It was contended by Mr. Patwalia that even if the legislature had restricted the benefit of regularisation to the Stipendiary Engineers later appointed on ad hoc basis as Assistant Engineers, there was no reason why this Court could not extend the very same benefit to degree holder engineers who had similarly worked for over 15 years.

40. The decision in Umadevi's case (supra), as noticed earlier, permitted regularisation of regular appointments and not illegal appointments. Question, however, is whether the appointments in the instant case could be described as illegal and if they were not, whether the State could be directed to regularise the services of the degree holder Junior Engineers who have worked as ad hoc Assistant Engineers for such a long period, not only on the analogy of the legislative enactment for regularisation but also on the principle underlying para 53 of the decision in Umadevi's case (supra).

41. As to what would constitute an irregular appointment is no longer res integra. The decision of this Court in State of Karnataka v. M.L. Kesari and Ors. (2010) 9 SCC 247, has examined that question and explained the principle regarding regularisation as enunciated in Umadevi's case (supra). The decision in that case summed up the following three essentials for regularisation (1) the employees worked for ten years or more, (2) that they have so worked in a duly sanctioned post without the benefit or protection of the interim order of any court or tribunal and (3) they should have possessed the minimum qualification stipulated for the appointment. Subject to these three requirements being satisfied, even if the appointment process did not involve open competitive selection, the appointment would be treated irregular and not illegal and thereby qualify for regularisation. Para 7 in this regard is apposite and may be extracted at this stage:

> "7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in Umadevi, if the following conditions are fulfilled:
>
> (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.
>
> (ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the

> appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

42. It is nobody's case that the degree holder Junior Engineers were not qualified for appointment as Assistant Engineers as even they possess degrees from recognised institutions. It is also nobody's case that they were not appointed against the sanctioned post. There was some debate as to the actual number of vacancies available from time to time but we have no hesitation in holding that the appointments made were at all relevant points of time against sanctioned posts. The information provided by Mr. Nageshwar Rao, learned Additional Solicitor General, appearing for the State of Orissa, in fact, suggests that the number of vacancies was at all points of time more than the number of appointments made on ad hoc basis. It is also clear that each one of the degree holders has worked for more than 10 years ever since his appointment as ad hoc Assistant Engineer. It is in that view difficult to describe these appointments of the Stipendiary Engineers on ad hoc basis to be illegal so as to fall beyond the purview of the scheme envisaged in Umadevi's case (supra).

43. The upshot of the above discussion is that not only because in Umadevi's case (supra) this Court did not disturb the appointments already made or regularisation granted, but also because the decision itself permitted regularisation in case of irregular appointments, the legislative enactment granting such regularisation does not call for interference at this late stage when those appointed or regularised have already started retiring having served their respective departments, in some cases for as long as 22 years.

44. We need to advert to one other aspect which bears relevance to the issue whether regularisation under the impugned Enactment is legally valid. The appointment process of unemployed degree holders, as noticed earlier, started with the resolution passed by the State Government which envisaged appointments of such unemployed Graduate Engineers as Stipendiaries on a consolidated stipend of Rs.2,000/- p.m. The resolution further envisaged their absorption in service after a period of two years. Not only that, appointments as Stipendiary Engineers were made on the basis of a selection process and on the basis of merit no matter determined de hors the relevant rules which provided for appointments to the cadre to be made only through the Public Service Commission. A reference to the Public Service Commission was no doubt considered unnecessary but the fact remains that appointment of unemployed degree holders as Stipendiary Engineers were made pursuant to a notification by which everyone who was unemployed and held an Engineering degree in any discipline was free to make an application. A large number of unemployed engineers responded to the notification inviting applications out of whom nearly 932 were selected by a Selection Committee constituted for the purpose. What is significant is that the empanelment of the unemployed degree holders for appointment as Stipendiaries did not invite any criticism from any quarter either as to the method of appointment or the fairness of the selection process. The process of appointment was at no stage questioned before the Court, a feature which is notable keeping in view the number of people appointed/empanelled and a larger number who were left out and who could have possibly made a grievance if there was any. It is not, therefore, wholly correct to suggest that the entry of the degree holder Junior Engineers as Stipendiary Engineers and later as Assistant

Engineers was through "the backdoor", an expression very often used in service matters where appointments are made de hors the rules. The process of selection and appointments may not have been as per the relevant rules as the same ought to have been, but it is far from saying that there was complete arbitrariness in the manner of such appointments so as to violate Articles 14 and 16 of the Constitution of India.

45. That apart the appointment of Stipendiary Engineers was at the level of Junior Engineers although it was argued on their behalf that they were discharging the functions of Assistant Engineers from the date they were employed. In the absence of any finding from the High Court on the subject and in the absence of any cogent material before us to support that claim, we find it difficult to hold that the appointment of the Stipendiary Engineers was from the beginning itself as Assistant Engineers. The fact that the resolution of the State Government itself envisaged appointment of Stipendiary Engineers as ad hoc Assistant Engineers on the basis of performance makes it amply clear that the Stipendiary Engineers were not treated as Assistant Engineers for otherwise there would have been no question of appointing them as Assistant Engineers on ad hoc or any other basis. It is also noteworthy that the appointment of the Stipendiary Engineers on ad hoc basis came pursuant to the direction from the High Court which is yet another reason why it is not open to the Stipendiary Engineers to claim that they were at all points of time working as Assistant Engineers. Having said that we cannot lose sight of the fact that the appointment of graduate engineers as Stipendiaries was on a clear representation that they would be eventually absorbed in service as Assistant Engineers. That representation is evident from the resolution of the State Government where it stated:

> "In all, therefore, 741 posts will be available for recruiting these Degree Engineers in the first instance. They may be designed as Junior Engineers or Stipendiary Engineers in the first phase. They may be paid salary in the scale of Junior Engineers or in a consolidated stipend of Rs.2,000/- per month. Absorption into regular posts may be done after two years on the basis of their performance."

46. In the counter-affidavit filed by the State Government before the High Court the State re-affirmed its commitment to the appointment of Stipendiary Engineers as Assistant Engineers on ad hoc basis.

47. In the circumstances and taking a holistic view of the matter, it cannot be said that the appointment of Stipendiary Engineers on ad hoc basis and their subsequent regularisation came as a side wind or was inspired by any political or other consideration. The Government, it appears, was from the very beginning, keen to utilise the services of unemployed Graduate Engineers selected on their merit by the Selection Committee and, therefore, remained steadfast in its efforts for achieving that purpose and in the process going even to the extent of getting them regularised by a legislative measure. Suffice it to say that the question whether regularisation was justified cannot be viewed in isolation or divorced from the context in which the same arises.

48. We may now turn to the contention urged by Mr. Patwalia, that the impugned Legislation was discriminatory in as much as it granted regularisation to persons similarly situated while denying

such benefit to his client who not only held a degree qualification like the Stipendiary Engineers but were in terms of the Government resolution promoted as Ad hoc Assistant Engineers against 5% quota reserved for them. It was argued that State could not have classified ad hoc Assistant Engineers who came from the Stipendiary Engineers stream, on one hand, and those appointed as ad hoc Assistant Engineers on account of their being in service as Junior Engineers holding a degree qualification. The degree holder Junior Engineers, it was contended, were in comparison better entitled to regularisation as they had not only the requisite qualification but had put in longer service as ad hoc Assistant Engineers vis-a-vis their Stipendiary counterparts. Alternatively, it was contended that the degree holder Junior Engineers who too had put in more than 15 years service, were entitled to a direction for their regularisation as Assistant Engineers not only on account of the length of service rendered by them but also on the analogy of the legislative benefit extended to their counterpart Stipendiaries.

49. The approach to be adopted and the principles applicable to any forensic exercise aimed at examining the validity of a legislation on the touchstone of Article 14 of the Constitution have been long since settled by several decisions of this Court. Restatement or repetition of those principles was, therefore, considered platitudinous. The real difficulty as often acknowledged by this Court lies not in stating the principles applicable but in applying them to varying fact situations that come up for consideration. Trite it is to say at the outset that a piece of legislation carries with it a presumption of constitutional validity. Also settled by now is the principle that Article 14 does not forbid reasonable classification. A classification is valid on the anvil of Article 14, if the same is reasonable that is it is based on a reasonable and rational differentia and has a nexus with the object sought to be achieved. (See State of West Bengal v. Anwar Ali Sarkar AIR 1952 SC 75 and Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors. AIR 1958 SC 538). A comprehensive review of the law is, in our opinion, unnecessary at this stage in view of the Constitution Bench decision of this Court in Re: The Special Courts Bill, 1978 (1979) 1 SCC 380 where this Court undertook that exercise and noticed as many as thirteen propositions that bear relevance to any forensic determination of the validity of a law by reference to the equality clause enshrined in Article 14 of the Constitution. Some of those principles were stated by this Court in the following words:

“xxx xxx xxx (2) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

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

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons

similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

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

(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense abovementioned.

xxx xxx xxx (11) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

xxx xxx xxx"

50. Applying the above to the case at hand, the first and foremost question would be whether the classification of ad hoc Assistant Engineers is reasonable, that there is a reasonable differentia that distinguishes those grouped together for the grant of the benefit from those left out and if there is

such a differentia, whether the classification has a reasonable nexus with the object underlying the legislation.

51. The second and by no means less important is the question whether the impugned legislation is ultra vires of Article 14 because of under inclusion. That is because the argument of the writ petitioners in substance is that the legislation ought to have included even in-service Junior Engineers degree holders working as Ad hoc Assistant Engineers for the benefit of regularisation.

52. There is no difficulty in answering the first question. We say so because the beneficiaries of the impugned legislation constitute a class by themselves inasmuch as they were un-employed degree holders appointed as Stipendiary Engineers on a consolidated pay. The method of their employment was also different inasmuch as although they were selected on the basis of inter-se merit, the process of selection itself was not conducted by the Public Service Commission. Their appointment as ad hoc Assistant Engineers also came pursuant to a direction issued by the High Court no matter the direction itself was based on a resolution passed by the State Government that provided for such appointments upon proof of satisfactory performance. The object underlying the legislation evidently being to ensure continued utilisation of the services of such Stipendaries appointed on ad hoc basis as Assistant Engineers, there was a reasonable nexus between the classification and the object sought to be achieved. It is not the case of writ petitioners that Stipendiary Engineers appointed as ad hoc Assistant Engineers were left out of the group for a hostile treatment by refusal of the benefit extended to others similarly situated. What the writ petitioners contend in support of their challenge to the validity of the legislation is that since they were also appointed on ad hoc basis though in a different way, the legislation was bad for under inclusion. We shall presently deal with the test applicable to cases where the challenge to the legislation is founded on under inclusion but before we do so, we need to dispel the impression that the writ petitioners were similarly situated as the Stipendiaries only because they were also working as ad hoc Assistant Engineers. There is no gainsaying that the legislation does not aim at regularising all ad hoc Assistant Engineers regardless of the circumstances in which such appointments came about. If that were so, the writ petitioners could well argue that since the object underlying the enactment is to regularise all ad hoc Assistant Engineers, they could not be left out without violating their fundamental rights under Article 14 of the Constitution. The impugned legislation, however, has limited its beneficence to ad hoc Assistant Engineers who came in as Stipendiary Engineers pursuant to a policy decision of the State Government that aimed at utilising their services and dealing with the unemployment problem in the State. That being the object, ad hoc Assistant Engineers appointed by other modes or in circumstances other than those in which Stipendiaries entered the service, cannot cry foul or invite the wrath of Article 14 upon the legislation. As a matter of fact, the State Government's resolve to give 5% vacancies to in service degree holder Junior Engineers itself brought about a classification between Stipendiaries on one hand and the in- service Junior Engineers on the other. The proposed reservation having run into rough waters because of the opposition of the Orissa Public Service Commission, the in-service Junior Engineer writ petitioners before the High Court lost their fight for a share in the higher cadre of Assistant Engineers based on their higher qualification. Suffice it to say that Stipendiary Engineers later appointed as ad hoc Assistant Engineers were a class by themselves and any benefit to them under the impugned Enactment could not be grudged by in-service Junior Engineers no matter the latter had in anticipation of the amendment to the

recruitment rules also got appointed as ad hoc Assistant Engineers.

53. Coming then to the question of "under inclusion" we need to keep in mind that a challenge based on "under inclusion" is not readily accepted by Courts. Constitution Bench's decision of this Court in State of Gujarat and Anr. v. Shri Ambica Mills Ltd., Ahmedabad and Anr. (1974) 4 SCC 656, dealt with the question of a classification which was under inclusive and declared that having regard to the real difficulties under which legislatures operate, the Courts have refused to strike down legislations on the ground that they are under inclusive. The Court observed:

> "55. A classification is under-inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under- inclusive when a State benefits or burdens persons in a manner that furthers a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated. A classification is over-inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well. In other words, this type of classification imposes a burden upon a wider range of individuals than are included in the class of those attended with mischief at which the law aims. Herod ordering the death of all male children born on a particular day because one of them would some day bring about his downfall employed such a classification.
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> 56. The first question, therefore, is, whether the exclusion of establishments carrying on business or trade and employing less than 50 persons makes the classification under-inclusive, when it is seen that all factories employing 10 or 20 persons, as the case may be, have been included and that the purpose of the law is to get in unpaid accumulations for the welfare of the labour.

Since the classification does not include all who are similarly situated with respect to the purpose of the law, the classification might appear, at first blush, to be unreasonable. But the Court has recognised the very real difficulties under which legislatures operate - difficulties arising out of both the nature of the legislative process and of the society which legislation attempts perennially to re-shape - and it has refused to strike down indiscriminately all legislation embodying classificatory inequality here under consideration. Mr. Justice Holmes, in urging tolerance of under- inclusive classifications, stated that such legislation should not be disturbed by the Court unless it can clearly see that there is no fair reason for the law which would not require with equal force its extension to those whom it leaves untouched." (emphasis supplied)

54. The above was followed by this Court in The Superintendent and Remembrancer of Legal Affairs, West Bengal v. Girish Kumar Navalakha and Ors. (1975) 4 SCC 754 where this Court held that some sacrifice of absolute equality may be required in order that legal system may preserve the flexibility to evolve new solutions to social and economic problems. This Court said:

> "8. Often times the courts hold that under-inclusion does not deny the equal protection of laws under Article 14. In strict theory, this involves an abandonment of the principle that classification must include all who are similarly situated with respect to the purpose. This under-inclusion is often explained by saying that the legislature is free to remedy parts of a mischief or to recognize degrees of evil and strike at the harm where it thinks it most acute.
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> 10. There are two main considerations to justify an under-

inclusive classification. First, administrative necessity. Second, the legislature might not be fully convinced that the particular policy which it adopts will be fully successful or wise. Thus to demand application of the policy to all whom it might logically encompass would restrict the opportunity of a State to make experiment. These techniques would show that some sacrifice of absolute equality may be required in order that the legal system may preserve the flexibility to evolve new solutions to social and economic problems. The gradual and piecemeal change is often regarded as desirable and legitimate though in principle it is achieved at the cost of some equality. It would seem that in fiscal and regulatory matters the court not only entertains a greater presumption of constitutionality but also places the burden on the party challenging its validity to show that it has no reasonable basis for making the classification."

55. The above decisions were followed in Ajoy Kumar Banerjee and Ors. v. Union of India and Ors. (1984) 3 SCC 127 where this Court observed:

> "...Article 14 does not prevent legislature from introducing a reform i.e. by applying the legislation to some institutions or objects or areas only according to the exigency of the situation and further classification of selection can be sustained on historical reasons or reasons of administrative exigency or piecemeal method of introducing reforms. The law need not apply to all the persons in the sense of having a universal application to all persons. A law can be sustained if it deals equally with the people of well-defined class-employees of insurance companies as such and such a law is not open to the charge of denial of equal protection on the ground that it had no application to other persons."

56. We have in the light of the above no hesitation in holding that the legislation under challenge does not suffer from any constitutional infirmity and that the High Court was in error in having struck it down.

57. Having said that we are of the opinion that even when the challenge to the constitutional validity of the impugned enactment fails, the degree holder Junior Engineers currently working as ad hoc Assistant Engineers are entitled to the relief of regularisation in service, having regard to the fact that they have rendered long years of service as Assistant Engineers on ad hoc basis for 17 to 18 years in some cases. While it is true that those in service degree holders working as Junior Engineers

were not the beneficiaries of the legislation under challenge, the fact remains, that they were eligible for appointment as Assistant Engineers on account of their being degree holders. It is also not in dispute that they were appointed against substantive vacancies in the cadre of Assistant Engineers no matter by utilizing the direct recruit quota. Even in the case of Stipendiary Engineers the vacancies were utilized out of the 67% quota meant for direct recruitment. What is, however, significant is that the utilization of the quota reserved for direct recruitment for appointing Stipendiary and Junior Engineers as Assistant Engineers has not been assailed either before the High Court or before us. On the contrary the contention urged on behalf of Junior Engineers degree holders who are still working as Junior Engineers was that the remainder of vacancies comprising 5% of the cadre strength should be utilised to appoint the eligible degree holder Junior Engineers. We shall presently deal with that contention. Suffice it to say for the present that the appointments granted to degree holder Junior Engineers as Assistant Engineers on ad hoc basis were pursuant to a Government decision whereunder such degree holders as were already in-service as Junior Engineers, were also given an opening for upward movement. Appointment of such degree holders was not grudged by their diploma holder colleagues as no challenge was mounted by them to such appointments ostensibly because degree holder Junior Engineers were getting appointed without in the least affecting the quota of 33% reserved for the promotees. In a way the upward movement of the degree holders as Assistant Engineers brightened the chances of the rest to get promoted at their turn in the promotees quota. All told, the Junior Engineers have served for almost a lifetime and held substantive vacancies no matter on ad hoc basis. To revert them at this distant point of time would work hardship to them. Besides, we cannot ignore the march of events especially the fact that Stipendaries appointed at a later point of time with the same qualifications and pursuant to the very same Government policy as took shape for both the categories, have been regularised by the Government through the medium of a legislation. That this Court can suitably mould the relief, was not in serious controversy before us. In the circumstances, we hold the degree holder Junior Engineers currently working as Assistant Engineers on ad hoc basis writ petitioners in the High Court entitled to the relief of regularisation with effect from the same date as the Validation Act granted such regularisation to the Stipendiary Engineers.

58. We shall advert to the question of inter se seniority between the two categories while we take up question No.3. But before we turn to question No.3 we need to briefly deal with the contention urged on behalf of some of the degree holder Junior Engineers represented by Mr. Dholakia who contended that since the Government resolution had provided for 5% quota for degree holder Junior Engineers the Government was duty bound to make appointments against that quota. It was urged that the cadre strength of the Assistant Engineers had not been presently determined by the Government nor were the figures given by the State Government accurate. The number of Junior Engineers who should have got appointed against 5% quota reserved for them would have been large, agreed Mr. Dholakia. To the extent of shortfall the State Government was bound to continue the process of appointment, contended the learned counsel.

59. There is, in our opinion, no merit in the submissions urged by Mr. Dholakia and by learned counsel for some of the interveners. We say so because the quota which the Government resolution proposed to carve out never fructified by a corresponding amendment of the Service Rules. As noticed in the earlier part of this order, the Orissa Public Service Commission was not agreeable to

the reservation of a quota for the subordinate engineering service members who held a degree qualification. No such classification was, therefore, made or could be made by the Government, nor was the Government resolution translated into a binding rule that could be enforced by a Court of law. Assuming, therefore, that on a true and proper determination of the posts comprising the cadre strength of Assistant Engineers, some more vacancies could fall in the 5% quota proposed to be reserved for the degree holder Junior Engineers and no mandamus could be issued for filing up such vacancies. It is trite that existence of an enforceable right and a corresponding obligation is a condition precedent for the issue of a mandamus. We fail to locate any such right in favour of the writ petitioner degree holders who are still holding posts as Junior Engineers. They will have, therefore, to wait for their turn for promotion against the 33% quota reserved for them along with their diploma holder colleagues. We hardly need to emphasise that those appointed against 5% quota may also have had no such right, but since they have worked in the higher cadre for a long period and discharged duties attached to the posts of Assistant Engineers with the benefits attached thereto, their regularisation comes on a totally different juristic basis than the one sought to be urged on behalf of those who were left out. Appointments as Assistant Engineers were from out of Junior Engineers made strictly according to seniority. The fortuitous circumstance under which the appointments did not extend to the full quota of 5% would make no material difference when it comes to finding out whether the Junior Engineers can claim an enforceable legal right.

60. Question No.2 is answered accordingly.

Re. Question No.3

61. Section 3(2) of the impugned legislation deals entirely with the inter se seniority of Assistant Engineers whose appointments are validated/regularised by the said enactment and stipulates that such inter se seniority shall be determined according to the dates of appointment of the officers concerned on ad hoc basis as mentioned in the schedule. It further stipulates that all those regularised under the legislation shall be enbloc junior to the Assistant Engineers of that year appointed to the service in their respective discipline in their cadre in accordance with the provisions of the Recruitment Rules. Sub-section (3) of Section 3 makes the ad hoc service rendered by such Assistant Engineers count for the purpose of their pension, leave and increments and for no other purpose.

62. Appearing for the State of Orissa, Mr. Nageshwar Rao contended that grant of seniority to ad hoc Assistant Engineers regularised under the legislation w.e.f. the date they were appointed on ad hoc basis was legally permissible especially when the ad hoc appointments had continued without any interruption till their regularisation. Reliance in support was placed by Mr. Rao upon a Constitution Bench decision of this Court in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Ors. (1990) 2 SCC 715. The case at hand, according to the learned counsel, fell under proposition (B) formulated in the said decision. Grant of seniority from the date of initial appointments did not, therefore, suffer from any constitutional or other infirmity to warrant interference from this Court.

63. Mr. Sisodia appearing for some of the parties, on the other hand, contended that seniority could be granted only from the date of regularisation under the enactment and not earlier. Learned counsel for some of the interveners adopted that contention, including Ms. Aishwarya appearing for some of the diploma holder Junior Engineers and urged that ad hoc service rendered by the Engineers appointed otherwise than in accordance with the rules could not count for the purposes of seniority and that even if Section 3(1) of the Validation Act was held to be valid, Section 3(2) which gave retrospective seniority from the date they were first appointed on ad hoc basis must go.

64. In Direct Recruit's case (supra) this Court reviewed and summed up the law on the subject by formulating as many as 11 propositions out of which propositions A and B stated in Para 47 of the decision in the following words are relevant for our purposes:

> "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.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. (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 regularisation of his service in accordance with the rules, the period of officiating service will be counted."

65. There was some debate at the bar whether the case at hand is covered by corollary to proposition A or by proposition B (supra). But having given our consideration to the submissions at the Bar we are inclined to agree with Mr. Rao's submission that the case at hand is more appropriately covered by proposition B extracted above. We say so because the initial appointment of ad hoc Assistant Engineers in the instant case was not made by following the procedure laid down by the Rules. Even so, the appointees had continued in the posts uninterruptedly till the Validation Act regularised their service. There is, in the light of those two significant aspects, no room for holding that grant of seniority and other benefits referred to in Section 3(3) of the impugned Act were legally impermissible or violated any vested right of the in service Assistant Engineers appointed from any other source. Proposition A, in our opinion, deals with a situation where an incumbent is appointed to a post according to the rules but the question that arises for determination is whether his seniority should be counted from the date of his appointment or from the date of his confirmation in the said service. The corollary under proposition A, in our opinion, deals with an entirely different situation, namely, where the appointment is ad hoc and made as a stop-gap-arrangement in which case officiation in such post cannot be taken into consideration for seniority. Be that as it may, as between proposition A and B the case at hand falls more accurately under proposition B which permits grant of seniority w.e.f. the date the appointees first started officiating followed by the regularisation of their service as in the case at hand.

66. We may also refer to a three-Judge Bench of this Court in Union of India and Anr. etc. etc. v. Lalita S. Rao and Ors. etc. etc. (2001) 5 SCC 384 where doctors appointed by Railway Administration on ad hoc basis had been upon regularisation granted seniority from the date of their ad hoc appointment. This Court held that proposition B stated in Direct Recruits case (supra) permitted such seniority being granted. This Court observed:

> "Obviously the Court had in mind the principle B evolved by the Constitution Bench in the Direct Recruit Engineering Officers Association case (supra). If the initial appointment had not been made in accordance with the prescribed procedure laid down by the Recruitment Rules, and yet the appointees Medical Officers were allowed to continue in the post uninterruptedly and then they appeared at the selection test conducted by the Union Public Service Commission, and on being selected their services stood regularised then there would be no justification in not applying the principle 'B' of the Direct Recruit Class II Engineering Officers Association case (supra) and denying the period of officiating services for being counted for the purpose of seniority."

67. Reference may also be made to the decision of this Court in State of Andhra Pradesh & Anr. V. K.S. Muralidhar & Ors. (1992) 2 SCC 241 where the Government of India gave weightage to service rendered by employees prior to their regularisation. The dispute in that case was regarding inter se seniority between the Supervisors who were upgraded as Junior Engineers and the degree holders who were directly appointed as Junior Engineers. This Court held that the State Government had as a matter of policy given weightage to both the categories and that there was nothing unreasonable in giving a limited benefit or weightage to the upgraded Supervisors in the light of their experience. This Court said:

> "The question to be considered is from which date the weightage of four years' service should be given to the upgraded Junior Engineers namely the Supervisors. Is it the date of acquiring the degree qualification or the date of their appointment? Having given our earnest consideration and for the reasons stated above we hold that the weightage can be given only from the date of their appointment.
>
> The Tribunal in the course of its order, however, observed that in accordance with the existing rules the appointments of these Junior Engineers from the notional date have to be cleared by the Public Service Commission and the appointments cannot be held to be regular appointments as long as they are not approved by the Public Service Commission.
>
> Xx xx xx To sum up, our conclusions are as under:
>
> (i) The weightage of four years in respect of upgraded Junior Engineers as provided in G.O. Ms. No. 559 has to be reckoned from the date of appointment and not the date of their acquiring the degree qualification;

(ii) On the basis of that notional date, their inter-se seniority has to be fixed;

(iii) The regularisation of the degree-holder Junior Engineers who passed the SQT by giving retrospective effect cannot be held to be illegal, and their seniority among themselves shall be subject to the order of ranking given by the Public Service Commission on the basis of the SQT;

(iv) The Government shall prepare a common seniority list of the degree-holders Junior Engineers and the upgraded Junior Engineers on the above lines and that list shall be the basis for all the subsequent promotions. Promotions, if any, already given shall be reviewed and readjusted in accordance with the said seniority list; and

(v) The approval of the Public Service Commission in respect of these appointments and their seniority thus fixed need not be sought at this distance of time." (emphasis supplied)

68. In Narender Chadha & Ors. v. Union of India & Ors. (1986) 2 SCC 157, this Court was dealing with a somewhat similar fact situation. The petitioners in that case were not promoted by following the actual procedure prescribed by the relevant Service Rules even though the appointments were made in the name of the President by the competent authority. They had based on such appointments, continuously held the post to which they were appointed and received salary and allowances payable to incumbent of such post. The incumbents were entered in the direct line of their promotion. The question, however, was whether it would be just and proper to hold that such promotees had no right to the post held by them for 15-20 years and could be reverted unceremoniously or treated as persons not belonging to the service at all. Repelling the argument that such service would not count for the purposes of seniority, this Court observed:

" It would be unjust to hold at this distance of time that on the facts and in the circumstances of this case the petitioners are not holding the posts n Grade IV. The above contention is therefore without sub-stance. But we, however, make it clear that it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post. Such a person may be reversed from that post. But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not: belonging to the Service at all, particularly where the Government is endowed with the power to relax the Rules to avoid unjust results. In the instant case the Government has also not expressed its unwillingness to continue them in the said posts. The other contesting respondents have also not urged that the petitioners should be sent out of the said posts. The only question agitated before us relates to the seniority as between the petitioners and the direct recruits and such a

question can arise only where there is no dispute regarding the entry of the officers concerned into the same Grade. In the instant case there is no impediment even under the Rules to treat these petitioners and others who are similarly situated as persons duly appointed to the posts in Grade IV because of the enabling provision contained in the Rule 16 thereof. Rule 16 as it stood at the relevant time read as follows :

16. The Government may relax the provisions of these rules to such extent as may be necessary to ensure satisfactory working or remove in-equitable results." (emphasis supplied)

69. The ratio of the decision in the above case was not faulted by the Constitution Bench of this Court in Direct Recruit's case (supra). As a matter of fact the Court approved the said decision holding that there was force in the view taken by this Court in that case. This Court observed:

"In Narender Chadha v. Union of India 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."

70. In the light of what we have said above, we do not see any illegality or constitutional infirmity in the provisions of Section 3(2) or 3(3) of the impugned legislation.

71. Having said so, there is no reason why a similar direction regarding the writ-petitioners degree holder Junior Engineers who have been held by us to be entitled to regularisation on account of their length of service should also not be given a similar benefit. We must mention to the credit of Dr. Dhawan, appearing for the Stipendiary Engineers who have been regularised under the provisions of the Legislation that such Stipendiary-

ad hoc Assistant Engineers cannot, according to the learned counsel, have any objection to the degree holder Junior Engineers currently working as Assistant Engineers on ad hoc basis being regularised in service or being given seniority from the date they were first appointed. It was also conceded that Stipendiary Engineers all of whom were appointed after the appointment of the Junior Engineers would enbloc rank junior to such ad hoc Assistant Engineers from out of degree holder Junior Engineers. But all such regularised Assistant Engineers from Stipendiary Stream and from Junior Engineers category would together rank below the promotee Assistant Engineers.

72. Question No.3 is answered accordingly.

73. Several intervention applications have been filed in these appeals to which we may briefly refer at this stage. In IA No.5 of 2012 filed in Civil Appeal No.8324 of 2009, the interveners have sought permission for the State Government to complete the re-structuring process and to fill up the vacancies subject to a final decision of this Court in these appeals. In IA Nos.6 and 7 of 2012 also filed in Civil Appeal No.8324 of 2009, the interveners seek a direction to the State of Orissa to upgrade the post of Assistant Engineers Class II (Group B) to Assistant Executive Engineer Junior Class I (Group A) and to make such up-gradation retrospective w.e.f. 28th February, 2009. IA No.8 of 2012 has been filed in the very same appeal in which the interveners have sought a direction against the State of Orissa to give effect to the up-gradation of posts considering inter se seniority of in-service degree holder Junior Engineers who are otherwise eligible for appointment against the vacancies reserved for direct recruits. In IA No.3 of 2009 in SLP No.29765 of 2008, the interveners seek permission to support the judgment of the High Court whereby the impugned legislation has been struck down as unconstitutional. Similarly, IAs filed in some other appeals either seek to support the judgment passed by the High Court or pray for permission to argue the case on behalf of one or the other party.

74. We have heard counsel for the interveners also at some length. We, however, do not consider it necessary to enlarge the scope of these proceedings by examining issues that are not directly related to the controversy at hand. Three questions that have primarily engaged our attention in these petitions relate to (a) the validity of the impugned Validation Act. (b) regularization of in-service degree holder Junior Engineers who have been working for considerable length of time as Assistant Engineers on ad hoc basis and (c) the seniority position of those being regularized either under the Validation Act or in terms of the directions being issued by us in these appeals. Other issues which the interveners seek to raise especially issues regarding grant or denial of the benefit of reservation to SC and ST candidates, have not been touched by us in these proceedings for want of proper pleadings on the subject and also for want of any pronouncement by the High Court on the said questions. In the circumstances, this order shall be taken to have settled only what we have specifically dealt with or what would logically follow therefrom. Any question whether the same relates to inter se seniority of those regularized under the legislation or by reason of the directions which we propose to issue or issues relating to the benefit of seniority on the basis of roster points if any prescribed for that purpose are left open and may be agitated by the aggrieved party before an appropriate forum in appropriate proceedings. To the extent any such questions or aspects have not been dealt with by us in this order, may be dealt with in any such proceedings. Beyond that we do not consider it proper or necessary to say anything at this stage.

75. In the result we pass the following order:

> (1) Civil Appeals No.8324-8331 of 2009 filed by the State of Orissa and Civil Appeals No.8322-8323 of 2009 and 1940 of 2010 filed by the Stipendiary Engineers are allowed and the impugned judgment and order dated 15th October, 2008 passed by the High Court of Orissa set aside.

(2) Writ Petitions No.9514/2003, 12494/2005, 12495/2005, 12627/2005, 12706/2006 and 8630/2006 filed by the degree holders Junior Engineers working as Assistant Engineers on ad hoc basis are also allowed but only to the limited extent that the services of the writ-petitioners and all those who are similarly situated and promoted as ad hoc Assistant Engineers against the proposed 5% quota reserved for in-

service Junior Engineers degree holder shall stand regularized w.e.f. the date Orissa Service of Engineers (Validation of Appointment) Act, 2002 came into force. We further direct that such in-service degree holder Junior Engineers promoted as Assistant Engineers on ad hoc basis shall be placed below the promotees and above the Stipendiary Engineers regularized in terms of the impugned legislation. The inter se seniority of the Stipendiary Engineers regularized as Assistant Engineers under the impugned Legislation and Junior Engineer degree holders regularized in terms of this order shall be determined on the basis of their date of first appointment as Assistant Engineers on ad hoc basis.

(3) Civil Appeal No.1768 of 2006 is resultantly allowed, the judgment and order impugned therein set aside and Writ Petitions OJC Nos.6354-55 of 1999 disposed of in terms of the above direction.

(4) Intervention applications filed in these appeals are also disposed of in the light of observations made in Para 74 of this judgment.

(5) Parties are left to bear their own costs.

.....J. (T.S. THAKUR) .....J. (VIKRAMAJIT SEN)
New Delhi February 19, 2014