Renu & Ors vs District & Sess.Judge Tishazri & Anr on 12 February, 2014

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Bench: M.Y. Eqbal, J. Chelameswar, B.S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 979 OF 2014
(Arising out of SLP (C) No. 26090 of 2011)

Renu & Ors. …Appellants

Versus

District & Sessions Judge, Tis Hazari & Anr.
…Respondents

J U D G M E N T

Dr. B. S. CHAUHAN, J.

1. The matter initially related to the appointment of Class IV employees in the courts subordinate to Delhi High Court as the dispute arose about the continuity of the employees appointed on ad-hoc basis for 89 days which stood extended for the same period after same interval from time to time. The matter reached the Delhi High Court and ultimately before this Court. This court vide order dated 10.5.2012 took up the matter in a larger perspective taking cognizance of perpetual complaints regarding irregularities and illegalities in the recruitments of staff in the subordinate courts throughout the country and in order to ensure the feasibility of centralising these recruitments and to make them transparent and transferable. This Court suo motu issued notice to Registrar Generals of all the High Courts and to the States for filing their response mainly on two points viz.

(i) why the recruitment be not centralized; and (ii) why the relevant rules dealing with service conditions of the entire staff be not amended to make them as transferable posts. All the States and High Courts have submitted their response and all of them are duly represented in the court.

2. This Court had appointed Shri P.S. Narasimha, learned senior counsel as Amicus Curiae to assist the court. The matter was heard on 28.1.2014 and deliberations took place at length wherein all the learned counsel appearing for the States as well as for the High Courts suggested that the matter should be dealt with in a larger perspective i.e. also for appointments of employees in the High Court and courts subordinate to the High Court which must include Class IV posts also. A large number of instances have been pointed out on the basis of the information received under the Right to Information Act, 2005 of cases not only of irregularity but of favouritism also in making such appointments. It has been suggested by the learned counsel appearing in the matter that this court has a duty not only to check illegality, irregularity, corruption, nepotism and favouritism in judicial institutions, but also to provide guidelines to prevent the menace of back-door entries of employees who subsequently are ordered to be regularised.

3. It was in view of the above that this Court vide its earlier orders had asked learned counsel appearing for the States as well as the High Courts to examine the records of their respective States/Courts and report as to whether a proper and fair procedure had been adopted for evaluating the candidates. A mixed response was received from different counsel on these issues.

4. In view of the aforesaid submissions, we do not think it necessary to peruse the record in order to gauge the amount of irregularities or illegalities. Our basic concern is that the appointments in judicial institutions must be made on the touchstone of equality of opportunity enshrined in Article 14 read with Article 16 of the Constitution of India, 1950 (hereinafter referred to as the `Constitution') and under no circumstance any appointment which is illegal should be saved for the reason that the grievance of the people at large is that complete darkness in the light house has to be removed. The judiciary which raises a finger towards actions of every other wing of the society cannot afford to have this kind of accusations against itself.

5. Rule of law is the basic feature of the Constitution. There was a time when REX was LEX. We now seek to say LEX is REX. It is axiomatic that no authority is above law and no man is above law. Article 13(2) of the Constitution provides that no law can be enacted which runs contrary to the fundamental rights guaranteed under Part III of the Constitution. The object of such a provision is to ensure that instruments emanating from any source of law, permanent or temporary, legislative or judicial or any other source, pay homage to the constitutional provisions relating to fundamental rights. Thus, the main objective of Article 13 is to secure the paramountcy of the Constitution especially with regard to fundamental rights.

6. The aforesaid provision is in consonance with the legal principle of "Rule of Law" and they remind us of the famous words of the English jurist, Henry de Bracton – "The King is under no man but under God and the Law". No one is above law. The dictum – "Be you ever so high, the law is above you" is applicable to all, irrespective of his status, religion, caste, creed, sex or culture. The

Constitution is the supreme law. All the institutions, be it legislature, executive or judiciary, being created under the Constitution, cannot ignore it.

The exercise of powers by an authority cannot be unguided or unbridled as the Constitution prescribes the limitations for each and every authority and therefore, no one, howsoever high he may be, has a right to exercise the power beyond the purpose for which the same has been conferred on him. Thus, the powers have to be exercised within the framework of the Constitution and legislative provisions, otherwise it would be an exercise of power in violation of the basic features of the Constitution i.e. Part III dealing with the fundamental rights which also prescribes the limitations.

7. Article 14 of the Constitution provides for equality of opportunity. It forms the cornerstone of our Constitution.

In I.R. Coelho (dead) by L.Rs. v. State of Tamil Nadu, AIR 2007 SC 861, the doctrine of basic features has been explained by this Court as under:

> "The doctrine of basic structure contemplates that there are certain parts or aspects of the Constitution including Article 15, Article 21 read with Articles 14 and 19 which constitute the core values which if allowed to be abrogated would change completely the nature of the Constitution. Exclusion of fundamental rights would result in nullification of the basic structure doctrine, the object of which is to protect basic features of the Constitution as indicated by the synoptic view of the rights in Part III."

8. As Article 14 is an integral part of our system, each and every state action is to be tested on the touchstone of equality. Any appointment made in violation of mandate of Articles 14 and 16 of the Constitution is not only irregular but also illegal and cannot be sustained in view of the judgments rendered by this Court in Delhi Development Horticulture Employees' Union v. Delhi Administration, Delhi & Ors., AIR 1992 SC 789; State of Haryana & Ors. v. Piara Singh & Ors. etc.etc., AIR 1992 SC 2130; Prabhat Kumar Sharma & Ors. v. State of U.P. & Ors., AIR 1996 SC 2638; J.A.S. Inter College, Khurja, U.P. & Ors. v. State of U.P. & Ors., AIR 1996 SC 3420; M.P. Housing Board & Anr. v. Manoj Shrivastava, AIR 2006 SC 3499; M.P. State Agro Industries Development Corporation Ltd. & Anr. v. S.C. Pandey, (2006) 2 SCC 716; and State of Madhya Pradesh & Ors. v. Ku. Sandhya Tomar & Anr., JT 2013 (9) SC 139.

9. In Excise Superintendent Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao & Ors., (1996) 6 SCC 216, a larger Bench of this Court reconsidered its earlier judgment in Union of India & Ors. v. N. Hargopal & Ors., AIR 1987 SC 1227, wherein it had been held that insistence of requisition through employment exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. However, due to the possibility of non sponsoring of names by the employment exchange, this Court held that any appointment even on temporary or ad hoc basis without inviting application is in violation of the said provisions of the Constitution and even if the names of candidates are requisitioned from Employment Exchange, in addition thereto, it is mandatory on the part of the employer to invite applications from all eligible candidates from open

market as merely calling the names from the Employment Exchange does not meet the requirement of the said Articles of the Constitution. The Court further observed:

> "In addition, the appropriate department.....should call for the names by publication in the newspapers having wider circulation and also display on their office notice ...and employment news bulletins; and then consider the case of all candidates who have applied. If this procedure is adopted, fair play would be sub served. The equality of opportunity in the matter of employment would be available to all eligible candidates." (Emphasis added) (See also: Arun Tewari & Ors. v. Zila Mansavi Shikshak Sangh & Ors., AIR 1998 SC 331; and Kishore K. Pati v. Distt. Inspector of Schools, Midnapur & Ors., (2000) 9 SCC 405).

10. In Suresh Kumar & Ors. v. State of Haryana & Ors., (2003) 10 SCC 276, this Court upheld the judgment of the Punjab & Haryana High Court wherein 1600 appointments made in the Police Department without advertisement stood quashed though the Punjab Police Rules, 1934 did not provide for such a course. The High Court reached the conclusion that process of selection stood vitiated because there was no advertisement and due publicity for inviting applications from the eligible candidates at large.

11. In Union Public Service Commission v. Girish Jayanti Lal Vaghela & Ors., AIR 2006 SC 1165, this Court held:

> ".....The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial, through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made..... Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution...." (Emphasis added)

12. The principles to be adopted in the matter of public appointments have been formulated by this Court in M.P. State Coop. Bank Ltd., Bhopal v. Nanuram Yadav & Ors., (2007) 8 SCC 264 as under:

> "(1) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.
>
> (2) Regularisation cannot be a mode of appointment.

(3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.

(4) Those who come by back-door should go through that door. (5) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.

(6) The court should not exercise its jurisdiction on misplaced sympathy.

(7) If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection.

(8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside."

13. A similar view has been reiterated by the Constitution Bench of this Court in Secretary, State of Karnataka & Ors. v. Umadevi & Ors., AIR 2006 SC 1806, observing that any appointment made in violation of the Statutory Rules as also in violation of Articles 14 and 16 of the Constitution would be a nullity. "Adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment". The Court further rejected the prayer that ad hoc appointees working for long be considered for regularisation as such a course only encourages the State to flout its own rules and would confer undue benefits on some at the cost of many waiting to compete.

14. In State of Orissa & Anr. v. Mamata Mohanty, (2011) 3 SCC 436, this Court dealt with the constitutional principle of providing equality of opportunity to all which mandatorily requires that vacancy must be notified in advance meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum participation of all eligible candidates; thereby the right of equal opportunity is effectuated. The Court held as under:-

"Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be

> fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

15. Where any such appointments are made, they can be challenged in the court of law. The quo warranto proceeding affords a judicial remedy by which any person, who holds an independent substantive public office or franchise or liberty, is called upon to show by what right he holds the said office, franchise or liberty, so that his title to it may be duly determined, and in case the finding is that the holder of the office has no title, he would be ousted from that office by judicial order. In other words, the procedure of quo warranto gives the Judiciary a weapon to control the Executive from making appointment to public office against law and to protect a citizen from being deprived of public office to which he has a right. These proceedings also tend to protect the public from usurpers of public office who might be allowed to continue either with the connivance of the Executive or by reason of its apathy. It will, thus, be seen that before a person can effectively claim a writ of quo warranto, he has to satisfy the Court that the office in question is a public office and is held by a usurper without legal authority, and that inevitably would lead to an enquiry as to whether the appointment of the alleged usurper has been made in accordance with law or not. For issuance of writ of quo warranto, the Court has to satisfy that the appointment is contrary to the statutory rules and the person holding the post has no right to hold it. (Vide: The University of Mysore & Anr. v. C.D. Govinda Rao & Anr., AIR 1965 SC 491; Shri Kumar Padma Prasad v. Union of India & Ors., AIR 1992 SC 1213; B.R. Kapur v. State of Tamil Nadu & Anr., AIR 2001 SC 3435; The Mor Modern Co-operative Transport Society Ltd. v. Financial Commissioner and Secretary to Govt., Haryana & Anr., AIR 2002 SC 2513; Arun Singh v. State of Bihar & Ors., AIR 2006 SC 1413; Hari Bansh Lal v. Sahodar Prasad Mahto & Ors., AIR 2010 SC 3515; and Central Electricity Supply Utility of Odisha v. Dhobei Sahoo & Ors., (2014) 1 SCC 161).

16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.

17. Thus, the aforesaid decisions are an authority on prescribing the limitations while making appointment against public posts in terms of Articles 14 and 16 of the Constitution. What has been deprecated by this Court time and again is "backdoor appointments or appointment de hors the rules".

In State of U.P. & Ors. v. U.P. State Law Officers Association & Ors., AIR 1994 SC 1654, this Court while dealing with the back-door entries in public appointment observed as under:

> "The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on the considerations other than merit. In the absence of guidelines, the appointment may be made purely on personal or political consideration and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back-door have to go by the same door....From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them." (Emphasis added)

18. In Som Raj & Ors. v. State of Haryana & Ors., AIR 1990 SC 1176, this Court held as under:

> "The absence of arbitrary power is the first postulate of rule of law upon which our whole constitutional edifice is based. In a system governed by Rule of Law, discretion when conferred upon an executive authority must be confined within clearly defined limits. The rules provide the guidance for exercise of the discretion in making appointment from out of selection lists which was prepared on the basis of the performance and position obtained at the selection. The appointing authority is to make appointment in the order of gradation, subject to any other relevant rules like, rotation or reservation, if any, or any other valid and binding rules or instructions having force of law. If the discretion is exercised without any principle or without any rule, it is a situation amounting to the antithesis of Rule of Law. Discretion means sound discretion guided by law or governed by known principles of rules, not by whim or fancy or caprice of the authority."

19. In making the appointments or regulating the other service conditions of the staff of the High Court, the Chief Justice exercises an administrative power with constitutional backing. This power has been entrusted to the safe custody of the Chief Justice in order to ensure the independence of the Judiciary, which is one of the vital organs of a Government and whose authority is to be maintained. The discretion exercised by the Chief Justice cannot be open to challenge, except on well known grounds, that is to say, when the exercise of discretion is discriminatory or mala fide, or the like(s).

20. Even under the Constitution, the power of appointment granted to the Chief Justice under Article 229 (1) is subject to Article 16 (1), which guarantees equality of opportunity for all citizens in matters relating to employment. 'Opportunity' as used in this Article means chance of employment and what it guaranteed is that this opportunity of employment would be equally available to all.

21. As a safeguard, the Constitution has also recognized that in the internal administration of the High Court, no other power, except the Chief Justice should have domain. In order to enable a judicial intervention, it would require only a very strong and convincing argument to show that this power has been abused. If an authority has exercised his discretion in good faith and not in violation of any law, such exercise of discretion should not be interfered with by the courts merely on the ground that it could have been exercised differently or even that the courts would have exercised it

differently had the matter been brought before it in the first instance or in that perspective.

22. Article 235 of the Constitution provides for power of the High Court to exercise complete administrative control over the Subordinate Courts. This control, undoubtedly, extends to all functionaries attached to the Subordinate Courts including the ministerial staff and servants in the establishment of the Subordinate Courts. If the administrative control cannot be exercised over the administrative and ministerial staff, i.e. if the High Court would be denuded of its powers of control over the other administrative functionaries and ministerial staff of the District Court and Subordinate Courts other than Judicial Officers, then the purpose of superintendence provided therein would stand frustrated and such an interpretation would be wholly destructive to the harmonious, efficient and effective working of the Subordinate Courts. The Courts are institutions or organism where all the limbs complete the whole system of Courts and when the Constitutional provision is of such wide amplitude to cover both the Courts and persons belonging to the Judicial Office, there would be no reason to exclude the other limbs of the Courts, namely, administrative functionaries and ministerial staff of its establishment from the scope of control. Such control is exclusive in nature, comprehensive in extent and effective in operation. (Vide: The State of West Bengal & Anr. v. Nripendra Nath Bagchi, AIR 1966 SC 447; Shri Baradakanta Mishra v. Registrar of Orissa High Court & Anr., AIR 1974 SC 710; Yoginath D. Bagde v. State of Maharashtra & Anr., AIR 1999 SCC 3734; Subedar Singh & Ors. v. District Judge, Mirzapur & Anr., AIR 2001 SC 201; High Court of Judicature for Rajasthan v. P.P. Singh & Anr., AIR 2003 SC 1029; and Registrar General, High Court of Judicature at Madras v. R. Perachi & Ors., AIR 2012 SC 232).

23. In M. Gurumoorthy v. The Accountant General, Assam and Nagaland & Ors., AIR 1971 SC 1850, the Constitution Bench of this Court held:

> "The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointments of officers and servants of a High Court it is the Chief Justice or his nominee who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the Article……Thus, Article 229 has a distinct and different scheme and contemplates full freedom to the Chief Justice in the matter of appointments of officers and servants of the High Court and their conditions of service."

24. In this Case, this Court spelt out the powers of the Chief Justice of the High Court in the matters of appointment of staff of the High Court, but this Court did not lay down in any way that the Chief Justice can exercise such powers in contravention of the provisions of Articles 14 and 16 of the Constitution while making appointments in the establishment of the High Court.

25. In H.C. Puttaswamy & Ors. v. The Hon'ble Chief Justice of Karnataka High Court, Bangalore & Ors., AIR 1991 SC 295, while dealing with a similar situation and interpreting the provisions of Article 229 (2) of the Constitution and Karnataka State Civil Services (Recruitment to Ministerial Posts) Rules, 1966, this Court held the appointments made by the Chief Justice of the High Court without advertising the vacancies as invalid being violative of Articles 14 and 16(1) of the Constitution. The Court came to the said conclusion as the appointments were made without

following the procedure prescribed in the Rules. The Court further observed:

> "While the administration of the Courts has perhaps, never been without its critics, the method of recruitment followed by the Chief Justice appears to be without parallel.....The methodology adopted by the Chief Justice was manifestly wrong and it was doubtless deviation from the course of law which the High Court has to protect and preserve.
>
> The judiciary is the custodian of constitutional principles which are essential to the maintenance of rule of law. It is the vehicle for the protection of a set of values which are integral part of our social and political philosophy. Judges are the most visible actors in the administration of justice. Their case decisions are the most publicly visible outcome. But the administration of justice is just not deciding disputed cases. It involves great deal more than that. Any realistic analysis of the administration of justice in the Courts must also take account of the totality of the judges behaviour and their administrative roles. They may appear to be only minor aspects of the administration of justice, but collectively they are not trivial. They constitute in our opinion, a substantial part of the mosaic which represents the ordinary man's perception of what the Courts are and how the Judges go about their work. The Chief Justice is the prime force in the High Court. Article 229 of the Constitution provides that appointment of officers and servants of the High Court shall be made by the Chief Justice or such other Judge or officer of the Court as may be directed by the Chief Justice. The object of this Article was to secure the independence of the High Court which cannot be regarded as fully secured unless the authority to appoint supporting staff with complete control over them is vested in the Chief Justice. There can be no disagreement on this matter. There is imperative need for total and absolute administrative independence of the High Court. But the Chief Justice or any other Administrative Judge is not an absolute ruler. Nor he is a free wheeler. He must operate in the clean world of law; not in the neighbourhood of sordid atmosphere. He has a duty to ensure that in carrying out the administrative functions, he is actuated by same principles and values as those of the Court he is serving. He cannot depart from and indeed must remain committed to the constitutional ethos and traditions of his calling. We need hardly say that those who are expected to oversee the conduct of others, must necessarily maintain a higher standards of ethical and intellectual rectitude. The public expectations do not seem to be less exacting." (Emphasis added) (See also: State of Assam v. Bhubhan Chandra Datta & Anr., AIR 1975 SC
>
> 889).

26. In Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors., AIR 2005 SC 2103, this Court did not accept the contention that appointment could be made to Class-IV post in Subordinate Courts under the Civil Court Rules without advertisement in the newspapers inviting applications for the posts as that would lead to lack of transparency and violation of the provisions of Article 16 of the Constitution. The Court terminated the services of such appointees who had worked even for 15

years observing that the Court otherwise "would be guilty of condoning a gross irregularity in their initial appointment."

27. To say that the Chief Justice can appoint a person without following the procedure provided under Articles 14 and 16 would lead to an indefinite conclusion that the Chief Justice can dismiss him also without holding any inquiry or following the principles of natural justice/Rules etc., for as per Section 16 of General Clauses Act, 1897 power to appoint includes power to remove/suspend/dismiss. (Vide: Pradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta High Court, 1956 SC 285; and Chief Justice of Andhra Pradesh & Anr. v. L.V.A. Dikshitulu & Ors., AIR 1979 SC 193).

But as no employee can be removed without following the procedure prescribed by law or in violation of the terms of his appointment, such a course would not be available to the Chief Justice. Therefore, the natural corollary of this is that the Chief Justice cannot make any appointment in contravention of the Statutory Rules, which have to be in consonance with the scheme of our Constitution.

28. In State of West Bengal & Ors. v. Debasish Mukherjee & Ors., AIR 2011 SC 3667, this Court again dealt with the provisions of Article 229 of the Constitution and held that the Chief Justice cannot grant any relief to the employee of the High Court in an irrational or arbitrary manner unless the Rules provide for such exceptional relief. The order of the Chief Justice must make reference to the existence of such exceptional circumstances and the order must make it so clear that there had been an application of mind to those exceptional circumstances and such orders passed by the Chief Justice are justiciable. While deciding the matter, the court placed reliance on its earlier judgment of the Constitution Bench in State of U.P.& Ors. v. C.L. Agrawal & Anr., AIR 1997 SC 2431.

29. Thus, in view of the above, the law can be summarised to the effect that the powers under Article 229 (2) of the Constitution cannot be exercised by the Chief Justice in an unfettered and arbitrary manner. Appointments should be made giving adherence to the provisions of Articles 14 and 16 of the Constitution and/or such Rules as made by the legislature.

30. In today's system, daily labourers and casual labourers have been conveniently introduced which are followed by attempts to regularise them at a subsequent stage. Therefore, most of the times the issue raised is about the procedure adopted for making appointments indicating an improper exercise of discretion even when the rules specify a particular mode to be adopted. There can be no doubt that the employment whether of Class IV, Class III, Class II or any other class in the High Court or courts subordinate to it fall within the definition of "public employment". Such an employment, therefore, has to be made under rules and under orders of the competent authority.

31. In a democratic set up like ours, which is governed by rule of law, the supremacy of law is to be acknowledged and absence of arbitrariness has been consistently described as essence of rule of law. Thus, the powers have to be canalised and not unbridled so as to breach the basic structure of the Constitution. Equality of opportunity in matters of employment being the constitutional mandate has always been observed. The unquestionable authority is always subject to the authority of the

Constitution. The higher the dignitary, the more objectivity is expected to be observed. We do not say that powers should be curtailed. What we want to say is that the power can be exercised only to the width of the constitutional and legal limits. The date of retirement of every employee is well known in advance and therefore, the number of vacancies likely to occur in near future in a particular cadre is always known to the employer. Therefore, the exercise to fill up the vacancies at the earliest must start in advance to ensure that the selected person may join immediately after availability of the post, and hence, there may be no occasion to appoint any person on ad-hoc basis for the reason that the problem of inducting the daily labourers who are ensured of a regular appointment subsequently has to be avoided and a fair procedure must be adopted giving equal opportunity to everyone.

32. It has been rightly said:

> "Perfection consists not in doing extraordinary things, but in doing ordinary things extraordinary well."

33. We had the advantage of the response given by the High Courts and the State. Some of the States like Jharkhand, Kerala, Madhya Pradesh, Orissa, Sikkim and Uttrakhand have pointed out in their respective affidavits that the recruitment of most of the posts are made by centralised selection and some of those posts are transferable. Some States like Jharkhand have pointed out that there is a centralised recruitment of all the posts but division wise and are transferable within the division. Some of the States like Punjab & Haryana and Uttar Pradesh have pointed out that they have already drafted the rules providing for centralised recruitment. The State of Himachal Pradesh and the High Court thereof have shown inclination towards the centralised recruitment. In the State of Madhya Pradesh, though rules do not provide for centralised recruitment but it is so done under the administrative order of the Chief Justice of the High Court. Other States and the High Courts have also made suggestions that it is the need of the hour to provide for centralised recruitment.

34. We would like to make it clear that the High Court is a constitutional and an autonomous authority subordinate to none. Therefore, nobody can undermine the constitutional authority of the High Court, and therefore the purpose to hear this case is only to advise the High Court that if its rules are not in consonance with the philosophy of our Constitution and the same may be modified and no appointment in contravention thereof should be made. It is necessary that there is strict compliance with appropriate Rules and the employer is bound to adhere to the norms of Articles 14 & 16 of the Constitution before making any recruitment.

35. In view of the above, the appeal stands disposed of with the following directions:

> i) All High Courts are requested to re-examine the statutory rules dealing with the appointment of staff in the High Court as well as in the subordinate courts and in case any of the rule is not in conformity and consonance with the provisions of Articles 14 and 16 of the Constitution, the same may be modified.

ii) To fill up any vacancy for any post either in the High Court or in courts subordinate to the High Court, in strict compliance of the statutory rules so made. In case any appointment is made in contravention of the statutory rules, the appointment would be void ab-initio irrespective of any class of the post or the person occupying it.

iii) The post shall be filled up by issuing the advertisement in at least two newspapers and one of which must be in vernacular language having wide circulation in the respective State. In addition thereto, the names may be requisitioned from the local employment exchange and the vacancies may be advertised by other modes also e.g. Employment News, etc. Any vacancy filled up without advertising as prescribed hereinabove, shall be void ab-

initio and would remain unenforceable and inexecutable except such appointments which are permissible to be filled up without advertisement, e.g., appointment on compassionate grounds as per the rules applicable. Before any appointment is made, the eligibility as well as suitability of all candidates should be screened/tested while adhering to the reservation policy adopted by the State, etc., if any.

iv) Each High Court may examine and decide within six months from today as to whether it is desirable to have centralised selection of candidates for the courts subordinate to the respective High Court and if it finds it desirable, may formulate the rules to carry out that purpose either for the State or on Zonal or Divisional basis.

v) The High Court concerned or the subordinate court as the case may be, shall undertake the exercise of recruitment on a regular basis at least once a year for existing vacancies or vacancies that are likely to occur within the said period, so that the vacancies are filled up timely, and thereby avoiding any inconvenience or shortage of staff as it will also control the menace of ad-hocism.

36. Before parting with the case, we record our deep appreciation to Shri P.S. Narasimha, learned senior counsel for rendering invaluable assistance to the court as Amicus Curiae.

Copy of the judgment be sent to the Registrar General/Registrar (Administration) of all the High Courts by this Registry directly and the said officer is requested to place the same before the Hon'ble Chief Justice for information and appropriate action.

.....J. (Dr. B.S. CHAUHAN) .....J. (J. CHELAMESWAR) .....J. (M.Y. EQBAL) New Delhi;

February 12, 2014.
