Jacob M. Puthuparambil and Others

Vs

Kerala Water Authority and Others

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Vs

Kerala Water Authority and Others

P. Mohanan and Others

Vs

Kerala Water Authority and Others

Sasidharan C. P. and Others

Vs

State of Kerala and Others

C. A. Jose and Others

Vs

State of Kerala and Others

Mary C. L. and Others

Vs

State of Kerala and Others

Nazar K. M. and Others

Vs

Kerala Water Authority and Others

P. V. Sasikumar and Others

Vs.

Kerala Water Authority and Others

Parassala Sivanandan and Others

Vs

Kerala Water Authority and Others

M. S. Sreekumar and Others

Vs

Kerala Water Authority and Others

P. B. Prasadchandran and Others

Vs

Kerala Water Authority Others

C. V. Balakrishnan and Others

Vs

Kerala Water Authority and Others

Abdul Buriyain O.H. and Others

Vs

Kerala Water Authority and Others

A. G. Dasankunju and Others

Vs

State of Kerala and Others

E. Pradeep and 4 Others

Vs

Kerala Water Authority and 4 Others

K. C. Rajeevan and 15 Others

Vs

State of Kerala and 2 Others

Writ Petition (Civil) Nos. 112 of 1990.232, 525, 527, 528, 580, 581, 597, 598 and 599 of 1988, 636, 658 and 1095 of 1989, Contempt Petition No. 156 of 1990No. 112 of 1990 and Civil Appeals Nos. 4690-91 and 4692 of 1990

(A. M. Ahmadi, K. Jayachandra Reddy JJ)

19.09.1990

JUDGMENT

AHMADI, J. -

1. In special leave petitions, leave granted.

2. An autonomous body called the Kerala Water and Waste Water Authority was constituted with effect from April 1, 1984 under Section 3(1) of the Kerala Water and Waste Water Ordinance, 1984 (14 of 1984) which Ordinance was brought into force w.e.f. March 1, 1984. This ordinance was replaced by similar ordinances issued from time to time, the last being Ordinance 27 of 1986 which was in turn replaced by the Kerala Water Supply and Sewerage Act, 1986 (Act 14 of 1986), (hereinafter called 'the Act'); Section 1(3) whereof provides that it shall be deemed to have come into force on March 1, 1984. This Act, besides providing for the establishment of an autonomous authority to be called the Kerala Water Authority, makes provision for the development and regulation of water supply and waste water collection and disposal and for matters connected therewith. There is no dispute that the functions which were carried on by the Public Health Engineering Department (PHED) were transferred to the autonomous body on the enactment of the Ordinance 14 of 1984. After the enactment of the Act, every person working in the PHED became the employee of the Kerala Water Authority (for short 'the Authority') by virtue of Section 19(1) of the Act, which reads as under :

> "19. Transfer of employees to the Authority. - (1) Save as otherwise provided in this Section, every person who was employed in the Public Health Engineering Department of the government shall, on and from the appointed day become an employee of the Authority and shall hold his office or service therein by the same tenure, at the same remuneration and upon the same terms and conditions, and with the same rights and privileges as to pension, gratuity and other matters as he would have held the same on the appointed day if this Act had not come into force and shall continue to do so until his employment in the Authority is terminated or until his remuneration or other terms and conditions of service are revised or altered by the Authority under or in pursuance of any law or in accordance with any provision which for the time being governs his service :
>
> Provided that nothing contained in this sub-section shall apply to an employee in the cadres of the Administrative Officers, Financial Assistants Divisional Accounts, Typists and Stenographers, who, by notice in writing given to the government and the Authority within such time as the government may, by general or special order, specify, intimates his intention of not becoming an employee of the Authority :
>
> Provided further than an employee referred to in the preceding proviso shall continue to be an employee under the government and shall be provided elsewhere in any post or other service under the government."
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> Sub-sections (3) and (6) of Section 19 make it clear that such transfer of service shall not entitle the employee to claim any compensation under the Industrial Disputes Act, 1947 nor shall it amount to retrenchment or abolition of post under any extant rule, regulation or order applicable to government servants. Thus, the erstwhile staff of the PHED was by the thrust of Section 19(1) transferred on the establishment of the Authority. This would naturally concern those persons only who were in the

employment of the PHED before the establishment of the Authority w.e.f. April 1, 1984.

3. The staff members employed by the Authority after its constitution were naturally appointed under the provisions of the concerned statute. Since the Act has retrospective effect, reference may be made to Section 8(1) of the Act which reads thus :

> "8. Appointment of officers and staff. - (1) Subject to the provisions of sub-section (2), the Authority may appoint for the purpose of enabling it to carry out its powers, duties and functions under this Act, a Secretary and such other officers and staff as may be required against posts duly sanctioned by it :

Provided that the Authority shall obtain the previous approval of the government for the creation of post above the rank of the Executive Engineer."

> By virtue of Section 8(3), except as provided by sub-sections (1) and (2), the appointment and conditions of service of the officers and employees of the Authority are to be governed by rules made by the government from time to time. Although the Act is deemed to have come into force w.e.f. March 1, 1984, Section 69 became effective from the date of publication of the Act in the gazette i.e. August 4, 1986. That section reads as follows :
>
> "69. Amendment of Act 19 of 1970. - With effect from the date of publication of this Act in the gazette, the Kerala Public Service Commission (Additional Functions as Respects Certain Corporations and Companies) Act, 1970 (19 of 1970) shall have effect subject to the following amendment, namely :
>
> in clause (a) of Section 2, the words and figures "or the Kerala Water Authority" established under Section 3 of the Kerala Water Supply and Sewerage Act, 1986;", shall be added at the end."

Even though Act 19 of 1970 stood so amended by the force of Section 69, actual effect could be given after issuance of Notification No. G.O. (MS) No. 38/88/P&ARD dated July 30, 1988 on which date item (LIII) was added to the relevant rules as under :

> "Amendment of the Rules. - In the Kerala Public Service Commission (Consultation by Corporation and Companies) Rules, 1971, in clause (d) of Rule 2, after Item (LII), the following item shall be added, namely :-

(LIII) - The Kerala Water Authority."

This amendment was considered necessary with a view to bringing the Authority within the purview of PSC so that it may seek the advice of that body on matters relating to the methods of recruitment of its employees, etc.

4. From the above discussion it becomes clear that the employees of the Authority can be divided into four distinct groups, viz., (i) those who were in the employment of PHED before the constitution of the Authority and were transferred to the Authority (ii) those whom the Authority employed between April 1, 1984 and August 4, 1986 (iii) those who were appointed between August 4, 1986 and July 30, 1988 and (iv) those who were appointed after July 30, 1988.

5. The petitioners in this batch of matters are serving in different capacities, such as, cleaners, pump operators, draftsmen, drivers, etc. They claim that they were appointed through the Employment Exchange between 1981 and 1988. They contend that they have been compelled to approach this Court as their services are likely to be terminated as has been done in the case of a few of their colleagues. They contend that till the issuance of the notification dated July 30, 1988 amending the concerned PSC rule (amendment extracted earlier) there was no question of the Authority consulting the PSC and therefore, appointments made prior to that date cannot be termed as irregular or unauthorised and cannot be determined on that ground. They contend that as in a few cases the High Court of Kerala failed to appreciate this true legal position and refused to grant relief to employees whose services were threatened, the Managing Director of the Authority issued instructions to his sub-ordinates to terminate the services of similarly placed employees, thereby compelling the present petitioners to approach this Court so that all such employees are uniformly governed by this Court's order. They point out that in Civil Appeals Nos. 427 to 478 of 1988 arising from the High Court decision, and Writ Petitions (Civil) Nos. 857 and 1135 of 1987, this Court passed the following order on February 1, 1988 :

"Special leave granted. Heard counsel for the parties.

We are of the view that in the facts and circumstances of these cases the services of such of the appellants as posses the requisite qualifications should be regulated in accordance with the Kerala Public Service Commission (Additional Functions as Respects Certain Corporations and Companies) Act, 1970 and until such regularisation is made, no appointment on similar posts from outside be made. If there be any excess employees now in service employment, it will be open to the Authority to terminate their services on condition that as and when vacancies arise, they shall first be considered for appointment keeping the direction indicated above in view.

Recruitments in future will, however, be in accordance with the Kerala Public Service Commission (Additional Functions as Respects Certain Corporations and Companies) Act, 1970 and the Kerala Water Supply and Sewerage Act, 1986."

Thereafter in another batch of Special Leave Petitions Nos. 4385 to 4387 of 1988 this Court passed the following order on March 24, 1988 :

> "Heard learned counsel for parties. The only direction which we can give in the facts and circumstances of the case will be in case after all those who have been regularly selected by the Public Service Commission are appointed and thereafter any vacancies are left, the same should be given to those who, like the petitioners, have already been in service taking into consideration their seniority. Even step should be taken by the Water Authorities to regularise the services of such people who can be appointed under our direction as indicated above. There will be no further direction in this case. The other person who may be thrown out of employment on account of the direction of the Water Authority which is impugned before us, may appear before the Public Service Commission in the next examination. The State of Kerala has informed us that age bar would be waived. The petitions are disposed of accordingly."

The Authority treated these orders as confined to the workmen who had filed the proceedings and did not extend the ratio to others similarly placed. Not only that, the Authority, contend the petitioners, placed different interpretations on the aforesaid orders and continued to terminate the

services of the employees. Another group of Writ Petitions Nos. 525, 527, 528 and 503 of 1988 came up before this Court on November 28, 1988 when this Court passed the following Order :

> "Mr Krishnamurthy Iyer appearing for the Kerala Water Authority states that the claims of the petitioners can be divided into three categories, namely (1) those who had been employed by Public Health Engineering Department before the Kerala Water Authority was constituted, (2) those who get employed between April 1, 1984 and 1986 and (3) the persons appointed after 1986. The Kerala Water Authority is given three months' time to examine the individual cases of these groups and take its decision accordingly. We direct the Authority to place its conclusions before the court before giving effect to them. Status quo as on today will continue until further orders."

The grievance of the petitioners is that no action was taken by the Authority within the time allowed nor has it taken any action till today to implement the said order. The petitioners also contend that the employees are compelled to knock at the doors of different courts as the Authority continues to terminate the services of the employees notwithstanding the aforequoted orders passed by this Court. Mr P.S. Poti, the learned counsel for the petitioners, therefore, made a fervent appeal that this Court should pass an order laying down guidelines for the regularisation of the services of not only the petitioners but also all others similarly placed so that these low income group employees are not required to knock at the doors of different courts to protect themselves from the threatened arbitrary action of the Authority terminating their services. In other words he wants this Court to formulate a scheme for the regularisation of the services of all similarly placed employees which would put an end to all pending cases and future cases which are bound to arise if the Authority continues its present policy.

6. The claims made by the employees in this group of cases is contested mainly on the plea that their tenure and service conditions were regulated by Rule 9(a)(i) of the Kerala State and Subordinate Service Rules, 1958 (hereinafter called 'the Rules') which were statutory in character and were, therefore, binding on the Authority as well as the employees. It is contended that the employees belonging to different categories were appointed on different dates by the PHED prior to April 1, 1984 under this rule and, therefore, their services could only be regulated thereunder. After the autonomous Authority was constituted w.e.f. April 1, 1984 on the enactment of Ordinance 14 of 1984, the Authority passed a Resolution No. 8 on April 25, 1984 adopting the aforesaid Rules and hence all appointments made after April 1, 1984 also came to be governed by Rule 9(a)(i) of the Rules till Section 69 of the Act came into force w.e.f. August 4, 1986 and not July 30, 1988 when the relevant rule was amended by the introduction of item (LIII) referred to earlier. Appointments made after August 4, 1986 are clearly subject to the requirement of Section 69 of the Act and the Authority cannot act in contravention thereof. Had it not been for court orders restraining the Authority from terminating their services, the services of all those who were governed by Rule 9(a)(i) would have been terminated on the expiry of 180 days. The text of that rule may be noticed at this stage :

> "9.(a)(i) Where it is necessary in the public interest, owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a service, class or category and there would be undue delay in making such appointment in accordance with these rules and the Special Rules, the appointing authority may appoint a person, otherwise than in accordance with the said rules, temporarily."

The first proviso is not relevant for our purpose but reliance was placed on the second proviso which reads as under :

> "Provided further that a person appointed under this clause by direct recruitment to a post other the teaching post (and a post covered by the proviso to clause (iii) of Rule 10(b)) shall not be allowed to continue in such post for a period exceeding three months." (i.e. one hundred eighty days).

The rule further requires that a person appointed under clause (i) should be replaced as soon as possible by a member of the service or an approved candidate qualified to hold the post under the said rules. Such replacement must take place in the order of seniority based on length of temporary service in the unit. It is, therefore, the case of the Authority that appointments made under this rule were purely temporary, not to exceed three months, and had to be terminated on the expiry of the said period and it was not open to the Authority to continue their services even by reappointment unless fresh candidates were not available for reappointment through employment exchange. Therefore, had it not been for the restraint orders issued by different courts, the Authority contends it was under an obligation to act in conformity with the above rules. However, as regards those who had joined service prior to April 1, 1984 in different categories, the Authority passed a resolution on January 30, 1987 to the following effect :

> "Resolved to recommend to the government the regularisation of the service of the employees recruited in the erstwhile PHED and still working in the Kerala Water Authority."

The government, it seems, has not taken any decision in this behalf as yet. Since the counter filed on behalf of the State Government is silent on this point we inquired of the learned counsel for the State to clarify the position. We were told that since the Authority was an autonomous body it was free to regularise the services of such employees, if it so desired, without the concurrence of the State Government. While admitting the fact that appointments were made from the lists submitted by various District Employment Officers, the Authority contends that as the appointments were governed by Rule 9(a)(i) they could not enure beyond three months and the termination of their employment did not fall within the ambit of 'retrenchment' as understood under the Industrial Disputes Act, 1947. In any case even otherwise the application of that law is specifically excluded by Section 19(3) of the Act and hence the benefit of that law cannot be extended to the employees of the Authority. The contention that the action of the Authority to terminate the services is violative of Article 14 is repelled on the plea that acting in conformity with a statutory Rule 9(a)(i) can never be branded as arbitrary. Lastly it is contended that the authority was not directed to apply this Court's orders passed in some of the proceedings referred to earlier to all similarly situated employees as the court's orders were based on 'the facts and circumstances of these cases' and were not intended to be of general application. With reference to the order of March 24, 1988 it is said that the Authority has moved a review application which is pending. The Authority contends that as there is no infringement of any fundamental right, the writ petitions brought under Article 32 of the Constitution cannot be sustained. The above is the stand taken by the Authority. The State Government has by and large supported this stand and, therefore, we need not restate the contentions raised in their counter. The respondents, therefore, contend that the employees are not entitled to any relief whatsoever and the appeals/petitions deserve to be dismissed with costs.

7. The question of regularisation in service must be examined keeping in mind the historical as well as the constitutional perspectives. During the colonial rule industrial growth in the country was

tardy and most of the large-sized industries were controlled by British interests. These establishments employed Indian labour on wages far below the sustenance levels. Men, women and even children were required to work for long hours in thoroughly unhygienic conditions. Because of large scale unemployment there was a surplus labour market which the employers could and did exploit. This virtually forced the labour to accept employment on terms unilaterally dictated by the employers. The relationship between the employer and the employee being purely contractual, the hire and fire rule governed. Those were the days of laissez faire when contractual rights were placed above human rights. The concepts of dignity of labour and fair remuneration for work done were wholly alien. The workers had to work in appalling conditions and at low wages with no job security.

8. After we attained independence the pace of industrial growth accelerated. Our Constitution makers were aware of the hardships and insecurity faced by the working classes. The Preamble of our Constitution obligates the State to secure to all its citizens social and economic justice, besides political justice. By the Forty-second Amendment, the Preamble of the Constitution was amended to say that ours will be a socialistic democracy. In furtherance of these promises certain fundamental rights were engrafted in Part III of the Constitution. The Constitution guarantees 'equality', abhors discrimination, prohibits and penalises forced labour in any form whatsoever and extends protection against exploitation of labour including child labour. After extending these guarantees, amongst others, the Constitution makers proceeded to chart out the course for the governance of the country in Part IV of the Constitution entitled 'Directive Principles of State Policy'. These principles reflect the hopes and aspirations of the people. Although the provisions of this part are not enforceable by any court, the principles laid down therein are nevertheless fundamental in the governance of the country and the State is under an obligation to apply them in making laws. The principles laid down therein, therefore, define the objectives and goals which the State must endeavour to achieve over a period of time. Therefore, whenever the State is required to make laws it must do so consistently with these principles with a view to securing social and economic freedom so essential for the establishment of an egalitarian society. This part, therefore, mandates that the State shall strive to promote the welfare of the people by minimising the inequalities in income and eliminating inequalities in status, facilities and opportunities; by directing its policy towards securing, amongst others, the distribution of the material resources of the community to subserve the common good; by so operating the economic system as not to result in concentration of wealth; and by making effective provision for securing the right to work as also to public assistance in cases of unemployment, albeit within the limits of its economic capacities. There are certain other provisions which enjoin on the State certain duties, e.g. securing to all workers work, a living wage, just and humane conditions of work, a decent standard of life, participation in management, etc. which are aimed at improving the lot of the working classes. Thus the Preamble promises socio-economic justice, the fundamental rights confer certain justiciable socio-economic rights and the Directive Principles fix the socio-economic goals which the State must strive to attain. These three together constitute the core and conscience of the Constitution.

9. India is a developing country. It has a vast surplus labour market. Large scale unemployment offers a matching opportunity to the employer to exploit the needy. Under such market conditions the employer can dictate his terms of employment taking advantage of the absence of the bargaining power in the other. The unorganised job seeker is left with no option but to accept employment on take-it-or-leave-it terms offered by the employer. Such terms of employment offer no job security and the employee is left to the mercy of the employer. Employers have betrayed an increasing tendency to employ temporary hands even on regular and permanent jobs with a view to circumventing the protection offered to the working classes under the benevolent legislations

enacted from time to time. One such device adopted is to get the work done through contract labour. It is in this backdrop that we must consider the request for regularisation in service.

10. Before we deal with the case on hand it would be advantageous to refer to some of the decisions bearing on the question of regularisation. In P.K. Narayani v. State of Kerala (1984 Supp SCC 212 : 1984 SCC (L&S) 640) the petitioners who had been serving as employees of the State of Kerala or its public sector undertakings for the past few years challenged the action of the employer in terminating their services to make room for the candidates selected by the Kerala Public Services Commission. This Court directed that the petitioners and all others similarly placed should be allowed to appear at the next examination that the Public Service Commission may hold without raising the age bar; till then the petitioners and others may be continued in service provided there are vacancies. This, clarified the court, will not confer any right on the employees to continue in service or of being selected by the Commissioner otherwise than in accordance with the extent rules and regulations. These directions were given to resolve what this Court described as 'a human problem which has more than one facet'. Again in Dr A.K. Jain v. Union of India (1987 Supp SCC 497 : 1988 SCC (L&S) 222) the services of ad hoc Assistant Medical Officers who were initially appointed for six months but were continued for periods ranging up to four years, were sought to be terminated to accommodate the candidates selected by the Union Public Service Commission. The petitioners claimed that their services should be regularised and their seniority should be fixed from the date of their initial entry in service as ad hoc appointees. In the counter, the Union of India contended that 'ad hoc' appointments were made by the General Managers of the Zonal Railways to tide over temporary shortages of doctors and their tenures were extended till regular selection was made by the UPSC and appointments were made by the President of India. Since the appointing authority was the President of India such ad hoc appointments by the General Managers of the Zonal Railways could not be regularised. It was further contended that the ad hoc appointees were granted age relaxation and were asked to appear at two special selections based on interview alone held by the UPSC in 1982 and 1985. The petitioners were those ad hoc appointees who had either failed to avail of the special benefit of selection or had appeared and failed to qualify. In the circumstances it was contended that they could not be regularised in service. Notwithstanding the same this Court directed regularisation of services of all doctors appointed up to October 1, 1984 in consultation with UPSC on the evaluation of their work and conduct based on the confidential reports in respect of the period subsequent to October 1, 1982. Such regularisation was to be from the dates from which they were continuously working. The services of those not regularised were allowed to be terminated. The petitions of those appointed after October 1, 1984 were however dismissed.

11. In the case of Daily rated Casual Labour employed under P & T Department through Bhartiya Dak Tar Mazdoor Manch v. Union of India ((1988) 1 SCC 122 : 1988 SCC (L&S) 138 : (1987) 5 ATC 228) this Court, while dealing with the question of their absorption, referred to the State's obligations (referred to as an individual's rights) under Part IV of the Constitution and observed as under : (SCC p. 131, Para 9)

> "Of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim to the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that

> they may contribute to the maximisation of production. It is again for this reason that managements and the governmental agencies in particular should not allow workers to remain as causal labourers or temporary employees for an unreasonable long period of time."

This Court emphasised that unless a sense of belonging arises, the worker will not give his best and consequently production will suffer which in turn will result in economic loss to the nation. This Court, therefore, directed the department to prepare a scheme on a rational basis for absorbing those who have worked for a continuous period of one year.

12. Tested on the above and keeping in mind the constitutional philosophy adverted to earlier, we may now proceed to consider the main plank of the contention raised by the Authority. But before we do so we may dispose of the non-controversial part of the case.

13. From the pleadings in this case one thing that clearly emerges is that the Authority had taken a decision on January 30, 1987 to regularise the services of those who were employed by the erstwhile PHED and whose services stood transferred to the Authority by the thrust of the statute. According to the resolution extracted earlier, the Authority recommended to the State government that the services of the employees recruited in the erstwhile PHED and who continued to work on the establishment of the Authority should be regularised. The learned counsel for the State Government contended that since these employees were now borne on the establishment of the Authority on the statutory transfer of their services, it was for the Authority to regularise their services, and it was quite unnecessary to make a recommendation to the State Government in that behalf. To put it differently, the stand of the State Government through its counsel is that the question of regularisation of the services of ex-PHED employees now borne on the establishment of the Authority is exclusively within the purview of the Authority and the State Government has no role to play. That means it was wholly unnecessary on the part of the Authority to make the recommendation it made by the resolution of January 30, 1987 to the State Government for the regularisation of the ex-PHED employees serving on its establishment on that date. To us the position, therefore, appears crystal clear that it is for the Authority and the Authority alone to regularise the services of such employees without waiting for a nod from the State Government. The sphinx-like silence on the part of the State Government for now over three years from the date of the resolution is indeed disturbing and betrays total lack of concern for this pressing human problem.

14. The second batch of workers comprise those who were appointed between April 1, 1984 and August 4, 1986 by the Authority itself. Under Section 8(1) of the Act the power to appoint the Secretary and other officers and staff members vests in the Authority. Only when a post above the rank of an Executive Engineer is to be created that the sanction of the State Government becomes necessary under the proviso. Sub-section (2) to which sub-section (1) is subject expects the Authority to seek the previous sanction of the government if it desires to employ a servant of the Central or State Government on deputation and not otherwise. It is, therefore, clear beyond any manner of doubt that the power to appoint the staff members with whom we are concerned, solely vests in the Authority. Since the Act is brought into force w.e.f. March 1, 1984 the question of regularisation of the services of staff members appointed after that date must be examined with reference to the power found in Section 8(1) of the Act. However, the contention of the Authority is based on Rule 9(a)(i) of the Rules, which it claims to have adopted under Resolution No. 8 dated April 25, 1984. The Authority contends that by the thrust of this rule the appointments were limited to 180 days only and since the said rules had statutory flavour the Authority was bound to act in

accordance therewith. We have extracted the relevant part of this rule earlier. Since these rules were framed in exercise of power conferred by the proviso to Article 309 of the Constitution they are undoubtedly statutory in character but Mr Poti was right in his contention that they do not retain that character in their application to the staff members of the Authority since they have been adopted by the Authority under a resolution. These rules would undoubtedly be statutory in character in their application to the members of the Kerala Subordinate Services for whom they were enacted but when any other authority adopts them by a resolution for regulation the services of its staff, the rules do not continue to remain statutory in their application to the staff of that Authority. They are like any other administrative rules which do not have statutory force. It was not contended, as indeed it could not be, that these rules derive statutory force from Section 64 or 65 of the Act. Section 64 confers the rule making power on the State while Section 65 empowers the Authority to make regulations with the previous approval of the government. It is nobody's case that these rules were adopted after obtaining the previous approval of the government. If that be so, we must accept Mr Poti's submission that these rules in their application to the staff members of the Authority appointed after April 1, 1984 have no statutory flavour or force.

15. Now to the text of Rule 9(a)(i) of the Rules. It empowers the appointing authority to appoint a person temporarily otherwise than in accordance with the rule if (i) it is necessary in public interest and (ii) where an emergency has arisen to fill any particular post which has fallen vacant, immediately. In the present case it is difficult to say that all appointments made after April 1, 1984 were required to be filled immediately because of an emergency of the type contemplated by the said rule. On the contrary it seems appointments were routinely made in purported exercise of power conferred by this rule. The proviso on which reliance is placed, which we have extracted earlier, merely states that ordinarily such appointments will be of those persons who possess the requisite qualifications for the post. If any person who does not possess the requisite qualifications is appointed under the said clause, he will be liable to be replaced by a qualified person. Clause (iii) of Rule 9 states that a person appointed under clause (i) shall, as soon as possible, be replaced by a member of the service or an approved candidate qualified to hold the post. Clause (e) of Rule 9, however, provided for regularisation of service of any person appointed under clause (i) of sub-rule (a) if he had completed continuous service of two years on December 22, 1973, notwithstanding anything contained in the rules. This is a clear indication that in the past the government also considered it just and fair to regularise the services of those who had been in continuous service for two years prior to the cut-off date. The spirit underlying this treatment clearly shows that the government did not consider it just, fair or reasonable to terminate the services of those who were in employment for a period of two or more years prior to the cut-off date. This approach is quite consistent with the spirit of the rule which was intended to be invoked to serve emergent situations which could not brook delay. Such appointments were intended to be stop-gap temporary appointments to serve the stated purpose and not long term ones. The rule was not intended to fill a large number of posts in the service but only those which could not be kept vacant till regular appointments were made in accordance with the rules. But once the appointments continued for long, the services had to be regularised if the incumbent possessed the requisite qualifications as was done by sub-rule (e). Such an approach alone would be consistent with the constitutional philosophy adverted to earlier. Even otherwise, the rule must be so interpreted, if the language of the rule permits, as will advance this philosophy of the Constitution. If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment, must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since some time as such removal

has serious consequences. The family of the employee which had settled down and accommodated its needs to the emoluments received by the bread winner, will face economic ruination if the job is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered 'age barred' for securing a job elsewhere. It is indeed unfair to use him, generate hope and a feeling of security in him, attune his family to live within his earnings and then suddenly to throw him out of job. Such behaviour would be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution. Therefore, if we interpret Rule 9(a)(i) consistently with the spirit and philosophy of the Constitution, which it is permissible to do without doing violence to the said rule, it follows that employees who are serving on the establishment for long spells and have the requisite qualifications for the job, should not be thrown out but their services should be regularised as far as possible. Since workers belonging to this batch have worked on their posts for reasonably long spells they are entitled to regularisation in service.

16. The third and fourth batches concern workers who were appointed between August 4, 1986 and July 30, 1988 and after July 30, 1988, respectively. Their appointments would be governed by Section 69 which became effective from August 4, 1986. By virtue of this Section the Kerala Public Service (Additional Functions as Respect Certain Corporations and Companies) Act, 1970 (19 of 1970) came to be amended with effect from August 4, 1986 on which date it came to be published in the gazette. Thereby in clause (a) of Section 2 the 'Kerala Water Authority' came to be added. In law, therefore, the need to consult the PSC had arisen. True it is that the consequential notification amending the 1971 Rules was issued on July 30, 1988. But on that account we do not think it would be proper to treat them differently. We think it advisable to treat them as forming a single batch since the need to consult the PSC had arisen on Section 69 coming into effect from August 4, 1986.

17. In the result we allow these appeals and writ petitions and make the rule absolute as under :

> (1) The Authority will with immediate effect regularise the services of all ex-PHED employees as per its Resolution of January 30, 1987 without waiting for State Government approval.
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> (2) The services of workers employed by the Authority between April 1, 1984 and August 4, 1986 will be regularised with immediate effect if they possess the requisite qualifications for the post prescribed on the date of appointment of the concerned worker.
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> (3) The services of workers appointed after August 4, 1984 and possessing the requisite qualifications should be regulated in accordance with Act 19 of 1970 provided they have put in continuous service of not less than one year, artificial breaks, if any, to be ignored. The Kerala Service Public Service Commission will take immediate steps to regularise their services as a separate block. In so doing the Kerala Public Service Commission will take the age bar as waived.
>
> (4) The Kerala Public Service Commission will consider the question of regularisation of the services of workers who possess the requisite qualifications but have put in less than one year's service, separately. In doing so the Kerala Public Service Commission will take the age bar as waived. If they are found fit they will be placed on the list along with the newly recruited candidates in the order of their

respective merits. The Kerala Public Service Commission will be free to rearrange the list accordingly. Thereafter fresh appointments will issue depending on the total number of posts available. If the posts are inadequate, those presently in employment will make room for the selected candidates but their names will remain on the list and they will be entitled to appointment as and when their turn arrives in regular course. The list will enure for such period as is permissible under the extant rules.

(5) The Authority will be at liberty to deal with the services of the workers who do not possess the requisite qualifications as may be considered appropriate in accordance with law.

(6) Those workers whose services have been terminated in violation of this Court's order in respect of which Contempt Petition No. 156 of 1990 is taken out shall be entitled to the benefit of this order as if they continue in service and the case of each worker will be governed by the clause applicable to him depending on the category to which he belongs and if he is found eligible for regularisation he will be restored to service and assigned his proper place.

This order will regulate the services not only of the parties to the present petitions but also all others similarly situated including those who may be parties to other proceedings pending in different courts.

18. If further directions are required in the matter of working out of the above order the High Court of Kerala may be approached for the same. All the aforesaid proceedings are disposed of accordingly with no order as to costs.

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