SUPREME COURT OF INDIA

A. Manjula Bhashini

Vs.

M.D.,A.P.Women's Coop.Fin.Corpn.Ltd

C.A.No.3702 of 2006

06.07.2009

JUDGEMENT

G.S. SINGHVI, J.

1. Whether the persons employed on daily wage basis or nominal muster roll or consolidated pay or as contingent worker on full time basis in different departments of the Government of Andhra Pradesh and its agencies/instrumentalities are entitled to be regularised in service on completion of 5 years and whether amendments made in the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 (for short `the 1994 Act') by Amendment Act Nos.3 and 27 of 1998 are ultra vires the provisions of the Constitution are the questions which arise for determination in these appeals, some of which have been filed by the State Government and its agencies/instrumentalities and some have been filed by the employees, who could not convince the Andhra Pradesh Administrative Tribunal (for short "the Tribunal") and/or the High Court to accept their prayer for issue of a mandamus to the concerned authorities to regularise their services.

2. In 1970s, 80s and early 90s, the country witnessed an unusual phenomena in the field of public employment. Lakhs of persons were engaged/employed under the Central and State Governments in violation of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution, Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short `the 1959 Act') and the rules framed under proviso to Article 309 of the Constitution. The officers who were entrusted with the task of making appointments on Class III and Class IV posts misused their power and employed their favourites or all those who enjoyed political power without considering the claims of other similarly situated persons. For avoiding compliance of the mandate of the equality clause enshrined in the Constitution and other statutory provisions, the empowered authorities

resorted to the mechanism of employing the persons of their choice on daily wages or nominal muster roll or contract or part time basis with the hope that on some future date the Government will frame policy for regularisation of such employees. In this manner, nepotism, favoritism and even corruption became hallmark of the appointments and a huge illegal employment market developed in the country, a fact of which cognizance was taken by this Court in Delhi Development Horticulture Employees' Union v. Delhi Administration [(1992) 4 SCC 99].

3. State of Andhra Pradesh was no exception to the aforementioned malady. Thousands of persons were employed in different departments of the Government and agencies/instrumentalities of the State on daily wages or nominal muster roll or consolidated pay or part time basis. In some cases, employment was given despite the fact that sanctioned posts were not available. Even if the posts existed, the concerned authorities neither issued advertisement nor sent requisition to the employment exchange(s) and made appointments in complete disregard of Articles 14 and 16 of the Constitution and the relevant statutory provisions including the 1959 Act depriving thousands of unemployed persons of their right to be considered for appointment to public posts/offices.

4. In order to check the menace of irregular appointments, which was creating unwarranted financial burden on the State, and, thereby adversely affecting the welfare schemes and development programmes and also causing dissatisfaction among the members of younger generation who were denied the right of consideration for appointment, the Government of Andhra Pradesh decided to bring a legislation for totally banning appointment on daily wages, regulating appointment on temporary basis and for rationalisation of staff pattern and pay structure. In furtherance of that decision, the Governor of Andhra Pradesh promulgated the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Ordinance, 1993. The same was published in the State Gazette dated 25.11.1993. The Ordinance was replaced by the 1994 Act, which was enforced with effect from 25.11.1993. The State Government's determination to curb irregular appointments and reduce burden on the State exchequer is clearly reflected in the statement of objects and reasons contained in the bill presented before the legislative assembly, the relevant portions of which are extracted below:

".....The number of employees has been increasing at an enormous rate. The census of Government employee conducted by the State Government in 1976, 1981 and 1988 and as projected in 1993 shows that the number of employees of the Government, Universities, Institutions receiving Grant-in-Aid and Public Sector Undertakings, Local Bodies has increased from 6.78 lakhs in 1976 to 12.34 lakhs in 1993 which constituted an increase of 82%. Out of this, the employees of the Departments of the State alone increased from 2.85 lakhs to 5.56 lakhs representing an increase of 95%. The Public Sector Undertakings grew at 128% from 1.44 lakhs to 3.28 lakhs. Among the Government employees and Local Body employees, the class IV and other categories constitute about 41%.

The expenditure particulars show that the amount spent on the salaries, allowances and pension of Government employees, Panchayat Raj employees, employees paid out of the Grant-in-Aid, amounts to a figure of Rs.4277 crores in 1993- 94 salaries on the due dates. Government considers that it is not fair that people's interest should be neglected and even sacrificed by not taking up schemes just to pay salaries to its employees.

In addition to the salary and pension commitment there is a heavy debt servicing burden on the Government. The debt also has been increasing from year to year. In 1983 the total outstanding debt

was Rs.2543 crores. It has now reached Rs.10970 crores during 1993-94. At present, the Government are paying as much as Rs.1012 crores for payment of interest and Rs.330 crores for repayment of principal amount every year. The total amount of non-plan items of expenditure in 1993-94 is amounting to Rs.6222 crores, which cannot be avoided. The Government are not able to complete a number of Irrigation Projects and Power Projects because of lack of funds. For the same reason productive assets like completed irrigation projects and roads are not being properly maintained resulting in wastage of assets whose replacement will cost several hundreds of crores of rupees. At present, the Government are spending 81% of the debt they receive from the Government of India, Market borrowings and all other categories of loans for repayment; which means only 19% of the total debt is being added to our resources. But it is estimated that from next year onwards the repayment will be more than the debt receipts. If the Government are caught in such a debt trap the amount available to the State Government will be limited to its own tax and non-tax revenues and the devolutions from the Government of India. The devolutions expected from the Government of India is about Rs.1698 crores in 1993-94. Since the expenditure on establishment is already 105% of the own tax and non-tax revenues of the state, it can be seen that between this expenditure and other non-plan expenditure the Government would have exhausted the most of the resources leaving very little for welfare schemes and developmental programmes. Since no Government can allow such total neglect of welfare and developmental activities the employees of the State will not be getting salaries on time and eventually they will not be getting their full salary also.

The irregular appointments are adversely affecting the interest of several thousands of unemployed persons who have registered in the employment exchange and awaiting their turn for orders. It is also adversely affecting the interests of Scheduled Castes, Scheduled Tribes and backward Classes who have reservation in employment since the N.M.R. appointments are not taking care of the reservation for these categories. Government have constituted District Selection Committees and some ad hoc Selection Committees besides the Andhra Pradesh Public Service Commission to take up recruitment in accordance with law in Government Departments. Irregular appointments are depriving these legitimate recruiting bodies from performing their functions. Irregular appointments in excess of sanctioned strength will also result in industrial undertakings becoming unviable and eventually sick. When a unit goes sick, it results in retrenchment and even winding-up, thus, adversely affecting the interests of the existing employees who are recruited against sanctioned strength and through authorised process of selection. Similarly unauthorised appointments over and above the sanctioned strength in Government Departments would also increase the number of employees and to that extent militate against the Government looking after the existing employees who have been recruited through proper channel. The Act will, therefore, protect the interests of candidates in Employment Exchanges, reserved categories, the existing employees who were recruited through proper channel and the legitimate functions of the recruiting agencies.

From the above, it can be seen that the financial position of the State arising out of excessive expenditure on staff is so alarming that it cannot be tackled by ordinary administrative actions and instructions. It is, therefore, thought that a time has come when we have to provide for deterrent action for illegal and irregular appointments by enacting a law. It has accordingly been decided to enact a law to achieve the following objects, namely:- (a) totally banning such appointments in the institutions covered by legislation;
(b) imposing stringent penalties for making appointments by public servants on violation of the law;

(c) to protect public servants from being held for contempt for non-compliance of the orders of Tribunal or High Court and also for abatement of pending cases claiming regularization of services

which are already filed before the courts of law by making a suitable provisions therefor; and (d) to protect the interests of candidates registered with Employment Exchange, the reservation rights of Scheduled Castes, Scheduled Tribes and Backward Classes, the rights of the existing employees who are recruited through proper channel and the functions of Andhra Pradesh Public Service Commission, District Selection Committees and other Selection Committees constituted by the Government.

The legislation will prevent further deterioration of finances of the State and at the same time conserve the resources for the welfare and developmental activities."

5. For the sake of convenient reference, Sections 2(ii), 3, 4, 7 and 9 of the 1994 Act (unamended) are reproduced below:

"2(ii) `daily wage employee' means any person who is employed in any public service on the basis of payment of daily wages and includes a person employed on the basis of nominal muster roll or consolidated pay either, on full-time or part-time or piece rate basis or as a workcharged employee and any other similar category of employees by whatever designation called other than those who are selected and appointed in a sanctioned post in accordance with the relevant rules on a regular basis.

3. Prohibition of daily wage appointments and regulation of temporary appointments.- (1) The appointment of any person in any public service to any post, in any class, category or grade as a daily wage employee is hereby prohibited.

(2) No temporary appointment shall be made in any public service to any post, in any class, category or grade without the prior permission of the competent authority and without the name of the concerned candidate being sponsored by the Employment Exchange.

4. Regulation of recruitment.- No recruitment in any public service to any post in any class, category or grade shall be made except, - (a) from the panel of candidates selected and recommended for appointment by the Public Service Commission/College Service Commission where the post is within the purview of the said Commission;

(b) from a panel prepared by any Selection Committee constituted for the purpose in accordance with the relevant rules or orders issued in that behalf; and (c) from the candidates having the requisite qualification and sponsored by the Employment Exchange in other cases where recruitment otherwise than in accordance with clauses (a) and (b) is permissible.

Explanation: - For the removal of doubts it is hereby declared that nothing in this section shall apply to compassionate appointments made in favour of son/daughter/spouse of any person employed in public service who dies in harness or who retires from service on medical grounds, in accordance with the relevant orders issued from time to time.

7. Bar for regularization of services.- No person who is a daily wage employee and no person who is appointed on a temporary basis under section 3 and is continuing as such at the commencement of this Act shall have or shall be deemed ever to have a right to claim for regularization of services on any ground whatsoever and the services of such person shall be liable to be terminated at any time without any notice and without assigning any reason:

Provided that in the case of Workmen falling within the scope of section 25-F of the Industrial Disputes Act, 1947, one month's wages and such compensation as would be payable under the said section shall be paid in case of termination of services:

Provided further that nothing in this section shall apply to the Workmen governed by Chapter V-B of the Industrial Disputes Act, 1947.

Explanation.- For the removal of doubts it is hereby declared that the termination of services under this section shall not be deemed to be dismissal or removal from service within the meaning of article 311 of the Constitution or of any other relevant law providing for the dismissal or removal of employees but shall only amount to termination simpliciter, not amounting to any punishment.

9. Abatement of claims.- Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, the claims for regular appointment of all daily wage employees and persons appointed on a temporary basis, shall stand abated and accordingly,- (a) no suit or other proceeding shall be instituted, maintained or continued in any court, tribunal or other authority by the daily wage or temporary appointees against the Government or any person or authority whatsoever for the regularization of the services;

(b) no court shall enforce any decree or order directing the regularization of the services of such persons; and (c) all proceedings pending in any court or tribunal claiming the regularization of services shall abate."

6. As soon as the 1994 Act was enacted, the beneficiaries of illegal employment market and back door entrants became apprehensive of termination of their services in terms of Section 7.

Therefore, they approached the State Government through their mentors and sympathizers in the political and bureaucratic set up and succeeded in getting the rigor of that section relaxed. This is evinced from the fact that by taking shelter of the judgment of this Court in State of Haryana v. Piara Singh [(1992) 4 SCC 118] and using its executive power under Article 162 of the Constitution, the State Government issued G.O.Ms. No.212 dated 22.4.1994 (hereinafter referred to as `G.O. dated 22.4.1994') for facilitating regularisation of the services of those employed on daily wages or nominal muster roll or consolidated pay subject to the condition that such persons had worked continuously for a minimum period of 5 years and were continuing on 25.11.1993. The relevant portions of G.O. dated 22.4.1994 are reproduced below:

"Government notice that appointing authorities of the Institutions and Establishments under the control of State Government, Local Authorities, Corporations owned and controlled by the State Government and other bodies established by the State Government grossly violated the instructions issued from time to time by the Government and appointed persons indiscriminately to various categories of services either on Daily Wage basis or temporary basis without there being a post and without being sponsored by Employment Exchange and without observing the rule of reservation to the Scheduled Caste, Scheduled Tribe and Backward classes. In most of the cases, the persons appointed for a specific work have been continued even after their need ceased.

After a lapse of some time, all these appointees have approached the various Courts and Tribunals for regularization of their services and Courts and Tribunals have been directing the State

Government to regularize the services on the ground that they have a long service to their credit. This practice has been causing considerable drain on the finances of the State Government. Government have thought it imperative to prohibit the unauthorised and irregular appointments by a law in the public interest. Accordingly the State Government have enacted law regulating the appointments to Public Services and for Rationalisation of the Staff Pattern and Pay Structure in the reference read above. This will streamline the recruitment along healthy lines, to enforce Employment Exchanges (Compulsory Notification of Vacancies) Act in its true letter and spirit, to follow the rule of reservation enshrined in the Constitution with utmost strictness and to punish those who are guilty of violating the law.

The above Act came into force with effect from 25.11.1993.

2. Though the reference 2nd cited, information has been obtained from various Government Offices, Local Bodies, Public Sector undertakings etc., from the information received by Government it is seen that appointing authorities have violated the instructions issued by Government and appointed several individuals.

Appointments have been made indiscriminately in the Government Offices, Local Bodies, Universities, Public Sector undertakings and various other Bodies and Institutions operating on Government finances. In fact, there is no need to continue all these Daily Wage/Temporary employees for the reasons that not all of them are appointed in sanctioned posts and the recruitment was in many cases not through Employment Exchange. Their appointment was made without following rule of reservation and in the case of workcharged employees, there is no work for them as the specific work for which they were appointed has already been completed. Though the Act provides that no person who is Daily Wage employee and no person who is appointed on temporary basis shall have any right to claim for regularization of service on any ground, it has been the endeavour of the Government to regularize as many as NMR/Daily Wage employees as possible who are otherwise qualified depending on the requirement of the workload while keeping in mind the hardship that would be caused if their services are not regularised. The Hon'ble Supreme Court in its Judgement dated 12.8.1992 in Civil Appeal No. 2979/92 and batch have also observed to evolve an appropriate policy for regularization. Accordingly, Government after careful examination of the whole issue and in supersession of all previous orders on the subject including G.O.Ms. No. 193, General Administration Department, dated 14.3.1990 and keeping in view the above judgement of Supreme Court of India, have formulated a scheme for regularization of services of the persons appointed on Daily Wage/NMR or on consolidated pay and are continuing on the date of commencement of the Act. Government accordingly decided that the services of such persons who worked continuously for a minimum period of 5 years and are continuing on 25.11.1993 be regularised by the appointing authorities subject to fulfillment of the following conditions:

1) The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his/her services have to be regularised.

2) They should be within the age limits as on the date of appointment as NMR/Daily wage employee.

3) The rule of reservation wherever applicable will be followed and back-log will be set- off against future vacancies.

4) Sponsoring of candidates from Employment Exchange is relaxed.

5) Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service Commission / District Selection Committee.

6) In the case of Workcharged Establishment, where there will be no clear vacancies, because of the fact that the expenditure on Workcharged is at a fixed percentage of P.S. charges and as soon as the work is over, the services of workcharged establishment will have to be terminated, they shall be adjusted in the other departments, District Offices provided there are clear vacancies of last Grade Service."

7. A number of persons who were employed on daily wages or nominal muster roll or consolidated pay, but did not complete 5 years on 25.11.1993 challenged the aforesaid G.O. by filing writ petitions and applications before the High Court and Tribunal respectively. A learned Single Judge of the High Court allowed the writ petitions and held that all persons employed on daily wages or nominal muster roll or contract basis are entitled to be considered for regularisation on completion of 5 years. The Division Bench upheld the order of the learned Single Judge with the modification that daily wagers etc. would be entitled to be considered for regularisation with effect from the date of completion of 5 years continuous service. The special leave petitions filed by the State Government and agencies and instrumentalities of the State were dismissed by this Court vide judgment titled District Collector v. M.L. Singh [1880] VicLawRp 107; [1998 (2) ALT 5 (SC)], which is reproduced below:

"We have heard the learned counsel for the parties. These matters relate to regularisation and payment of wages to the respondents who were employed on daily wage basis. By the impugned judgment, the Division Bench of the High Court, while affirming with modification the order passed by the learned Single Judge has directed that all employees who have completed five years of continuous service should be considered for regularization in accordance with the terms of G.O.Ms. No.212, dated April 22, 1994 and that they should be paid their wages at par with the wages paid to the permanent employees of that category. As regards payment of wages there is no dispute between the parties that the same have to be paid from the date of regularization. Insofar as regularization is concerned, we are of the view that the High Court has rightly directed that on the basis of the Notification G.O. Ms. No. 212, the respondent employees shall be regularized with effect from the date or dates, they completed five years continuous service. It is however made clear that the other condition laid down in the said G.O.Ms. No. 212 will have to be satisfied for the purpose of regularisation. The special leave petitions are disposed of accordingly. No costs."

8. The part time employees, who were not covered by G.O. dated 22.4.1994 also approached the Tribunal and High Court claiming regularisation of their services. By an interlocutory order dated 25.4.1997, the High Court directed that a scheme be framed for regularisation of their services. The State Government promptly implemented the High Court's directive and issued G.O.(P) No.112 dated 23.7.1997 for regularization of part time employees who had worked continuously for a minimum period of 10 years and were continuing on 25.11.1993 subject to the following conditions:-

1. "Absorption shall be against clear vacancies of posts considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service

Commission or as the case may be, the District Selection Committee.

2. The persons appointed should possess the qualifications prescribed as per rules in force as on the date from which his or her services have to be regularised.

3. The person should be within the age limit as on the date of appointment as part-time employee.

4. The Rule of Reservation wherever applicable will be followed and back-log will be set off against future vacancies.

5. The sponsoring of candidate from Employment Exchange is relaxed.

6. If there are two candidates, one part-time and the second one a full-time employee (Daily Wage employee) of any category or name and there exists only one vacancy, the senior most between the two in terms of continuous service already rendered prior to 25-11- 1993 treating two years of part-time service as one year of full-time service, relative seniority will be calculated and regularization will be suggested for the senior among the two accordingly.

7. The regularization of services of full-time employee already made in terms of G.O.Ms. No.212, Finance & Planning (FW.PC.III) Department, dt.22-4-1994 will not be reopened for giving effect to the present order."

9. Although, in State of Haryana v. Piara Singh (supra) this Court did not lay down a proposition that the government/public employer is bound to frame policy for regularisation of all daily wage employees and similarly situated persons and the policy contained in G.O. dated 22.4.1994 was intended to be only one time measure for regularisation of the services of the persons employed on daily wages or nominal muster roll or consolidated pay who completed 5 years continuous service on 25.11.1993, interpretation thereof by the High Court, which was approved by this Court became basis for lodgment of claim for regularisation of service by all those who were employed on daily wages or nominal muster roll or consolidated pay on or before 25.11.1993 and the cut off date specified in the G.O. for determination of eligibility for regularisation became redundant.

10. With a view to clearly bring out the object underlying the policy of regularisation contained in G.O. dated 22.4.1994 and to make the same an integral part of the statute, the legislature amended the 1994 Act. The first amendment was made by Act No.3 of 1998, which was published in Andhra Pradesh Gazette dated 3.1.1998 and was brought into force at once. Sections 1, 2 and 3 of Amendment Act No.3 of 1998 read thus:

"1. Short title and commencement. (1) This Act may be called the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) (Amendment) Act, 1998.

(2) It shall come into force at once.

2. Amendment of section 4., Act 2 of 1994. In the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994, (hereinafter referred to as the principal Act), in section 4, in sub-section (2), after clause (b), the following shall be added, namely: - "(c) to the appointments made in favour of members of Scheduled Castes or

Scheduled Tribes, who or whose parents or spouse are subjected to atrocities, in accordance with the relevant orders issued from time to time."

3. Amendment of section 7. In section 7 of the principal Act;- (a) in the opening paragraph for the expression, "Section 3 and", the expression, "Section 3 and no person who" shall be substituted;

(b) in the first proviso, for the words "provided that," the words "provided also that" and in the second proviso, for the words "provided further that", the words "provided also that" shall respectively be substituted;

(c) After the opening paragraph and before the first proviso so amended, the following provisions shall be inserted, namely:

"Provided that the services of a person, who worked on daily wage/NMR/Consolidated pay/Contingent worker on full time basis continuously for a minimum period of five years and is continuing as such on the date of the commencement of the Act shall be regularised in accordance with the scheme formulated in G.O.Ms. No. 212, Finance & Planning (FW.PC. III) Department, dated the 22nd April, 1994:

Provided further that the services of a person who worked on part-time basis continuously for a minimum period of ten years and is continuing as such on the date of the commencement of this Act shall be regularised in accordance with the scheme formulated in G.O. (P).112, Finance & Planning (FW.PC. III) Department, dated the 23rd July, 1997."

11. After 8 months, the 1994 Act was again amended by Act No.27 of 1998. The preface and Sections 1, 4 and 7A of the second Amendment Act read as under:

"Whereas, according to the provisions of the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994 and in accordance with the scheme formulated in the orders issued by the Government in G.O.Ms. No. 212, Finance & Planning (FW.PC.III) Department dated the 22nd April, 1994, the services of a person who worked on daily wage/NMR/Consolidated pay/Contingent worker on full time basis and also continuing as such as on the 25th November, 1993, the date on which the aforesaid Act has come into force shall be regularised;

And Whereas, in various judgments rendered by the different courts, the orders issued by the Government in G.O.Ms.No. 212, Finance & Planning (FW.PC.III) Department, dated the 22nd day of April, 1994 have been interpreted, that the completion of five years of service as on 25th November, 1993 shall mean that as and when any employee completes five years of service and that the first proviso under Section 7 of the said Act have also been interpreted to mean as two separate and independent conditionalities;
And Whereas, the said interpretation is contrary to the intendment and the policy of the Government;

And Whereas, the Government felt it necessary to remove the ambiguity found in the said proviso to section 7 of the said Act;

1. Short title and commencement. (1) This Act may be called the Andhra Pradesh (Regulation of

Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) (Second Amendment) Act, 1998.

(2) Sub-section (1) of section 3 shall be deemed to have come into force on the th 28 October, 1996 and the remaining provisions shall come into force at once.

4. Amendment of section 7. In section 7 of the principal Act for the first proviso, the following proviso shall be substituted, namely:- Provided that the services of those persons continuing as on the 25th November, 1993 having completed a continuous minimum period of five years of service on or before 25th November, 1993 either on daily wage, or nominal muster roll, or consolidated pay or as a contingent worker on full time basis, shall be regularised in substantive vacancies, if they were otherwise qualified fulfilling the other conditions stipulated in the scheme formulated in G.O.Ms. No. 212, Finance & Planning (FW.PC. III) Department, dated the 22nd April, 1994.

7A. Abatement of Claims. (1) Notwithstanding any Government order, judgement, decree or order of any Court, Tribunal or other authority, no person shall claim for regularization of service under the first proviso to section 7 as it was incorporated by the Andhra Pradesh (Regulation of Appointments to Public Services and Rationalisation of Staff Pattern and Pay Structure) (Amendment) Act, 1998.

(2) No suit or other proceedings shall be maintained or continued in any Court, Tribunal or other authority against the Government or any person or other authority whatsoever for regularization of services and all such pending proceedings shall abate forthwith;

(3) No Court shall enforce any decree or order directing the Government or any person or other authority whatsoever for regularization of services."

12. The daily wage employees and similarly situated persons who would have been affected by the amendments challenged the same in a batch of writ petitions filed before the High Court.

Some employees also filed applications before the Tribunal. The writ petitions were allowed by the learned Single Judge of the High Court vide judgment titled D. Sesharani v. Managing Director, A.P. Women's Co-op. Finance Corporation [2001 (2) ALT 607]. The learned Single Judge held that the amendments are contrary to the fundamental rights guaranteed to the petitioners under Articles 14, 16 and 21 of the Constitution and the Directive Principles of State Policy enshrined in Articles 39A, 41, 42 and 43. The learned Single Judge further held that Section 7A of the Amendment Act by which judicial review was denied to the aggrieved persons is contrary to the law laid down by the Supreme Court in Minerva Mills Limited v. Union of India [(1980) 2 SCC 591] and L. Chandra Kumar v. Union of India [(1995) 1 SCC 400]. The learned Single Judge then relied upon the judgment of this Court in State of Haryana v. Piara Singh (supra) and declared that the State Government is obliged to create posts for regularisation of the services of daily wagers etc. from the date of completion of 5 years service.

13. The appeals preferred by the State Government and its agencies/instrumentalities were allowed by the Division Bench and the order of the learned Single Judge was set aside by placing reliance upon the judgments of this Court in S.S. Bola v. B.D. Sardana [1997 (8) SCC 522], Gujarat Agricultural University v. Rathod Labhu Bechar [2001 (3) SCC 574] and Indra Sawhney v. Union of India [2000 (1) SCC 168]. The Division Bench also reversed the direction given by the learned

Single Judge to the State Government for creation of posts for regularisation of the services of daily wagers etc., but declared that the ban imposed on regularisation would be effective from the date of enforcement of Amendment Act No.27/1998 i.e. 19.8.1998 and all persons who have completed 5 years service as on the date of coming into force thereof would be entitled to be considered for regularisation of their services. The relevant portions of the Division Bench judgment are extracted below:

"58. The entire basis whereupon the judgment of the learned single Judge is based is, therefore, erroneous. As indicated hereinbefore having regard to the mode of appointment the requirements thereof, absence of sanctioned posts, non-observance of the statutory rules the part-time employees, ad hoc employees and NMRs did not derive any legal right whatsoever to continue in service. In fact, save and except the right conferred upon them to be considered for regularisation by reason of G.O.Ms.No.212, they did not have any other legal right whatsoever. It is now well settled principle that by reason of a catena of decisions of the High Court as also of the Supreme Court of India a prolonged service would not ripen into permanence nor by reason thereof the status of employee can be changed.

59. It is also not a case where an individual decision inter-party had been sought to be taken away by reason of the said Amendment Act in terms whereof their rights and liabilities alone were affected. The interpretation of a policy decision is a judgment in rem and by reason thereof, no inter-party rights had been conferred or adjudicated upon.

60. The validation Act or for that purpose any Amendment Act does not offend the doctrine of separation of powers. It is also trite that the Court in exercise of its jurisdiction under Article 226 of the Constitution while exercising its power of judicial review over legislation would not invalidate an act on the ground of malice or otherwise. Such an approach, in our opinion, is wholly unwarranted inasmuch as the question as to whether the statute suffers from the vice of fraud on legislation or not must be kept confined to the legislative competence and not otherwise. Right to employment is not a fundamental right or a constitutional right. In terms of Articles 14 and 16 of the Constitution the right of a citizen is confined only to consideration therefore. Thus it would be incorrect to contend that the same would be a right of property.

67. The next question which may arise for consideration would be as to whether the cut off date 25.11.1993 is so arbitrary as to attract the wrath of Article 14 of the Constitution.
68. Fixing a cut off date is normally not arbitrary unless it can be said to be case where such a date has been fixed arbitrarily or capriciously and no reason exists therefor.

69. After the decision of the Apex Court in Piara Singh's case (supra) the State had appointed a committee. The committee had gone into the matter and made certain recommendations including fixation of cut off date. Such a cut off date was fixed keeping in view the coming into force of such policy decision. In Sushma Sharma v. State of Rajasthan the Apex Court has held:

It may be borne in mind that wisdom or lack of wisdom in the action of the Government or legislature is not justiciable by court. See in this connection the observations of the U.S. Supreme Court in the case of Metropolis Theatre Company v. City of Chicago and Ernest J. Magerstadt (1912) 57 I Ed 730). To find fault with a law is not to demonstrate its invalidity. There the learned judge Mr. Justice Mc Kenna observed as follows:

"It may seem unjust and oppressive, yet be free from judicial interference.

The problems of government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void.
This passage has been quoted with approval by Chief Justice Chandrachud in Prag Ice & Oil Mills v. Union of India [1978] INSC 43; (1978) 3 SCR 293 at p.333: [1978] INSC 43; AIR 1978 SC 1296 at p.1318.

70. Yet again in the matter of Cauvery Water Disputes Tribunal the Apex Court clearly held:

To the extent that the Ordinance interferes with the decision of this Court and of the Tribunal appointed under the Central legislation, it is clearly unconstitutional being not only in direct conflict with the provisions of Article 262 of the Constitution under which the said enactment is made but being also in conflict with the judicial power of the State.
71. There is another aspect of the matter which we may not lose sight of. In terms of Act 2 of 1994 a complete ban had been imposed in making recruitment of NMR, part-time or ad hoc employees. Thus on and from 25.11.1993 nobody had been employed nor could be employed. Any such appointment would ex facie violate the provisions of the said Act 2 of 1994 which not only contains a penal provision but also imposed statutory liability upon the officers to pay and unto the State all such salaries and emoluments paid to such employees. Even a ban had been imposed on the treasuries to honour such bills.

72. Act 27 of 1998 has come into force on 19.8.1998. Thus the ban which now would be imposed, as regards grant of regularisation will be effective from that date.

Can it be said that five years continuous service as on 13.8.1998 is a condition which is wholly arbitrary and irrational so as to attract Articles 14 and 246 of the Constitution. The answer to the aforementioned question must be rendered in negative. It will be a repetition to state that by reason of G.O.Ms.No.212 no workman derives any vested right to be appointed as such. But the employees who fulfill the criteria were entitled to be only considered therefor. Regularisation of service in terms of aforementioned G.O.Ms.No.212 is dependant upon fulfillment of the condition enumerated therein. As is evident from the decision of the apex Court in M.L.Singh's case (supra) a distinction must be borne in mind between a vested right and a right to be considered inasmuch as the requirement of a clear vacancy has a direct nexus therewith. Even if there were clear vacancies, such vacancies were required to be filled up having regard to the reservation policy of the State. "

14. Learned counsel for the employees supported the order of the learned Single Judge and argued that the Division Bench committed serious error by declaring that Amendment Act Nos.3 of 1998 and 27 of 1998 are constitutional. Learned counsel relied upon the judgments of this Court in Madan Mohan Pathak vs. Union of India [(1978) 2 SCC 50], State of Gujarat vs. Raman Lal Keshav Lal Soni [(1983) 2 SCC 33], Chairman, Railway Board vs. C.R. Rangadhamaiah [(1997) 6 SCC 623], Govt. of Andhra Pradesh vs. G.V.K. Girls High School [(2000) 8 SCC 370] and argued that amendments made in the 1994 Act are liable to be struck down not only because the same have the effect of nullifying the judgment of this Court in District Collector vs. M.L. Singh (supra), but also because Section 7A of Act No.27 of 1998 is a clear encroachment upon the courts' power of judicial

review, which is one of the basic features of the Constitution. Learned counsel further argued that by virtue of the policy contained in G.O. dated 22.4.1994, persons appointed on daily wages or nominal muster roll or consolidated pay acquired a right to be regularised in service and the State could not have deprived them of the said right by retrospectively amending the 1994 Act. Another argument of the learned counsel is that once this Court held that all persons appointed on daily wages or nominal muster roll or consolidated pay are entitled to be regularised with effect from the date of completion of 5 years continuous service, the legislature was not justified in prescribing 25.11.1993 as the cut off date for determining the eligibility of daily wagers etc. for the purpose of regularisation. Learned counsel emphasized that the interpretation placed by this Court on G.O. dated 22.4.1994 is final and the same could not have been undone by amending the 1994 Act.

15. Learned counsel for the State of Andhra Pradesh and its agencies/instrumentalities argued that the 1994 Act was amended to clarify the object underlying the policy of regularisation contained in G.O. dated 22.4.1994 and to make the same an integral part of the statute and the Division Bench rightly held that the Amendment Acts do not have the effect of nullifying the judgment of this Court in District Collector v. M.L. Singh (supra). Learned counsel pointed out that the policy contained in G.O. dated 22.4.1994 was one time measure for relaxing the negative mandate contained in Section 7 against regularisation of the persons appointed on daily wages or on temporary basis and argued that the legislature did not exceed its jurisdiction by laying down the requirements of completing 5 years continuous service on or before 25.11.1993 for the purpose of regularisation. They, however, questioned the direction given by the Division Bench for considering the cases of all daily wagers and like for regularisation who completed 5 years on 19.8.1998 i.e. the date on which Amendment Act No.27 of 1998 was published in the Gazette, by arguing that it was legally impermissible for the Division Bench to change and/or extend the date of eligibility for regularisation from 25.11.1993 to 19.8.1998 simply because the amendment made in Section 7 by Act No.27 of 1998 was not enforced retrospectively.

16. In the light of the above, we shall first consider whether the amendments made in the 1994 Act have the effect of nullifying or overriding the judgment of this Court in District Collector v. M.L. Singh (supra) and whether Section 7A of Act No.27 of 1998 amounts to an encroachment on courts' power of judicial review. For this purpose, it is necessary to understand the true nature of the 1994 Act, mischief sought to be remedied by enactment thereof and the reasons for its amendment. The 1994 Act was enacted in the backdrop of the decision taken by the State Government to curb irregular appointments, to rationalise the staff pattern and pay structure and thereby reduce unnecessary expenditure and also to ensure that only those selected by the specified recruiting agencies are appointed against the sanctioned posts. This is clearly discernible from the statement of objects and reasons contained in the Bill which led to enactment of the 1994 Act and provisions contained therein to which reference will be made hereinafter. Although in Aswini Kumar Ghose v. Arabinda Bose [1952] INSC 50; [AIR 1952 SC 369], it was held that the statement of objects and reasons contained in the Bill cannot be used or relied upon for the purpose of construction of the statute, this rule has not been strictly followed in the subsequent judgments. In A. Thangal Kunju Musaliar v. M. Venkatachalam Potti [1955] INSC 77; [AIR 1956 SC 246], the statement of objects and reasons were used for judging reasonableness of the classification made in an enactment to see if it infringed or was contrary to the Constitution. In Central Bank of India v. Workmen [1959] INSC 82; [AIR 1960 SC 12], it was held that the statement of objects and reasons can be used for the limited purpose of understanding the background and antecedent state of affairs leading up to the legislation. The same view was reiterated in large number of other judgments including Bhaiji v. Sub-Divisional Officer, Thandla [(2003) 1 SCC 692], in which the Court referred to Principles of

Statutory Interpretation by Justice G.P. Singh, 8th Edn., 2001 and observed:

"Reference to the Statement of Objects and Reasons is permissible for understanding the background, the antecedent state of affairs, the surrounding circumstances in relation to the statute, and the evil which the statute sought to remedy. The weight of judicial authority leans in favour of the view that the Statement of Objects and Reasons cannot be utilized for the purpose of restricting and controlling the plain meaning of the language employed by the legislature in drafting a statute and excluding from its operation such transactions which it plainly covers."

17. In B. Banerjee v. Smt. Anita Pan [(1975) 1 SCC 166], this Court approved the view expressed by the Calcutta High Court that the statement of objects and reasons contained in the West Bengal Premises Tenancy (Second Amendment) Bill, 1969 and proceedings of the legislature including the speech made by the Minister at the time of introducing the Bill could be looked into for understanding the true character of the amendment and observed:

"The explosive import of neglecting such a distressing urban development reasonably obliges the State to impose drastic restrictions on landlords' right to property. And when circumvention of wholesome legal inhibitions is practised on a large scale the new challenge is met by clothing the law with more effective armour and that is the rationale of the Amendment Act. The learned Judges rightly refer to the legislative proceedings, notorious common knowledge and other relevant factors properly brought to their ken. The "sound-proof theory" of ignoring voices from Parliamentary debates, once sanctified by British tradition, has been replaced by the more legally realistic and socially responsible canon of listening to the legislative authors when their artifact is being interpreted."

18. In K.P. Varghese v. ITO, Ernakulam [(1981) 4 SCC 173], this Court while rejecting the argument of the revenue that rule of strict construction should be applied for interpreting Section 52(2), referred to the statement of objects and reasons contained in the Bill presented before the Parliament, speech made by the Finance Minister and observed:

"Now it is true that the speeches made by the members of the legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic thought not only in western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible."

19. In Chern Taong Shang v. S. D. Baijal [(1988) 1 SCC 507], the Court referred to the object sought to be achieved by enacting Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 i.e. preventing the illegal poaching of fishes by foreign vessels including foreign vessels chartered by Indian parties by providing deterrent punishment to protect Indian fishermen and observed:

"It is pertinent to mention that in interpreting a statute the court has to ascertain the will and policy of the legislature as discernible from the object and scheme of the enactment and the language used therein. Viewed in this context it is apparent that the said Act has been made with the sole purpose

of preventing poaching of fishes by foreign vessels chartered by Indian citizens within the exclusive economic zone of India as specified in Rule 8(1) (q) of Maritime Zone of India Rules as amended in 1982 as well as in breach of the provisions of the said Act and the terms and conditions of permit issued under Section 5 of the said Act."

20. In Utkal Contractors and Joinery v. State of Orissa [1987] INSC 160; [1987 (3) SCC 279], the Court interpreted the provisions of the Orissa Forest Produce (Control of Trade) Act, 1981 and observed:- ".....A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are Statement of Objects and Reasons when the Bill is presented to Parliament, the reports of committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead. No provision in the statute and no word of the statute may be construed in isolation. Every provision and every word must be looked at generally before any provision or word is attempted to be construed. The setting and the pattern are important. It is again important to remember that Parliament does not waste its breath unnecessarily. Just as Parliament is not expected to use unnecessary expressions, Parliament is also not expected to express itself unnecessarily. Even as Parliament does not use any word without meaning something, Parliament does not legislate where no legislation is called for.

Parliament cannot be assumed to legislate for the sake of legislation; nor indulge in legislation merely to state what it is unnecessary to state or to do what is already validly done. Parliament may not be assumed to legislate unnecessarily."

21. In Gurudevdatta VKSSS Maryadit v. State of Maharashtra [(2001) 4 SCC 534], a three- Judge Bench of this Court interpreted the provisions of Maharashtra Cooperative Societies Act, 1960, Maharashtra Cooperative Societies (Second Amendment) Ordinance, 2001 and observed:

"Further, after introduction of the Bill and during the debates thereon before Parliament, if a particular provision is inserted by reason of such a debate, question of indication of any object in the Statement of Objects and Reasons of the Bill does not and cannot arise. The Statement of Objects and Reasons needs to be looked into, though not by itself a necessary aid, as an aid to construction only if necessary. To assess the intent of the legislature in the event of there being any confusion, Statement of Objects and Reasons may be looked into and no exception can be taken therefor -- this is not an indispensable requirement but when faced with an imperative need to appreciate the proper intent of the legislature, statement may be looked into but not otherwise.....

While the Statement of Objects and Reasons in the normal course of events cannot be termed to be the main or principal aid to construction but in the event it is required to discern the reasonableness of the classification as in the case of Shashikant Laxman Kale v. Union of India [1990] INSC 210; [1990 (4) SCC 366] Statement of Objects and Reasons can be usefully looked into for appreciating the background of the legislature's classification."

22. The proposition which can be culled out from the aforementioned judgments is that although the statement of objects and reasons contained in the Bill leading to enactment of the particular Act cannot be made the sole basis for construing the provisions contained therein, the same can be

referred to for understanding the background, the antecedent state of affairs and the mischief sought to be remedied by the statute. The statement of objects and reasons can also be looked into as an external aid for appreciating the true intent of the legislature and/or the object sought to be achieved by enactment of the particular Act or for judging reasonableness of the classification made by such Act.

23. We may now advert to the statement of objects and reasons contained in the Bill introduced in Andhra Pradesh Legislative Assembly. A perusal thereof shows that between 1976 and 1993, the total number of employees of the State Government, agencies/instrumentalities of the State and bodies/institutions receiving aid from the Government increased by 82% i.e. from 6.78 lakhs to 12.34 lakhs and in 1993-1994, the State Government had to spend more than 80% of total revenue in payment of salaries, allowances, pension, etc. of the employees causing severe strain on the revenue of the State which adversely affected implementation of the welfare schemes and development programmes. That apart, there was growing dissatisfaction among several thousand unemployed persons including those belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes, who were registered with the Employment Exchanges but could not get opportunity of competing for selection for appointment against the sanctioned posts. With a view to redeem the situation, the State Government decided to totally prohibit employment on daily wages and also restrict appointment on temporary basis and, at the same time, ensure that all appointments are made against the sanctioned posts only on the recommendations of the specified recruiting agencies.

In furtherance of that decision, the Governor of Andhra Pradesh promulgated the ordinance, which was replaced by the 1994 Act. The term `daily wage employee' has been defined in Section 2(ii) to mean any person employed in any public service on the basis of payment of daily wages and includes a person employed on the basis of nominal muster roll or consolidated pay either on full-time or part-time or piece rate basis or as a workcharged employee and any other similar category of employees by whatever designation called other than those who are selected and appointed on sanctioned posts in accordance with the relevant rules on a regular basis. The term `public service' has been defined in Section 2(vi) to mean service in any office or establishment of the Government, a local authority, a Corporation or undertaking wholly owned or controlled by the State Government, a body established under any law made by the Legislature of the State whether incorporated or not, including a University, and any other body established by the State Government or by a Society registered under any law relating to the registration of societies for the time being in force, and receiving funds from the State Government either fully or partly for its maintenance or any educational institution whether registered or not but receiving aid from the Government. By Section 3(1), total prohibition came to be imposed on the appointment of any person in any public service to any post, in any class, category or grade as a daily wage employee. By Section 3(2), it came to be provided that no temporary appointment shall be made in any public service to any post, in any class, category or grade without the prior permission of the competent authority and without the name of the concerned candidate being sponsored by the Employment Exchange. Section 4 of the Act lays down that no recruitment in any public service to any post in any class, category or grade shall be made except from the panel of candidates selected and recommended for appointment by the Public Service Commission/College Service Commission or from a panel prepared by any Selection Committee constituted for the purpose in accordance with the relevant rules or orders or from among the candidates having the requisite qualification and sponsored by the Employment Exchange. Section 5 of the Act provides that where an appointment has been made otherwise than in accordance with Section 4, the drawing authority shall not sign the salary bill of the appointee

concerned and the Pay and Accounts Officer, Sub-Treasury Officer or any other officer upon whom duty has been cast of passing the salary bill shall not pass such bill. Section 6 envisages imposition of different types of penalties on the holders of elective offices or any other officer or authority responsible for making appointment in contravention of the provisions of the Act. It also provides for recovery of the pay and allowances paid to a person appointed in contravention of the provisions of the Act. Section 7 contains a prohibition against regularization of persons appointed on daily wages or on temporary basis. It lays down that such appointee shall have no right to claim regularisation of service on any ground whatsoever and his/her service shall be liable to be terminated without any notice and without assigning any reason. By virtue of first proviso to the Section 7, an exception has been made in the case of workman to whom Section 25(F) of the Industrial Disputes Act, 1947 is applicable. The service of such person can be terminated only after complying with the provisions of Section 25(F). Section 9 of the Act contains a non obstante clause and lays down that notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, the claims for regular appointment of all daily wage employees and persons appointed on a temporary basis, shall stand abated and no suit or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority by daily wage or temporary appointees and no court shall enforce any decree or order directing regularisation of the services of such persons. Section 10(1) imposes a bar to the creation of posts in any office or establishment relating to a public service without the previous sanction of the competent authority.

Section 10(2) declares that any appointment made to any post created in violation of sub-section (1) shall be invalid and the provisions of Sections 5, 6, and 7 shall mutatis mutandis apply to such appointment. Section 11 envisaged constitution of a committee to review the existing staff pattern in all offices and establishments and also the pay scales, allowances, exgratia, etc. payable to the employees of different categories other than teaching staff of the Universities and submission of report by the committee to State Government containing specific recommendations. By Section 12, the committee was clothed with the powers of civil court in relation to certain specified matters. Section 14 postulates imposition of penalty for abatement of any offence punishable under the Act.

Section 15 provides for imposition of penalty on the officers of the companies acting against the provisions of the Act.

24. If the State Government had sincerely implemented the provisions of the 1994 Act, it may have succeeded in cleansing the mess created due to irregular employment of thousands of persons and, thereby, saved considerable revenue which could be utilized for execution of welfare schemes and development programmes. By ensuring that appointments against the sanctioned posts are made only from among the candidates selected by the specified recruiting agencies like Public Service Commission/College Service Commission etc. or from among the candidates sponsored by the employment exchanges, the State Government could have demonstrated its commitment to the system established by rule of law and determination to comply with the equality clause enshrined in the Constitution and other relevant statutory provisions in their true spirit. Unfortunately, that did not happen because, in spite of the prohibition contained in Section 7 against regularisation of the existing daily wage employees and persons appointed on temporary basis, the State Government wilted under the pressure exerted by the vested interests and issued G.O. dated 22.4.1994 incorporating therein policy for regularisation of the services of those appointed on daily wages or nominal muster roll or consolidated pay, who had continuously worked for 5 years and were continuing on 25.11.1993, i.e., the date of enforcement of the 1994 Act. This was intended to be one time measure and not an ongoing process/scheme for regularisation of the services of all daily wage

employees on their completing 5 years. A somewhat similar policy framed by the Government of India in 1993 for grant of temporary status to the casual labourers and regularisation of their services was considered by this Court in Union of India v. Mohan Pal [(2002) 4 SCC 573] and it was held that a policy of this nature cannot be interpreted as creating a right in favour of all casual labourers to be regularized in service irrespective of the date of completion of the specified period.

The 1993 Scheme envisaged conferment of temporary status and benefit of regularisation upon casual labourers who had completed 240 days in a year (206 days in the case of offices observing 5 days a week). Those who did not fulfill this condition approached the Central Administrative Tribunal, which allowed their applications and held that the casual labourers are entitled to the benefit of temporary status and regularisation as and when they fulfill the conditions enumerated in the 1993 Scheme. While reversing the order of the Central Administrative Tribunal, this Court observed:

".....We do not think that clause 4 of the Scheme envisages it as an ongoing scheme.

In order to acquire "temporary" status, the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have also rendered a continuous service of at least one year which means that he should have been engaged for a period of at least 240 days in a year or 206 days in case of offices observing 5 days a week. From clause 4 of the Scheme, it does not appear to be a general guideline to be applied for the purpose of giving "temporary" status to all the casual workers, as and when they complete one year's continuous service. Of course, it is up to the Union Government to formulate any scheme as and when it is found necessary that the casual labourers are to be given "temporary" status and later they are to be absorbed in Group `D' posts."

The ratio of the afore-mentioned judgment was reiterated in Union of India v. Gagan Kumar [2005 (6) SCC 70] and Director General, Doordarshan, Mandi House v. Manas Dey [2005 (13) SCC 437].

25. So far as these appeals are concerned, we find that the learned Single Judge interpreted G.O. dated 22.4.1994 as entitling all daily wage employees to claim regularisation in service with effect from the date of completion of 5 years irrespective of the date on which such period was completed or would have been completed. The Division Bench maintained the order of the learned Single Judge with the modification that regularisation would be from the date of completion of 5 years continuous service. This Court approved the view taken by the Division Bench apparently because even though the policy contained in G.O. dated 22.4.1994 was intended to be one time measure for facilitating regularisation of those who completed 5 years service on 25.11.1993, it did not contain a specific stipulation that only those who have completed 5 years continuous service as on 25.11.1993 will be regularised. A reading of the judgment in District Collector vs. M.L. Singh (supra) makes it clear that while examining correctness of judgment of the Division Bench of the High Court, this Court did not consider the background in which the 1994 Act was enacted, mischief sought to be remedied by it and various provisions contained therein including Section 7 whereby it was made clear that no person employed on daily wage or on temporary basis and continuing as such on the date of commencement of the Act shall have or shall ever be deemed to have the right to claim regularisation of service and his/her services shall be liable to be terminated at any time without any notice and without assigning any reason. We may observe that if the officers responsible for drafting G.O. dated 22.4.1994 had bothered to carefully read the provisions of the 1994 Act then instead of using the expression "such persons who worked continuously for a minimum period of 5 years and are continuing on 25.11.1993", they would have employed the expression "such persons who have

completed minimum 5 years of continuous service on or before 25.11.1993 on daily wages or nominal muster roll or consolidated pay". However, utter non- application of mind by the concerned officers resulted in the use of an ambiguous expression in the policy of regularisation which generated enormous litigation requiring the individual employees and the State Government to invest money for an avoidable exercise.

26. In order to remove the ambiguity and imperfectness in the language of G.O. dated 22.4.1994 and make the policy of regularisation an integral part of the 1994 Act, the legislature enacted Amendment Act Nos.3 of 1998 and 27 of 1998. The purpose of making the policy of regularisation a part of the 1994 Act was not to dilute the main object of the 1994 Act, i.e., to curb the menace of irregular appointments and also ensure that appointments are made against the sanctioned posts only from among the candidates selected by the designated recruiting agencies but also to harmonize the same with the prohibition contained in Section 7 against regularisation of daily wage and temporary employees. The preface of Act No.27 of 1998 clearly shows that the policy contained in G.O. dated 22.4.1994 was intended to be one time measure for regularisation of the persons employed on daily wages or nominal muster roll or consolidated pay, who completed 5 years continuous service on or before 25.11.1993, i.e., the date of enforcement of the 1994 Act and it was not a continuing scheme for regularisation of all `daily wage employees' as and when they were to complete 5 years period. The language of first proviso to Section 7 by which the policy of regularisation was engrafted in the 1994 Act shows that the amendments were made with the sole object of removing the ambiguity in the policy contained in G.O. dated 22.4.1994 and the same were not intended to nullify or override the judgment in District Collector vs. M.L. Singh (supra). We have no doubt that if the language of the policy contained in G.O. dated 22.4.1994 was similar to the one contained in newly inserted proviso to Section 7 and there was no ambiguity in it, the courts would not have interpreted the same in a manner which would entitle all persons employed on daily wages before 25.11.1993 to claim regularisation irrespective of the date of completion of 5 years service. Here it will also be apposite to mention that the policy contained in G.O. dated 22.4.1994 did not confer an indefeasible right upon all daily wage employees (as the term has been defined in Section 2(ii) of the 1994 Act) to be regularised in service de-hors the date of enforcement of the Act.

Therefore, it cannot be said that by incorporating the policy of regularisation in the 1994 Act, the legislature has taken away an accrued or vested right of the daily wage employees. It is interesting to note that the judgment of this Court in State of Haryana v. Piara Singh (supra) of which shelter was taken by the State Government for framing the policy of regularisation of daily wagers etc. in the teeth of the prohibition contained in Section 7 against such regularisation does not lay down that there will be wholesale regularisation of daily wagers, casual employees, work charge employees, etc.

While dealing with the question whether the High Court was right in declaring that the government could not have prescribed the requirement of particular length of service on a particular date as a condition for regularisation, this Court observed:

"These orders are not in the nature of a statute which is applicable to all existing and future situations. They were issued to meet a given situation facing the Government at a given point of time. In the circumstances, therefore, there was nothing wrong in prescribing a particular date by which the specified period of service (whether it is one year or two years) ought to have been put in. Take for example, the orders issued by the Haryana government. The first order is dated January 1, 1980. It says, a person must have completed two years of service as on December 31, 1979 i.e., the

day previous to the issuance of the order. However could it be said that fixing of such a date is arbitrary and unreasonable? Similarly the order dated January 3, 1983 fixes September 15, 1982 as the relevant date. This notification/order does two things.

Firstly, it excludes Class III posts of clerks from the purview of the SSSB in the case of those who have completed a minimum of two years of service as on September 15, 1982, and secondly, it provides for their regularisation subject to certain conditions.

No particular attack was made as to this date in the High Court. Consequently the Government of Haryana had no opportunity of explaining as to why this particular date was fixed. Without giving such an opportunity, it cannot be held that the fixation of the said date is arbitrary. What is more relevant is that the High Court has not held that this particular date is arbitrary. According to it, fixation of any date whatsoever is arbitrary, because in its opinion the order must say that any and every person who completes the prescribed period of service must be regularised on completion of such period of service. The next order dated March 24, 1987 prescribes the date as December 31, 1986 i.e., the end of the previous year. In the circumstances, we see no basis for holding that fixation of the date can be held to be arbitrary in the facts and circumstances of the case."

(emphasis added)

27. The distinction between legislative and judicial functions is well known. Within the scope of its legislative competence and subject to other constitutional limitations, the power of legislature to enact laws is plenary. In exercise of that power, the legislature can enact law prospectively as well retrospectively. The adjudication of the rights of the parties according to law enacted by the legislature is a judicial function. In the performance of that function, the court interprets and gives effect to the intent and mandate of the legislature as embodied in the statute. If the court finds that the particular statute is ultra vires the power of legislature or any provision of the Constitution, then the same can be struck down. It is also well settled that the legislature cannot by bare declaration, without anything more, directly overrule, reverse or override a judicial decision. However it can, in exercise of the plenary powers conferred upon it by Articles 245 and 246 of the Constitution, render a judicial decision ineffective by enacting a valid law fundamentally altering or changing the conditions on which such a decision is based. Such law can also be given retrospective effect with a deeming date or with effect from a particular date.

28. The question whether the legislature possesses the power to enact law apparently affecting pre-existing judgment or amend the existing law which has already been interpreted by the Court in a particular manner, has been considered in several cases. In Government of A.P. v. H.M.T. Ltd. [1975] INSC 117; [1975 (2) SCC 274], this Court considered whether the amendment made in definition of a `house' contained in the Andhra Pradesh (Gram Panchayat) Act, by amending Act No.16 of 1974 was intended to undo the judgment of the High Court which had interpreted the unamended definition and held that buildings other than factory premises were not a `house'. After noticing the unamended and amended definitions of the term `house', the Court held as under:- "The new definition of "house" which is to be read retrospectively into the Act meets effectively both the objections by reason of which the High Court held that the buildings constructed by the respondent were not a "house". By the amendment, the old clause: "having a separate principal entrance from the common way" is dropped and the definition of "house" is re-framed to include a "factory". It is clear and is undisputed that the buildings constructed by the respondent -- the colony buildings as well as the factory buildings -- answer fully the description of a "house" and are squarely within the

new definition contained in Section 2(15).

We see no substance in the respondent's contention that by re-defining the term "house" with retrospective effect and by validating the levies imposed under the unamended Act as if notwithstanding anything contained in any judgment, decree or order of any court, that Act as amended was in force on the date when the tax was levied, the Legislature has encroached upon a judicial function. The power of the Legislature to pass a law postulates the power to pass it prospectively as well as retrospectively, the one no less than the other. Within the scope of its legislative competence and subject to other constitutional limitations, the power of the Legislature to enact laws is plenary. In United Provinces v. Atiqa Begum, Gwyer, C.J. while repelling the argument that Indian Legislatures had no power to alter the existing laws retrospectively observed that within the limits of their powers the Indian Legislatures were as supreme and sovereign as the British Parliament itself and that those powers were not subject to the "strange and unusual prohibition against retrospective legislation". The power to validate a law retrospectively is, subject to the limitations aforesaid, an ancillary power to legislate on the particular subject.

The State Legislature, it is significant, has not overruled or set aside the judgment of the High Court. It has amended the definition of "house" by the substitution of a new Section 2(15) for the old section and it has provided that the new definition shall have retrospective effect, notwithstanding anything contained in any judgment, decree or order of any court or other authority. In other words, it has removed the basis of the decision rendered by the High Court so that the decision could not have been given in the altered circumstances. If the old Section 2(15) were to define "house" in the manner that the amended Section 2(15) does, there is no doubt that the decision of the High Court would have been otherwise. In fact, it was not disputed before us that the buildings constructed by the respondent meet fully the requirements of Section 2(15) as amended by the Act of 1974." (emphasis added)

29. In Indian Aluminium Co. v. State of Kerala [1996 (7) SCC 637], this Court examined the validity of the Kerala Electricity Surcharge (Levy and Collection) Act, 1989 and upheld the same. It is borne out from the judgment that by Section 36 of the Finance Act, 1978, the Central Excise and Salt Act, 1944 was amended for imposition of central excise duty on electricity under item 11-E in the First Schedule to the Excise Act and fixed 2 paisa per kilo watt electricity unit. To recoup the loss caused to the Kerala Electricity Board by imposition of central excise duty, the State Government issued an order under Section 3 of the Kerala Essential Articles Control (Temporary Powers) Act, 1961 whereby surcharge @ Rs.2.5 paisa per unit was levied. On 1.10.1984, the Government of India withdrew the levy of excise duty on electricity. However, the State Government did not withdraw the surcharge. Therefore, the consumers filed writ petition in the High Court. During the pendency of the writ petition, the State Government discontinued the levy of surcharge by issuing an ordinance. In Chakolas Spinning and Weaving Mills Ltd. vs. K.S.E. Board [1988 (2) KLT 680], a Division Bench of the High Court ruled that levy of surcharge was beyond the competence of the State. Special leave petition filed against the order of the High Court was dismissed. Thereafter, the Kerala Electricity Surcharge (Levy and Collection) Ordinance, 1989 was promulgated, which later on became the 1989 Act. This Court upheld the power of the State to enact law for levy of surcharge on the electricity supplied by the Electricity Board. The Court referred to the earlier judgments in Prithvi Cotton Mills Ltd. v. Broach Borough Municipality [1969 (2) SCC 283], Patel Gordhandas Hargovindas v. Municipal Commissioner [1963] INSC 76; [1964 (2) SCR 608], Orient Paper Mills Ltd. v. State of Orissa [1961] INSC 117; [AIR 1961 SC 1438], M/s. Misrilal Jain v. State of Orissa [1977] INSC 134; [1977 (3) SCC 212), Tirath Ram Rajendra

Nath v. State of U.P. [1973 (3) SCC 585], Government of A.P. v. H.M.T. Ltd. (supra), I.N. Saksena v. State of M.P. [1976] INSC 10; [1976 (4) SCC 750] and some other judgments and held:

"The validity of the Validating Act is to be judged by the following tests: (i) whether the legislature enacting the Validating Act has competence over the subject-matter; (ii) whether by validation, the legislature has removed the defect which the court had found in the previous law; (iii) whether the validating law is consistent with the provisions of Chapter III of the Constitution. If these tests are satisfied, the Act can validate the past transactions which were declared by the court to be unconstitutional.

The legislature cannot assume power of adjudicating a case by virtue of its enactment of the law without leaving it to the judiciary to decide it with reference to the law in force. The legislature also is incompetent to overrule the decision of a court without properly removing the base on which the judgment is founded.

The court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the legislature. Therefore, they are not encroachment on judicial power.

In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions should be such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date.....

The vice pointed out in Chakolas case has been removed under the Kerala Electricity Surcharge (Levy and Collection) Act, 1989. Consequently, Section 11 of this Act validated the invalidity pointed out in Chakolas case removing the base. In the altered situation, the High Court would not have rendered Chakolas case under the Act. It has made the writ issued in Chakolas case ineffective. Instead of refunding the duty illegally collected under invalid law, Section 11 validated the illegal collections and directed the liability of the past transactions as valid under the Act and also fastened liability on the consumers. In other words, the effect of Section 11 is that the illegal collection made under invalid law is to be retained and the same shall now stand validated under the Act. Thus considered, Section 11 is not an incursion on judicial power of the court and is a valid piece of legislation as part of the Act."

30. The judgment in S.S. Bola v. B.D. Sardana (supra) calls for a detailed reference because the main issue considered in that case is similar to the one raised in these appeals. The facts of that case show that in A.N. Sehgal v. Raje Ram Sheoran [1992 Supp (1) SCC 304] and S.L. Chopra v. State of Haryana [1992 Supp (1) SCC 391], this Court interpreted the rules framed under proviso to Article 309 of the Constitution and gave certain directions for fixation of seniority of the members of engineering services. After about three years, the State legislature enacted the Haryana Service of Engineers, Class I, Public Works Department (Buildings and Roads Branch), (Public Health Branch) and (Irrigation Branch) Act, 1995 and repeal the existing rules. The Act was given retrospective effect from 1.11.1966 that is the date on which the State of Haryana was formed. The Punjab and

Haryana High Court struck down various provisions of the Act on the ground that the same were enacted with the sole object of nullifying the earlier judgments of this Court in A.N. Sehgal v. Raje Ram Sheoran (supra) and S.L. Chopra v. State of Haryana (supra). By majority of 2:1, this Court held that the 1995 Act is a valid piece of legislation and set aside the order of the High Court. G.B. Pattanaik, J. (as he then was), who rendered leading judgment of the majority noted that in Sehgal's case and Chopra's case, the Court had not invalidated the recruitment rules but merely interpreted some provisions relating to determination of the inter se seniority of the direct recruits and promotees and held that the Act cannot be invalidated on the ground that it was an encroachment on judicial function. Pattanaik, J. then referred to the statement of objects and reasons contained in the Bill introduced in Haryana Vidhan Sabha, various judgments of this Court including in State of Gujarat v. Raman Lal Keshav Lal Soni (supra) and held:

".....In view of the aforesaid legal position when the impugned Act is examined the conclusion is irresistible that the said Act cannot be said to be an Act of usurpation of the judicial power by the Haryana Legislature, but on the other hand it is a valid piece of legislation enacted by the State Legislature over which they had legislative competence under Entry 41 of List II of the Seventh Schedule and by giving the enactment retrospective effect the earlier judgments of this Court in Sehgal and Chopra have become ineffective. But since this does not tantamount to a mere declaration of invalidity of an earlier judgment nor does it amount to an encroachment by the legislature into the judicial sphere the Court will not be justified in holding the same to be invalid. Needless to mention that the impugned Act has neither been challenged on the ground of lack of legislative competence nor has it been established to have contravened any provisions of Part III of the Constitution.

Consequently Mr Sachar's contention has to be rejected and the Act has to be declared intra vires. Necessarily, therefore the seniority list drawn up on different dates in accordance with the earlier Rules of 1961 will have to be annulled and fresh seniority list has to be drawn up in accordance with the provisions of the Act since the Act has been given retrospective effect with effect from 1-11-1966. It may, however, be reiterated that any promotion already made on the basis of the seniority list drawn up in accordance with the Recruitment Rules of 1961 will not be altered in any manner."

Pattanaik, J. then referred to the judgment in Zohrabi v. Arjuna [1980 (2) SCC 203], wherein it was held that a mere right to take advantage of the provisions of an Act is not an accrued right and proceeded to observe:

"In the aforesaid premises, it must be held that the direct recruits did not have a vested right nor had any right accrued in their favour in the matter of getting a particular position in the seniority list of Executive Engineers under the pre-amended Rules which is said to have been taken away by the Act since such a right is neither a vested right of an employee nor can it be said to be an accrued right. Thus there is no bar for the legislature to amend the law in consequence of which the inter se position in the rank of Executive Engineer might get altered. Consequently, we see no invalidity in the enactment of the Haryana Service of Engineers, Class I, Public Works Department (Buildings and Roads Branch), (Public Health Branch) and (Irrigation Branch) Respectively Act, 1995."

S. Saghir Ahmad, J. who agreed with Pattanaik, J expressed his views in the following words:

"It would be within the exclusive domain of the judiciary to expound the law as it is and not to speculate what it should be as it is the function of the legislature. It is also within the exclusive

power of the judiciary to hold that a statute passed by the legislature is ultra vires. The legislature in that situation does not become a helpless creature as it continues to remain a living pillar of a living Constitution. Though it cannot directly override the judicial decision, it retains the plenary powers under Articles 245, 246 and 248 to alter the law as settled or declared by judicial decisions.

This is what was observed by this Court in Anwar Khan Mehboob Co. v. State of M.P which had the effect of indirectly overruling its previous decision in Firm Chhotabhai Jethabai Patel & Co. v. State of M.P. The legislature can also validate an Act which was declared invalid by the Court or amend it with retrospective effect so as to remove the grounds of its invalidity. (See: Rai Ramkrishna v. State of Bihar and Jadao Bahuji v. Municipal Committee.) The power to make a law includes the power to give it retrospective effect subject to the restriction imposed by Article 20(1) that a legislature cannot make retrospective penal laws. It would be valid for the legislature to make any other enactment with retrospective effect provided no fundamental right is infringed by reasons of its taking away the vested right. Under the scheme of the Constitution, it is competent for the legislature to put an end to the finality of a judicial decision and, therefore, it would be competent for the legislature to render ineffective the judgment of a court by changing the basis of the Act upon which that judgment was founded.

Where, however, the statutory provision is interpreted by the Court in a particular manner and directions are issued for implementing the judgment in the light of the interpretation placed on the statutory provisions, the legislature need not pass a validating Act. In this situation, the legislature, in exercise of its plenary powers under Articles 245, 246 and 248 can make a new Act altering fundamentally the provisions which were the basis of the judgment passed by the Court. This can be done with retrospective effect. So far as service conditions are concerned, they can be altered with retrospective effect by making service rules under Article 309 or by an Act of the legislature."

31. In Mylapore Club v. State of T.N. [2005 (12) SCC 752], a three-Judge Bench examined the validity of Sections 2 and 3 of the Madras City Tenants' Protection (Amendment) Act, 1994 (Act No. 2 of 1996). By Section 2 of the 1996 Act, Section 1 of the Madras City Tenants' Protection Act, 1921 was amended and clause (f) was added providing for exemptions for tenancies of land owned by religious institutions and religious charities belonging to Hindu, Muslim, Christian or other religions. By Section 3, it was declared that any proceeding instituted by a tenant in respect of any land owned by such a religious institution or religious charity, which was being exempted from the operation of the Act pending before any court or other authority, would stand abated and all rights and privileges conferred by the extension of the Madras City Tenants' Protection Act, 1921 would cease and would become unenforceable. However, a proviso was added to the effect that nothing contained in Section 3 shall be deemed to render invalid, any suit or proceeding in which a decree or order passed had been executed or satisfied in full before the date of the coming into force of the amending Act. It was argued on behalf of the tenant Club that the amendment made by Sections 2 and 3 of Act No. 2 of 1996, whereby exemption was granted to certain tenancies was not in consonance with the object of the parent Act. It was further contented that Section 3 of the amending Act which provided for certain pending proceedings to abate was a legislative act to put an end to a judicial proceedings and the same was clearly unconstitutional. While rejecting the first argument, the Court observed:

"The power to legislate is a plenary power vested in the legislature and unless those who challenge the legislation clearly establish that their fundamental rights under the Constitution are affected or that the legislature lacked legislative competence, they would not succeed in their challenge to the

enactment brought forward in the wisdom of the legislature. Conferment of a right to claim the benefit of a statute, being not a vested right, the same could be withdrawn by the legislature which made the enactment. It is open to the legislature to bring in a law that has retrospective operation. That position is not disputed. When it affects vested rights or accrued rights, that question will have to be considered in that context. But the right to take advantage of a statute has been held to be not an accrued right. It could not be said that Amendment Act 2 of 1996 lacked either legislative competence or that it is unconstitutional. It is a matter for the legislature to balance the object of the Parent Act with the object of protecting the rights of religious institutions and religious charities and on the basis of the material available to the legislature, the decision to exempt the buildings of such religious institutions and religious charities has been taken."

While rejecting the second argument, the Court observed:

"By Section 3 of amending Act 2 of 1996 impugned herein, which is in pari materia with Section 9 of the amending Act of 1960, the legislature had intended that pending proceedings should be affected. Even otherwise, once the applicability of the Act itself is withdrawn, no relief can be granted to a person who could have been or who was earlier a beneficiary under that enactment, after such withdrawal. Here, the section provides that even if some steps have been taken pursuant to the claim by the tenant under Section 9 of the Parent Act, the proceeding cannot be continued in view of the exemption enacted in favour of the institutions. Reading Section 3 of amending Act 2 of 1996, it could not be said that it is a legislative intervention with a judicial decision. The proviso to Section 3 of amending Act 2 of 1996 has saved concluded transactions based on judicial adjudications. All that the said Section 3 does is to make it explicit that the amendment is intended to apply to pending proceedings. In the context of Section 6 of the General Clauses Act, unless it is shown that any right has accrued to the claimant under Section 6 of the General Clauses Act, such a provision making it clear that the Act could not be applied any more to pending proceedings is not in any way invalid or incompetent. Unless the proceedings have concluded and the rights of the landlord have passed to the tenant, no right accrues to the tenant. He is only in the process of acquiring a right, the process having been set in motion at his instance. When pending proceedings are affected by an amendment, it is open to the legislature to provide that the said process cannot continue. That alone has been done by Section 3 of amending Act 2 of 1996. Therefore there is no merit in challenge to Section 3 of the amending Act."

32. Before parting with this aspect of the case, we consider it proper to notice the ratio of the judgments on which reliance has been placed by the learned counsel for the employees. In Madan Mohan Pathak v. Union of India (supra), a seven-Judge Bench considered the constitutional validity of the Life Insurance Corporation (Modification of Settlement) Act, 1976 by which an attempt was made to nullify the mandamus issued by the Calcutta High Court for payment of bonus to the employees in terms of the settlements. This Court declared that the 1976 Act is violative of Article 31(2) of the Constitution and also held that by simply bringing new legislation, the Parliament could not nullify the mandamus issued by the High Court for payment of cash bonus to the employees in terms of the settlement.

33. In State of Gujarat v. Raman Lal Keshav Lal Soni (supra), this Court considered the question whether the State legislature could retrospectively amend the Gujarat Panchayats Act, 1961 and deprive the employees of the Panchayats of their status as government servants. The High Court allowed the writ petition filed by the members of the Panchayat service belonging to the local cadre and declared that they have acquired the status of government servants. The High Court also issued

consequential directions for equation of posts, revision of pay scales and payment of salaries.

During the pendency of the appeals, the 1961 Act was amended with retrospective effect from 1978 and members of Panchayat service were sought to be deprived of their status as government servants. This Court struck down the amendment on the ground that the same violated fundamental right acquired by the employees of the panchayats and observed:

"Now, in 1978 before the Amending Act was passed, thanks to the provisions of the principal Act of 1961, the ex-municipal employees who had been allocated to the panchayat service as Secretaries, Officers and servants of Gram and Nagar Panchayats, had achieved the status of government servants. Their status as government servants could not be extinguished, so long as the posts were not abolished and their services were not terminated in accordance with the provisions of Article 311 of the Constitution. Nor was it permissible to single them out for differential treatment. That would offend Article 14 of the Constitution. An attempt was made to justify the purported differentiation on the basis of history and ancestry, as it were. It was said that Talatis and Kotwals who became Secretaries, Officers and servants of Gram and Nagar Panchayats were government servants, even to start with, while municipal employees who became such Secretaries, Officers and servants of Gram and Nagar Panchayats were not. Each carried the mark of the `brand' of his origin and a classification on the basis of the source from which they came into the service, it was claimed, was permissible. We are clear that it is not. Once they had joined the common stream of service to perform the same duties, it is clearly not permissible to make any classification on the basis of their origin. Such a classification would be unreasonable and entirely irrelevant to the object sought to be achieved. It is to navigate around these two obstacles of Article 311 and Article 14 that the Amending Act is sought to be made retrospective, to bring about an artificial situation as if the erstwhile municipal employees never became members of a service under the State. Can a law be made to destroy today's accrued constitutional rights by artificially reverting to a situation which existed 17 years ago? No. The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history."

34. In Chairman, Railway Board v. C.R. Rangadhamaiah (supra), the Constitution Bench considered the question whether the Railway Administration could amend the rules with retrospective effect and reduce the pension payable to the employees and held that such an amendment violated Articles 14 and 16 of the Constitution, inasmuch as it affected vested right of the employees.

35. In Govt. of Andhra Pradesh v. G.V.K. Girls High School (supra), this Court answered in negative the question whether the Government could issue a G.O. and deny benefit of grant-in-aid to the school and amend the Andhra Pradesh Education Act, 1982 for denying the benefit of the judgment rendered by the High Court in favour of the respondent.

36. In none of the above noted cases, this Court considered an issue akin to the one examined by us. Therefore, the proposition of law laid down in those cases cannot be relied upon for entertaining the claim of daily wage employees for regularisation irrespective of the fact that they may not have completed 5 years continuous service on or before 25.11.1993.

37. In view of the above discussion, we hold that the amendments made in the 1994 Act by Act Nos.3 of 1998 and 27 of 1998 do not have the effect of nullifying or overriding the judgment in District Collector v. M.L. Singh (supra). We further hold that the policy of regularisation contained in first proviso to Section 7 of Act No.27 of 1998 is one time measure intended to benefit only those daily wage employees, etc. who completed 5 years continuous service on or before 25.11.1993 and the employees who completed 5 years service after 25.11.1993 cannot claim regularisation.

38. The question whether Section 7A of Act No. 27 of 1998 amounts to an encroachment on the court's power on judicial review is answered in negative in view of the three-Judge Bench judgment in Mylapore Club v. State of Tamil Nadu (supra) and we respectfully follow the ratio of that judgment. Even otherwise, in view of the interpretation placed by us on the policy of regularisation contained in first proviso to Section 7 of the 1994 Act, the question of abatement of claims etc. has become purely academic.

39. We shall now consider whether the cut off date, i.e., 25.11.1993 specified in the first proviso to Section 7 of the 1994 Act (as amended by Act No. 27 of 1998) for determination of the eligibility of daily wage employees to be considered for regularisation is arbitrary, irrational and violative of Articles 14 and 16 of the Constitution. Undisputedly, the Ordinance issued in 1993 was the first exercise of legislative power by the State to prohibit employment on daily wages and to restrict appointments on temporary basis and, at the same time, streamline the recruitment in public services by adopting a procedure consistent with the doctrine of equality embodied in Articles 14 and 16 of the Constitution. The 1994 Act was enforced with effect from 25.11.1993, i.e., the date on which the Ordinance was published in the official Gazette. Therefore, that date had direct bearing on the policy of regularisation circulated vide G.O. dated 22.4.1994, which was issued by the State Government in exercise of its executive power under Article 162 of the Constitution. When that policy was engrafted in the 1994 Act in the form of proviso to Section 7, the legislature could not have fixed any date other than 25.11.1993 for determining the eligibility of daily wage employees who fulfilled the requirement of 5 years continuous service. If any other date had been fixed for counting 5 years service of daily wage employees for the purpose of proviso to Section 7, the object sought to be achieved by enacting the 1994 Act would have been defeated, inasmuch as the regular recruitment could not have been made for appointment against the sanctioned posts and back door entrants would have occupied all the posts. Therefore, the cut off date i.e.25.11.1993 prescribed by the legislature for determining the eligibility of daily wage employees and others covered by Section 7 of the 1994 Act cannot be dubbed as arbitrary, unreasonable, irrational or discriminatory. This view of ours is in tune with judicial precedents on the subject. In Union of India v. Parameswaran Match Works [(1975) 1 SCC 305], a three-Judge Bench was called upon to decide whether the date for making the declaration, i.e., September 4, 1967 fixed for grant of the benefit of concessional rate of duty was irrational and arbitrary. The High Court declared that the cut off date fixed for grant of the concessional rate of duty violated Article 14 of the Constitution. This Court disapproved the view taken by the High Court and held that the choice of a date as the basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the same, unless it is shown to be capricious or whimsical. It was further held that there is no

mathematical or logical way for fixing a particular date and the decision of the legislature or its delegate must be accepted unless the fixation of date is found to be very wide off the reasonable mark.

40. In Sushma Sharma v. State of Rajasthan [(1985) Supp. SCC 45], fixation of 25 th June, 1975 as the cut off date for the determination of eligibility of temporary teachers for the purpose of absorption in terms of the Rajasthan Universities Teachers (Absorption of Temporary Lecturers) Act, 1973 was challenged on the ground of discrimination and violation of Articles 14 and 16. A learned Single Judge of the High Court declared that the cut off date was arbitrary and violative of the equality clause enshrined in the Constitution. The Division Bench reversed the order of the learned Single Judge and held that the cut off date did not offend the doctrine of equality. This Court approved the view taken by the Division Bench and observed:

"The object of this legislation was to provide for absorption of temporary lecturers of long standing. So therefore experience and continuous employment were necessary ingredients. The Hindi version of the Ordinance used the expression "ke prarambh ke samaya is roop me karya kar rahe hein" is capable of meaning "and are continuing" to work as such at the time of the commencement of the Ordinance. Keeping the background of the purpose of the Act in view that would be the proper construction and if that is the proper construction which is in consonance with the English version of the Ordinance and the Act as well as with the object of the Act then in our opinion the Act and the Ordinance should be construed to mean that only those would be eligible for screening who were appointed prior to June 25, 1975 and were continuing at the time of the commencement of the Ordinance i.e. June 12, 1978 i.e. approximately about three years. If that is the correct reading, then we are unable to accept the criticism that those who were for a short period appointed prior to June 25, 1975 then again with interruption were working only at the time of the commencement of the Ordinance i.e. June 12, 1978 would also be eligible. In other words people with very short experience would be eligible for absorption. That cannot be the purpose of the Act. It cannot be so read reasonably. Therefore on a proper construction it means that all temporary lecturers who were appointed as such on or before June 25, 1975 and were continuing as such at the commencement of the Ordinance shall be considered by the University for screening for absorption. The expression "were continuing" is significant. This is in consonance with the object of the Act to ensure continuity of experience and service as one of the factors for regularising the appointment of the temporary lecturers. For regularising the appointment of temporary lecturers, certain continuous experience is necessary. If a Legislature considers a particular period of experience to be necessary, the wisdom of such a decision is not subject to judicial review. Keeping the aforesaid reasonable meaning of clause 3 of the Ordinance and Section 3 of the Act in view, we are of the opinion that the criterion fixed for screening for absorption was not an irrational criterion not having any nexus with the purpose of the Act. Therefore, the criticism that a teacher who was working even for two or three months only before June 25, 1975 and then with long interruptions was in employment of the University at the time of the commencement of the Ordinance would be eligible but a teacher who had worked continuously from June 26, 1975 i.e. after the date fixed i.e. June 25, 1975 for three years would be ineligible and as such that will be discrimination against long experience, cannot be accepted. Such a construction would be an unreasonable construction unwarranted by the language used in the provisions concerned. It is well- settled that if a particular period of experience is fixed for screening or for absorption, it is within the wisdom of the Legislature, and what period should be sufficient for a particular job or a particular employment is not subject to judicial review."

(emphasis added)

41. In Union of India v. Sudhir Kumar Jaiswal [(1994) 4 SCC 212], it was held that fixing of 1st August as the cut off date for determining the eligibility in the matter of age of the candidates appearing in the examination held for recruitment to the Indian Administrative Service/Indian Foreign Service etc. cannot be termed as arbitrary merely because the preliminary examination was held prior to that date. The court accepted the explanation given by the Union of India that 1 st of August of the year is normally fixed for determination of the eligibility of the candidates and the same was not modified before holding the preliminary examination because it was only a screening test and marks obtained at such examination were not taken into consideration at the time of preparing the final result. In Union of India v. K.G. Radhakrishana Panickar [(1998) 5 SCC 111], it was held that the decision of the railway administration to fix 1.1.1961 as the cut off date for the purpose of counting of past service of Project Casual Labourers for the purpose of retrial benefits was not arbitrary or unreasonable because two separate schemes were framed for regularisation of casual labourers.

42. The question which remains to be considered is whether the Division Bench was justified in holding that all daily wage employees who completed 5 years service on the date of enforcement of Act No. 27 of 1998, i.e., 19.8.1998 would be entitled to be considered for regularisation of their services. A reading of paragraphs 54, 67, 68 and 72 of the impugned judgment shows that even though the Division Bench did not find the cut off date i.e. 25.11.1993 specified in first proviso to Section 7 for determining the eligibility of daily wage employees for regularisation to be arbitrary, irrational or discriminatory, yet it changed the said date from 25.11.1993 to 19.8.1998 solely on the premise that Act No. 27 of 1998 was enforced with effect from that date. In our view, once the Division Bench negatived the challenge to the validity of Act Nos.3 of 1998 and 27 of 1998, there was no warrant for altering the date of eligibility specified in first proviso to Section 7 of the 1994 Act and thereby extend the zone of eligibility of daily wage employees who could be considered for regularisation. As a corollary, we hold that the declaration made by the Division Bench that all persons who completed 5 years service as on the date of coming into force of Act No.27 of 1998 would be entitled to be considered for regularisation of their services is legally unsustainable and is liable to be set aside.

43. In the result, the appeals filed by the employees (C.A. Nos.3702, 3703, 3704, 3705, 3706, 3707, 3709, 3710, 3721, 3733, 3734, 3737, 3742, 3744, 3748, 3749 and 3751 of 2006) are dismissed and those filed by the State Government and agencies/instrumentalities of the State (C.A. Nos.3685, 3712, 3713, 3714, 3715, 3716, 3717, 3718, 3723, 3724, 3726, 3727, 3728, 3729, 3730, 3731, 3732, 3750, 3752, 3753, 3754 and 3755 of 2006) are allowed. The declaration made by the Division Bench that the ban on regularisation will be effective from 19.8.1998 i.e. the date on which Act No.27 of 1998 came into force and that all persons who have completed 5 years service as on that date would be entitled to be considered for regularisation of service is set aside. It is, however, made clear that the daily wage employees and others who are covered by Section 7 of the 1994 Act (amended) and whose services have not been regularised so far, shall be entitled to be considered for regularisation and their services shall be regularised subject to fulfillment of the conditions enumerated in G.O. dated 22.4.1994. With a view to obviate further litigation on this issue, we direct the Government of Andhra Pradesh, its officers and agencies/instrumentalities of the State to complete the exercise for regularisation of the services of eligible employees within four months of the receipt/production of copy of this order, without being influenced by the fact that the application, writ petition or appeal filed by any such employee may have been dismissed by the Tribunal or High Court or this Court.

Since some of the appeals decided by this order relate to part time employees, we direct that similar exercise be undertaken in their cases and completed within four months keeping in view the conditions enumerated in G.O.(P). No.112 dated 23.7.1997.

(B.N. Agrawal J.)