# THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 10th May, 2022

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**SINGLE BENCH: THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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W.P.(C) No.14 of 2018

**Petitioners** **:** Swarna Smriti Pradhan & Others

**versus**

**Respondents** **:** State of Sikkim & Others

Application under Article 226
of the Constitution of India

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**Appearance**

Mr. A.K. Upadhyaya, Senior Advocate with Ms. Rachhitta Rai, Advocate for the Petitioners.

Mr. Sudesh Joshi, Additional Advocate General with Mr. Thinlay Dorjee Bhutia, Government Advocate and Mr. Hissey Gyaltsen, Assistant Government Advocate for State-Respondents No.1, 3 and 4.

Mr. Bhusan Nepal, Advocate for the Sikkim Public Service Commission-Respondent No.2.

Mr. A. Moulik, Senior Advocate with Ms. K.D. Bhutia, Mr. Ranjit Prasad and Mr. Ateendra Raj Bagdas, Advocates for Respondents No.5 to 15.

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# J U D G M E N T

Meenakshi Madan Rai, J.

***1.(i)*** The Petitioners herein are Labour Inspectors holding LL.B. Degrees and were appointed on 27.01.2015 in the Respondent No.3-Department, vide Reference No.74/SPSC/2015. They are aggrieved by the appointment of Respondents No.5 to 15 in the same Department, in February, 2013, in 11(eleven) vacant, sanctioned, Cadre posts of Labour Inspectors, sans LL.B. Degree required for appointment to the posts. They are also aggrieved by the promotion of Respondents No.7 and 14 on 22.09.2017 to the posts of Assistant Labour Commissioners in the Department by the State-Respondent No.4, vide Office Order No.3065/G/DOP, *(Annexure P-3)* without acquiring the requisite LL.B. Degree in the

interregnum, as recommended by Respondent No.2-Sikkim Public Service Commission, vide its Recommendation dated 31.12.2012 *(Annexure P-1).*

***(ii)*** Respondents No.5 to 11 were appointed initially as Labour Sub Inspectors on contractual basis in the year 2005. Respondents No.12 and 13 were appointed on *ad hoc* basis as Labour Inspectors in the year 2008 and Respondents No.14 and 15 also as Labour Inspectors in the year 2009.

***(iii)*** The Respondents No.5 to 15 then came to be appointed as Labour Inspectors on "temporary regular basis" in the Respondent No.3-Department, vide the impugned Office Order No.74/LD, dated 19.02.2013, based on the Order of Recommendation, of the Respondent No.2, dated 31.12.2012 *(Annexure P-1)*. The appointments were made by relaxing the Roster Points and Educational Qualification, vide the impugned Notification No. No.54/GEN/DOP, dated 03.07.2012.

***2.(i)*** The Petitioners allege that the appointments were made by the State-Respondents No.1, 3 and 4 by invoking the relaxation clauses in the Sikkim State Labour Service Rules, 2006, *(for short, the "Service Rules of 2006")* and the Sikkim State Direct Recruitment (Special Provisions) Rules, 2008, *(for short, the "Recruitment Rules of 2008")* illegally and arbitrarily, in violation of Rule 12(a) of the Service Rules of 2006, which prescribes the minimum Educational Qualification of a Degree in Law *viz.* LL.B., for appointment to the said posts, which Respondents No.5 to 15 did not possess. That, the Recruitment Rules of 2008, notified vide impugned Notification No.137/GEN/DOP, dated 08.07.2008, at Rule 3(3) *inter alia,* provides for relaxation in the eligibility criteria for

Temporary Employees, which is also *ultra vires* Articles 14, 16 and Article 309 of the Constitution of India *(for short, the "Constitution")*. That, due to non-advertisement of the posts of Labour Inspectors since the year 2000, the Petitioners were deprived of an opportunity to apply for it, adversely affecting their future prospects and promotion to higher grades.

***(ii)*** The Petitioners claim to have been appointed as Labour Inspectors on merit, with due adherence to the recruitment procedure laid down by the Service Rules of 2006. That, although the Petitioners objected to the regularization of Respondents No.5 to 15 by a Representation dated, 12.10.2015, *(Annexure P-7),* on grounds that one statutory Act cannot supersede another and that the act of the State-Respondents was arbitrary, it was ignored. Hence, the prayers in the Writ Petition seeking amongst others, to set aside the appointment of Respondents No.5 to 15 from the Cadre posts of Labour Inspectors and quash the impugned Office Order *(of Appointment)* No.74/LD, dated 19.02.2013 as illegal; to declare the Recruitment Rules of 2008 and the Notification, dated 03.07.2012, as *ultra vires* and quash both; and to direct the State-Respondents No.1, 2 and 3 not to supersede the Seniority of the Petitioners in future promotions.

***3.*** In response, the State-Respondents No.1, 3 and 4, while denying *inter alia* the allegations of arbitrariness and illegality, sought to explain that through the years 1977 to 2005, altogether ten posts of Labour Inspectors were created by the State Government, through various Notifications. On 10.10.2011 by Notification No.908/GEN/DOP, *(Annexure R-5),* 15(fifteen) more posts of Labour Inspectors were created in the Respondent No.3-

Department, adding the number of posts of Labour Inspectors to 25(twenty-five). In the year 1992, vide Notification bearing No.50/GEN/ESTT, dated 29.10.1992, *(Annexure R-2),* the Method of and qualification for Recruitment to the post of Labour Inspector and Labour Enforcement Officer in the Respondent No.3-Department were prescribed but did not require an LL.B. Degree as qualification for the post. That, for the first time, the Service Rules of 2006, notified on 28.07.2006, at Rule 12, mandated the minimum qualification of a Law Degree from a recognized University for appointment to the post of Labour Inspector. Rule 31 of the Service Rules of 2006, however, empowered the Government to relax any of the provisions regarding class, category of persons or Cadre posts where it was considered necessary or expedient to do so, for reasons to be recorded. That, the Recruitment Rules of 2008 in *Proviso 1* to Rule 3(2) provides for consideration of Temporary Employees in 50% of the total number of vacant posts. Rule 2(e) of the Recruitment Rules of 2008 also provides for relaxation in Roster Points, Age, Qualification or Experience, to such extent as may be feasible. The State-Respondents, vide the impugned Notification, dated 03.07.2012, invoked the relaxation provisions under Rule 31 of the Service Rules of 2006 and Rule 3(2) of the Recruitment Rules of 2008, thereby relaxing the Educational Qualification and Roster Points of the Temporary Employees. Pursuant thereto, the Respondent No.2 conducted a Written Examination for Respondents No.5 to 15 on 20.10.2012, followed by *Viva Voce* on 29.11.2012. As per the Merit List submitted by Respondent No.2, the Services of Respondents No.5 to 15 were regularized on 19.02.2013.

Written Examinations were also conducted by Respondent No.2 for the remaining posts of Labour Inspectors, followed by *Viva Voce* and the seven Petitioners, were appointed on 27.01.2015 as Labour Inspectors. That, the promotion of Respondents No.7 and 14 vide Office Order No.3065/G/DOP, dated 22.09.2017 *(Annexure P-3, document of the Petitioners)*, from Labour Inspectors to Assistant Labour Commissioners, is only on Officiating capacity. That, the Writ Petition, therefore, deserves to be dismissed on grounds that regularization of the Respondents No.5 to 15 took place in 2013 and has been challenged in the year 2018 when the Respondents No.5 to 15 were appointed after compliance of all relevant procedures, hence, the Petitioners are barred by the principles of Delay, Laches and Acquiescence.

***4.*** The Respondent No.2, in its Return, averred that the State-Respondents No.1, 3 and 4 had forwarded a proposal to the Respondent No.2 for filling up of 11(eleven) posts of Labour Inspectors through Direct Recruitment in terms of the Recruitment Rules of 2008, after the Respondent No.4-Department had relaxed the provisions of Roster Points and Educational Qualification in exercise of the powers conferred by Rule 31 of the Service Rules of 2006 and Rule 3 of the Recruitment Rules of 2008 as a one-time relaxation. Examinations and *Viva Voce* of the candidates were conducted by Respondent No.2 and the Merit List forwarded to State-Respondent No.3 vide Letter, dated 31.12.2012, with a clear advice to the Administrative Department to send the selected Candidates for appropriate Training and obtaining a Degree in Law, for those who lacked it.

***5.*** Respondents No.5 to 15 reiterated the facts as averred by the State-Respondents No.1, 3 and 4 and clarified that the initial appointments of Respondents No.5 to 11, before 2006, was on Contractual Basis in the exigencies of Service, by Executive instructions, while the other Respondents were appointed on *ad hoc* basis. The Respondents No.12, 13 and 15 are Law Graduates, Respondent No.14 is a Post Graduate and the other Respondents are Graduates. That, as per the decision taken in the Cabinet Meeting held on 25.08.2011, the Petitioners were appointed in 50% of the Direct Recruitment Quota. By 2012, Respondents No.5 to 11 had completed six years of Service and acquired extensive experience, hence, the Seniority of the Petitioners cannot be retrospective and is to be determined from the date of their appointment. The Petitioners chose to sleep over the matter and acquiesced their rights, leaving the delay and laches unexplained. That, the grounds stated by the Petitioners are not tenable in law and the same is liable to be rejected.

***6.*** Learned Senior Counsel Mr. A.K. Upadhyaya, advancing his arguments for the Petitioners, contended that the Notifications which created posts of Labour Inspectors, dated 09.08.1977, 09.05.1980, 12.09.1990 and 29.10.2005 did not envisage the posts of *ad hoc* Labour Sub Inspectors, to which posts Respondents No.5 to 11 were initially appointed, hence, their appointment is illegal *ab initio.* Respondents No.12 to 15 came to be appointed as *ad hoc* Labour Inspectors in the year 2008. The appointments of 2008, are contrary to the Service Rules of 2006 and that of Respondents No.5 to 11, in contravention to the Notification of 1992 as well, since it provides that recruitment is to be 100% by

Direct Recruitment through advertisement and Open Competitive Examinations, which was not complied with by the State-Respondents while appointing Respondents No.5 to 15, in direct violation of Articles 14 and 16 of the Constitution. That, the impugned Recommendation of Respondent No.2 to appoint Respondents No.5 to 15 in the posts of Labour Inspectors contravening the Rules, was consequently illegal. That, the State-Respondent No.4 is to be held equally liable for violation of the provisions of the Statute by issuing the impugned Notification, dated 03.07.2012, relaxing the Roster Points and Educational Qualification for the 11(eleven) posts of Labour Inspectors, merely for the purpose of facilitating the appointment of Respondents No.5 to 15. Admitting that prior to 2006, a Degree in Law was not compulsory for appointment to the post of Labour Inspector, it was urged by Learned Senior Counsel for the Petitioners that Respondents No.5 to 15, however, were appointed by regularization of their Services only in the year 2013, when the Service Rules of 2006, which provided for a Degree in Law, was already in existence but was overlooked by the State-Respondents No.1, 3 and 4, to extend the benefit of employment to the Respondents No.5 to 15. Relying on the ratio of ***Secretary, State of Karnataka and Others vs. Umadevi (3) and Others***[1], it was contended that the Recruitment Rules of 2008 is in violation to the directions of the Hon'ble Supreme Court in the said ratio, which propounded that if Rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance thereof. That, no Government Order, Notification or Circular can be substituted for the Statutory Rules framed under the Law. Further,

[1] (2006) 4 SCC 1

strength was also sought to be garnered from the decision of the Hon'ble Supreme Court in ***M.P. State Cooperation Bank Limited, Bhopal vs. Nanuram Yadav and Others***[2] where it was held that in matters of public appointments, the appropriate procedure prescribed, have to be followed, violation of which would amount to breach of Articles 14 and 16 of the Constitution. That, the Petitioners were appointed on 27.01.2015 *(Annexure P-5)*, with a Probation Period of one year to be completed on 27.01.2016, in the intervening period on 12.10.2015, the Petitioners submitted a written Representation *(Annexure P-7),* to the State-Respondents laying forth their grievances with regard to the violation of the Service Rules of 2006, which the State-Respondents ignored. The appointments of Respondents No.5 to 15 having been made illegally, their claim to Seniority does not arise neither are they entitled to promotion, having entered through the back door. While relying on the decision in ***N. Balakrishnan vs. M. Krishnamurthy***[3] with regard to the question of delay and laches, it was contended that when substantial justice is at stake, the technicality of limitation is irrelevant. Hence, the prayers be granted.

***7.(i)*** Mr. A. Moulik, Learned Senior Counsel for Respondents No.5 to 15, rebutting the submissions *supra,* contended that some of the Respondents were appointed in the year 2005, others in the year 2008 and two more in the year 2009. Two Respondents were promoted on Officiating capacity as Assistant Labour Commissioners on 22.09.2017 but the instant Writ Petition was filed belatedly in May, 2018. That apart, the Service Rules of 2006, the Recruitment Rules of 2008, the Recommendation of the

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[2] (2007) 8 SCC 264
[3] (1998) 7 SCC 123

Respondent No.2, dated 31.12.2012, and the Cabinet Decision of 25.08.2011, have also not been assailed, neither have the other Assistant Labour Commissioners, who would be affected by the instant Judgment been impleaded as parties in the instant matter. In light of the above enumerated circumstances, the appointment of Respondents No.5 to 15 cannot now be challenged. On this aspect, attention was drawn to the ratio in ***Amarjeet Singh and Others vs. Devi Ratan and Others***[4] and ***M.P. Palanisamy and Others vs. A. Krishnan and Others***[5].

***(ii)*** While contending that the Petitioners chose to sleep over their rights for more than three years, Learned Senior Counsel buttressed his submissions by relying on the ratio of ***University of Delhi vs. Union of India and Others (2020)***[6] wherein it was held that the Court is to consider sufficient cause for condonation of delay and the delay of the Petitioners cannot be held lightly when they approach the Court after certain rights have accrued to the other parties. Reliance was also placed on the decision of ***N. Balakrishnan*** *(supra)* wherein the Court observed that length of delay is not the criterion but the acceptability of the explanation is. That, sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation, whereas in certain other cases, delay of a very long range can be condoned, if the explanation thereof is satisfactory. That, no satisfactory explanation for the delay was advanced by the Petitioners.

***(iii)*** It was further contended that promotion is a normal incidence of Service and had the Respondents No.7 and 14 not been promoted, they would have stagnated in the posts, in which

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[4] (2010) 1 SCC 417
[5] (2009) 6 SCC 428
[6] (2020) 13 SCC 745

situation the Court is empowered to issue necessary directions. On this point, reliance was placed on ***Food Corporation of India and Others vs. Parashotam Das Bansal and Others***[7]. It was also urged that the Service Rules of 2006 do not require advertisement to the posts and both the Service Rules of 2006 and the Recruitment Rules of 2008 allow relaxation of Age, Category and Educational Qualification. That, in fact, the appointments have been made in consonance with the Rules, as the Respondents No.5 to 15 took the Written Examinations and faced the *Viva Voce* Tests and therefore ought not to be made to suffer. The ratio of ***Amarjeet Singh and Others*** *(supra)* was invoked to buttress this submission. That, the Rules have been relaxed for one-time to accommodate the Respondents No.5 to 15 without any arbitrariness, as the State is a Model Employer and no illegality emerges therein. Hence, the Writ Petition deserves a dismissal.

***8.*** Mr. Sudesh Joshi, Learned Additional Advocate General for State-Respondents No.1, 3 and 4, while adopting the arguments *(supra)* forwarded by Learned Senior Counsel for Respondents No.5 to 15, contended that a Writ of *Quo Warranto* will apply only if eligibility conditions for the requisite post are non-existent. In the instant case, the eligibility conditions have been duly relaxed by the Government as per the Rules. That, the case of the Petitioners is also hit by delay and laches, which has gone unexplained. Towards this point, reliance was placed on ***Union of India and Others vs. N. Murugesan and Others***[8]. Learned Additional Advocate General contended that a litigant who invokes the jurisdiction of a Court claiming Seniority, should approach the

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[7] (2008) 5 SCC 100
[8] (2022) 2 SCC 25

Court at the earliest or at least within a reasonable span of time. That, a belated approach is impermissible as in the meantime, interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy. Reliance was placed on ***Vijay Kumar Kaul and Others vs. Union of India and Others***[9]***.***

***9.*** Learned Counsel Mr. Bhusan Nepal, for Respondent No.2, adopted the arguments *supra* and chose not to augment the arguments.

***10.*** The rival submissions put forth by Learned Counsel were heard at length. I have carefully perused and considered the pleadings, the entire documents appended, as well as the citations made at the Bar.

***11.*** The question that arises for consideration before this Court is whether any illegality besmirches the appointments and regularization of the Services of Respondents No.5 to 15 in the posts of Labour Inspectors?

***12.(i)*** Article 309 of the Constitution of India deals with Recruitment and Conditions of Service of persons serving the Union or a State. Recruitment is a comprehensive term and includes any method provided for inducting a person in Public Service, Appointment, Selection, Promotion, Deputation, which are all well known Methods of Recruitment. Appointment by transfer is also not unknown ***(See K. Narayanan and Others vs. State of Karnataka and Others***[10]***).*** The Constitution does not aim at providing detailed Rules for Recruitment or Conditions of Services of the Union or of the States. It merely lays down certain general provisions. The power

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[9] (2012) 7 SCC 610
[10] AIR 1994 SC 55

of appointment belonging to the Executive is subject to Legislative control. Article 309 does not stand in the way of the appropriate Legislature laying down necessary Conditions of Service.

***(ii)*** In the instant matter, the Service Rules of 2006 and the Recruitment Rules of 2008 have both been framed under Article 309 of the Constitution which, as already stated, does not stand in the way of the Legislature laying down necessary Conditions of Service. Consequently, a relaxation clause has also been inserted in the Rules, both of 2006 and 2008, which have been invoked by the State-Respondents No.1, 3 and 4, where it deemed it necessary to do so in the exigencies of Service. The fact that Respondents No.5 to 15 had been in Service for several years and had gained sufficient experience in their field to man the concerned posts, was duly taken into consideration by the Government while invoking the relaxation clause to afford an opportunity to Temporary Employees in due consideration of Rule 3(2) of the Recruitment Rules of 2008 which provides that;

> "***3.*** (1)………………………………………………………………………
> **(2)** Temporary employees in a Department, if any, subject to their having qualified in the test/interview, will be considered for selection to such number of posts in the concerned department as may be found suitable having regard to their performance in test or in interview including their overall assessment and proficiency:….."

It is worthwhile noticing that despite such relaxation *viz.* of Educational Qualification and Roster Points, the said Respondents did face the rigours of a Written Examination and *Viva Voce.* It was only on qualifying in the Written Examinations and *Viva Voce* that the Respondent No.2, prepared the Merit List and recommended their appointments. The act of the State, in such circumstances, cannot be termed arbitrary.

***(iii)*** It was the argument of Learned Senior Counsel for the Petitioners that there were no posts of Sub Inspectors at the time

of the appointment of Respondents No.5 to 11. That is indeed correct, however, at the relevant time, the appointment of the said Respondents were made on Executive instructions evidently in the exigencies of Service and no objection was raised from any quarter on such appointments having taken place.

***(iv)*** It would be apposite at this juncture, to refer to the relaxation clause in the Rules invoked by the State-Respondents to accommodate Respondents No.5 to 15.

***(v)*** Rule 31 of the Service Rules of 2006, provides that;

> "**31. Power to relax:-**
> Where the Government is of the opinion that it is necessary or expedient to do so, it may by order, for reasons to be recorded in writing, relax any of the provisions of these rules with respect to any class or category of persons or cadre posts."

***(vi)*** Rule 3(1) of the Recruitment Rules of 2008 reads as follows;

> "**3.(1)** Notwithstanding anything contained in any other rule for the time being in force, in direct recruitment to posts under different categories of services in the State Government, there may be allowed such relaxation in matters of eligibility criteria for temporary employees, if any, in the Government Department as may be considered expedient.
> Provided that such relaxation may not be granted as a matter of rule but only to allow candidates with experience and expertise gained during such temporary employment in a job to be able to complete, subject to their being found fit in all other respects:
> Provided further that relaxation may be allowed only in those cases wherever it is found feasible and it shall not be allowed or resorted to in respect of posts requiring specific technical qualification or physical standard."

***(vii)*** Rule 2.(e) of the Recruitment Rules of 2008 defines the term *"Relaxation"* as under;

> "**2**. In these rules, unless the context otherwise requires:-
> (a).........
> (b).........
> (c).........
> (d).........
> **(e)** "Relaxation", means such relaxation in matters of direct recruitment for such category of posts as may be specified in any notification for recruitment and includes

> relaxation in roster points, age, qualification or experience, etc. to such extent as may be feasible;
> …………."

***13.(i)*** It is worth noticing that Rule 31 of the Service Rules of 2006 provides for relaxation of any of the provisions of the rules with respect to any class or category of persons or Cadre posts, while Rule 3(1) of the Recruitment Rules of 2008 provides that relaxation in eligibility criteria may be made for temporary employees, if any, in the Government Department, as may be considered expedient. The Second *Proviso to* Rule 3(1) of the Recruitment Rules of 2008 *inter alia* lays down that relaxation will not be resorted to for posts requiring specific technical qualification.

***(ii)*** While noticing the *non obstante* clause which occurs in Rule 3(1) of the Recruitment Rules of 2008, read with the Second *Proviso* therein *(supra),* pertinent reference may be made to the ratio in ***State of Bihar and Others vs. Bihar Rajya M.S.E.S.K.K. Mahasangh and Others***[11] wherein it was explained that *non obstante* clause is generally appended to a Section with a view to give the enacting part of a Section, in case of a conflict, an overriding effect, over the provision in the same or other Act mentioned in the *non obstante* clause.

***(iii)*** In ***Municipal Council Palai Through the Commissioner of Municipal Counsel, Palai vs. T.J. Joseph and Others***[12] the Hon'ble Supreme Court observed that there is a presumption against a repeal by implication and the reason for this Rule is based on the theory that the legislature, while enacting a law has a complete knowledge of the existing law on the same subject and, therefore,

[11] (2005) 9 SCC 129
[12] AIR 1963 SC 1561

when it does not provide a repealing provision, it indicates the intention not to repeal the existing legislation. That, such a presumption can be rebutted and repealed by necessary implication and can be inferred only when the provisions of the new Act are so inconsistent with or repugnant to the provisions of the earlier Act and the two cannot stand together.

***(iv)*** In ***R.S. Raghunath vs. State of Karnataka and Others***[13] the principle question involved was whether Rule 3(2) of the Karnataka Civil Services (General Recruitment) Rules, 1997, had an overriding effect over the Karnataka General Service (Motor Vehicles Branch) (Recruitment) Rules, 1976. After examining the statutes, the Hon'ble Supreme Court elucidated that a special Enactment or Rule cannot be held to be overridden by a later general Enactment simply because the latter opens up with a *non obstante* clause. There should be a clear inconsistency between the two before giving an overriding effect to the *non obstante* clause.

***(v)*** In ***State (NCT) of Delhi vs. Sanjay***[14] the Hon'ble Supreme Court observed that a *non obstante* clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. In the same ratio, the observations made in ***Liverpool Borough Bank vs. Turner***[15] was considered wherein Lord Campbell, CJ, held that no universal rule can be laid down for the construction of statutes, as to whether mandatory enactments shall be considered directory only or obligatory, with an implied nullification for

[13] AIR 1992 SC 81
[14] (2014) 9 SCC 772
[15] (1860) 30 LJ Ch 379

disobedience. It is the duty of Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed. It was further observed that the question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other. The pronouncements *supra* clear the air on the effect of *non obstante* clauses appearing in Statutes.

***(vi)*** While considering the Second *Proviso supra*, in **Maxwell's Interpretation of Statutes, 10th Edition, Page 162**, while dealing with the cardinal rule of construction of the provisions of a section with *proviso,* it was elucidated as under;

> "The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light if need be on the rest.
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> The true principle undoubtedly is, that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail."

In ***Tahsildar Singh vs. State of U.P.***[16] while relying on the aforesaid extract, it was held as follows;

> "**14**. ………………Unless the words are clear, the Court should not so construe the proviso as to attribute an intention to the legislature to give with one hand and take away with another. To put it in other words, a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two."

***(vii)*** It is to be presumed that the State Legislature, while enacting the provisions of the Recruitment Rules of 2008, was well

[16] AIR 1959 SC 1012

aware of and had complete knowledge of the Service Rules of 2006 and the relaxation clause embedded in Rule 31 of the said Rules. The Service Rules of 2006 allow relaxation with no contingency contrary to that as found in the Second *Proviso* of the Recruitment Rules of 2008. The Recruitment Rules of 2008, however, nowhere states that the Service Rules of 2006 which are specific to the Respondent No.3-Department, have been repealed. The interpretation of the *non obstante* clause and the Second *Proviso* in the Recruitment Rules of 2008 would have to be interpreted in this background. On the edifice of the Judgments cited hereinabove, it is clear that the Recruitment Rules of 2008 and the Service Rules of 2006 are to be construed harmoniously and there cannot be too much concentration on one Rule and no attention paid to another. The intention of the Legislature is to be culled out from the enactments. Thus, in the case of Respondents No.5 to 15, the relaxation clause devoid of any contingency, being Rule 31 in the Service Rules of 2006, continued to hold sway. That having been said, the Respondents No.5 to 15 cannot be faulted for their earlier temporary appointments as Labour Sub Inspectors or Labour Inspectors on *ad hoc* and some on contract. It would undoubtedly be unreasonable, unjust and arbitrary to penalize Respondents No.5 to 15 for the failure of the State-Respondents to invite applications from the Open Market and follow the procedure prescribed by the Rules. It would also be incongruous to apply the Educational Qualification required by the Service Rules of 2006 to persons appointed prior to the Rules, foist the new qualifications on them and thereby set aside their appointments on grounds of lack of qualification.

***14.(i)*** Reverting back to the Rules *supra* and the relaxation clauses therein, the Hon'ble Supreme Court in ***Anil Kumar Vitthal Shete and Others vs. State of Maharashtra and Another***[17] held that it is always open to an Employer to adopt a Policy for fixing Service Conditions of his Employees. Such Policy, however, must be in consonance with the Constitution and should not be arbitrary, unreasonable or otherwise objectionable. In ***State of Gujarat and Others vs. Arvindkumar T. Tiwari and Others***[18] it was held that the power to relax the recruitment rules or any other rule made by the State Government/authority is conferred upon the Government/ authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said Rules might have become impossible. In ***Ashok Kumar Uppal and Others vs. State of Jammu and Kashmir and Others***[19] the Hon'ble Supreme Court taking into consideration a case of relaxation of Recruitment Rules, observed that it was a case in which the Government had not acted arbitrarily or capriciously but had proceeded to relax the Rules to obviate genuine hardship caused to a class of employees, namely, the Appellants and directed their promotion in relaxation of the Rules. That, the power to relax the Recruitment Rules or any other Rule made by the State Government, under Article 309 of the Constitution, is conferred upon the Government to meet any emergent situation where injustice might have been caused or is likely to be caused to any individual employee or class of employees or where the working of the Rule might have become impossible. That, under Service Jurisprudence as also the

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[17] (2006) 12 SCC 148
[18] (2012) 9 SCC 545
[19] (1998) 4 SCC 179

Administrative Law, such a power has necessarily to be conceded to the Employer particularly the State Government or the Central Government, who have to deal with hundreds of Employees working under them in different Departments. In ***State of Maharashtra vs. Jagannath Achyut Karandikar***[20] it was held that the power to relax the conditions of the rules to avoid undue hardship in any case or class of cases cannot now be gainsaid. In ***J.C. Yadav and Others vs. State of Haryana and Others***[21] the Hon'ble Supreme Court laid down that the relaxation of the Rules may be to the extent the State Government may consider necessary for dealing with a particular situation in a just and equitable manner. That, the power of relaxation is generally contained in the Rules with a view to mitigate undue hardship or to meet a particular situation. That, many a times strict application of Service Rules creates a situation where a particular individual or a set of individuals may suffer undue hardship and further there may be a situation where requisite qualified persons may not be available for appointment to the service. In such a situation, the Government has the power to relax requirement of the Rules. The State Government may, in exercise of its powers, issue a general order relaxing any particular Rule with a view to avail the services of requisite Officers.

***(ii)*** In ***Sandeep Kumar Sharma vs. State of Punjab and Others***[22] the Hon'ble Supreme Court observed *inter alia* as follows;

> "**14.** ………The power of relaxation even if generally included in the service rules could either be for the purpose of mitigating hardships or to meet special and deserving situations. Such rule must be construed liberally, according to the learned Judges. Of course arbitrary exercise of such power must be guarded against. But a narrow construction is likely to deny benefit to the really deserving cases. We too are of the view that the rule of relaxation must get a

[20] AIR 1989 SC 1133
[21] AIR 1990 SC 857
[22] (1997) 10 SC298

> pragmatic construction so as to achieve effective implementation of a good policy of the Government."

***(iii)*** In light of these pronouncements *supra*, it is clear that the Government is clothed with adequate powers to relax the Rules and Conditions affecting the Conditions of Service of an Employee or Class of Employees, to prevent undue hardship to any case or class of cases and ensure that injustice is not meted out to any Employee or class of Employees. It goes without saying that the relaxation clause, when invoked, must be just and equitable.

***(iv)*** While on this point, it is pertinent to point out that the Petitioners were not even borne in the Cadre when Respondents No.5 to 15 were appointed in 2005, 2008 and 2009 as disclosed *supra* and subsequently their Services regularized on 19.02.2013. The Petitioners were appointed on 27.01.2015 and filed the Writ Petition in May, 2018. In this context, in ***Nani Sha and Others vs. State of Arunachal Pradesh and Others***[23] the Hon'ble Supreme Court held *inter alia* as under;

> '**16**. **Lastly, the High Court has specifically rejected the claim of the appellants on another ground, namely, that the appellants were not borne in the cadre of ACF on the date from which they had been given the seniority. We are in complete agreement with the High Court, particularly in view of the decision of this Court in *State of Bihar* v. *Akhouri Sachindra Nath* [1991 Supp (1) SCC 334**:1991 SCC (L&S) 1070:(1991) 16 ATC 936] which decision was reiterated in *State of Bihar* v. *Bateshwar Sharma* [(1997) 4 SCC 424:1997 SCC (L&S) 975] . We do not want to burden this judgment with further reported decisions. However, the same view has been taken in another reported decision of this Court in *Uttaranchal Forest Rangers' Assn. (Direct Recruit)* v. *State of U.P.* [(2006) 10 SCC 346:(2007) 1 SCC (L&S) 116:JT (2006) 12 SC 513] where at para 18, this Court has taken a view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to be adversely affecting those who were appointed validly in the meantime.'
>
> **[Emphasis supplied]**

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[23] (2007) 15 SCC 406

***(v)*** On the same aspect, in ***Sunaina Sharma and Others vs. State of Jammu and Kashmir and Others***[24] the Hon'ble Supreme Court, while considering retrospective promotion and consequent seniority, opined *inter alia* as follows;

> '**18**. In our view the Rules in question clearly provide that not only vacancies should have been existing from an earlier date but the person to be granted retrospective promotion should have also been working against the post. …………..
>
> **19**. It is well settled that retrospective promotion to a particular group can violate Articles 14 and 16 of the Constitution of India. Even if the Rules enable the State to make retrospective promotion, such promotion cannot be granted at the cost of some other group. Therefore, the only reasonable interpretation can be that the promotees can get promotion from an anterior date only if they have worked against the said post even if it be on temporary or officiating, or ad hoc basis, ………'

***15.(i)*** While addressing the issue of delay in approaching the Court, the Hon'ble Supreme Court in ***N. Murugesan and Others*** observed *inter alia* that;

> "**22.** Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. **By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court**. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy."
>
> **[Emphasis supplied]**

***(ii)*** In ***Vijay Kumar Kaul*** *(supra),* relied on by the Learned Additional Advocate General, the Hon'ble Supreme Court laid down *inter alia* as under;

> "**25.** In *City and Industrial Development Corpn.* v. *Dosu Aardeshir Bhiwandiwala* [(2009) 1 SCC 168 : AIR 2009 SC 571] this Court has opined that:(SCC p. 174, para 26)
>
> > "*26*. …One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a writ is an adequate ground for refusing a writ. The principle is that the courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming

[24] (2018) 11 SCC 413

> matters where the rights of third parties may have accrued in the interregnum."
>
> **26.** From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy."

No reasons have been enumerated by the Petitioners as to why they approached the Court only in 2018 when they themselves were appointed in 2015. When the delay is unexplained, the relief will not be forthcoming.

***(iii)*** Resort had been taken by Learned Senior Counsel for the Petitioners to the ratio of ***M.P. Palanisamy*** *(supra)*. The said matter pertained to appointment of Post Graduate Teachers who were appointed on *ad hoc* basis in terms of Rule 10(a)(i)1) of the General Rules of the Tamil Nadu Public Service Commission, 1981. Subsequently, in 1984, steps were taken to make regular appointments through the Public Service Commission. The *ad hoc* appointees were given an opportunity to compete with other candidates but they did not do so and claimed regularization without being subjected to Examination conducted by the Public Service Commission. The candidates selected by the Public Service Commission were appointed in 1986. The Hon'ble Supreme Court *inter alia* held that all the T.N. PSC PG Assistants were already in Service, when the question of regularisation of the PG Assistants appointed under Rule 10(*a*)(*i*)(1) came for consideration. Till then, the Government had steadfastly refused the regularisation and ultimately, chose to regularise them only in 1988. Therefore, the stance of the Government in providing the second condition was absolutely correct and by mere subsequent regularisation, that too without taking any examination under T.N. PSC or undergoing any

recruitment process and facing general competition from the other candidates, the *ad hoc* PG Assistants could not be held senior to those, who were already in service. The facts therein are thus distinguishable from the present case inasmuch, as the Respondents No.5 to 15 on relaxation of Educational Qualification and Roster Points have taken the Written Examination and Interview in 2013 and were recommended by the Respondent No.2 for appointments in the vacancies that existed for Labour Inspectors prior in time to the appointment of the Petitioners.

***16.*** A careful consideration of the facts and circumstances indicate that the State Government, in exercise of its powers, has taken reasonable steps to prevent injustice to Respondents No.5 to 15, who were appointed in the exigencies of Service by Executive instructions. The extract of the Cabinet Meeting held on 25.08.2011 *inter alia* reads thus;

> "**176.18** The proposal seeking approval to create 15 posts of Inspectors in the Pay Band of-Rs:9300-34800 with grade pay of Rs.3800. It is mentioned that there are 9 posts of Inspector lying vacant and as many as 12 Inspectors are appointed on Adhoc basis. **With the creation of 15 new posts, the total strength of Inspectors will be 25 and 50% of the sanctioned strength will be filled up by regularizing the service of Inspectors working on Adhoc basis immediately**. In order to minimize the financial burden, the 12 posts under direct recruitment quota will be filled up in three phases commencing from 2013-14 only, as detailed in the Cabinet Memo.No.6/DL Dated 24.08.2011.
>
> **CABINET DECISION: The Cabinet approved the above proposal.**
>
> ……………"

**[Emphasis supplied]**

When this proposal was processed, the Petitioners had not even been appointed and although they claim that they were deprived of future benefits, this is mere speculation as no details are forthcoming before the Court to assess whether, in the first instance, they were eligible for appointment to the coveted posts in the years 1977; 1980; 1990 and 2005, when the concerned posts

were created or for that matter in 2013 when Respondents No.5 to 15 were appointed vide Order, dated 19.02.2013. Subsequently, in the year 2014, the State-Respondents advertised the posts to which, the Petitioners were then duly appointed. It is now no more *res integra* that there can be no retrospective promotion or seniority, which rings clear as a bell from the precedents *supra.* The Correspondence by the Petitioners to the State Government, dated 12.10.2015, appears to be a *faux* document as no Office or Department has been addressed therein nor is there an endorsement of receipt by any concerned Authority and is thus disregarded by this Court. In any event, detailed discussions have already taken place *supra* with regard to the Service Rules of 2006 and the Recruitment Rules of 2008. Pertinently, the observation of the Hon'ble Supreme Court in ***Umadevi*** *supra,* may be noticed when dealing with the appointment of Temporary Employees or Employees who came in through the back door. The Hon'ble Supreme Court observed therein as follows;

> "**53.** One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *S.V. Narayanappa* [(1967) 1 SCR 128:AIR 1967 SC 1071], *R.N. Nanjundappa* [(1972) 1 SCC 409:(1972) 2 SCR 799] and *B.N. Nagarajan* [(1979) 4 SCC 507:1980 SCC (L&S) 4:(1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. …………"

In the instant case, the lack of qualification of the Respondents No.5 to 15, on pain of repetition, was relaxed by the State-Respondents.

***17.*** While disagreeing with the argument of Learned Senior Counsel for Respondents No.5 to 15 contending that the Service Rules of 2006 and the Recruitment Rules of 2008 do not envisage for advertisement to the posts concerned, it may relevantly be pointed out that the Rules appear to be unhappily drafted since it provides for Method of Recruitment but has omitted Rules pertaining to advertisement of the posts, nevertheless there can be no assumption that appointments can be made without inviting applications by way of advertisements in the Open Market. Such a circumstance would undoubtedly be arbitrary and unreasonable and violate the Constitutional provisions.

***18.*** So far as the question of the promotion of Respondents No.7 and 14 is concerned, it is worth remarking that they are not LL.B. Degree holders, their promotions on Officiating capacity were made vide Office Order No.3065/G/DOP, dated 22.09.2017 *(Annexure P-3)* and after the Service Rules of 2006 were enforced. The said Rules require the qualification of a Degree in Law from a recognized University for appearing in Competitive Examination for promotion *(Annexure R-2, collectively).* However, as they have been promoted only on officiating capacity vide Office Order, dated 22.09.2017 *(supra),* when steps are being taken for promotion, it is expected that the State-Respondents will refer to the Correspondence of Respondent No.2 to the Respondent No.3 bearing No.SPSC/25(1)NG(D)12/412, dated 31.12.2012, *(Annexure R-6, document of Respondent No.2)* (notwithstanding

the relaxation clause), wherein it has been specifically recommended that while selecting Respondents No.5 to 15 to the posts of Labour Inspectors, the selected candidates who do not possess LL.B. Degree shall acquire it prior to their promotion to the next higher post *(Annexure P-1, document of the Petitioners).*

***19.*** In conclusion, it is essential to observe that the object of a proceeding for *Quo Warranto* is to protect the public from usurpation of a public Office by a person who is not legally entitled to hold it. In the backdrop of the foregoing detailed discussions, it is clear that the Petitioners have failed to establish contravention of the binding rule of law and thereby failed to make out a case for this Court to exercise its Writ jurisdiction for issuance of a Writ of *Quo Warranto.* The State Government cannot be faulted for invoking its power to relax the Rules and regularizing the Services of Respondents No.5 to 15. There is nothing unreasonable or deprivatory of the rights of any other person by invocation of the powers vested with the State-Respondents. Resultantly, the appointment and regularization of Services of Respondents No.5 to 15 cannot be said to be besmirched by any illegality. Consequently, I find that the Petitioners are not entitled to any of the reliefs claimed.

***20.*** Writ Petition stands dismissed and disposed of accordingly.

***21.*** No order as to costs.

**( Meenakshi Madan Rai )**
**Judge**
**10.05.2022**

ml Approved for reporting : **Yes**