

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI

DATE OF DECISION: 10.3.1989.

(1) Regn. No. OA 876 of 1987

Mrs. Suraksha Markande

.. Applicant

Versus

Union of India through the Secretary,
Ministry of Human Resource Development,
Department of Youth Affairs and Sports,
'C' Wing, New Delhi and another

.. Respondents.

(2) Regn. No. OA 869 of 1987:

R.R.Sharma & Others

.. Applic-ants

Versus

Union of India & Another

.. Respondents

(3) Regn.No.OA 877 of 1987.

Attar Singh

.. Applicant

Versus

Union of India & Another

.. Respondents

(4) Regn. No.OA 574 of 1987.

Dr. M.P.Agarwal

.. Applicant

Versus

Union of India & Another

.. Respondents.

(5) Regn. No. 2329 of 1988.

Mohd. Aqil

.. Applicant

Versus

Union of India etc.

.. Respondents

(6) Regn. No. 960 of 1987.

Regn.No.OA 2328 of 1988. S.M.Mehta & Others

.. Applicants

N.L.Parmar & Ors.*

Versus

V/s

Union of India etc. Union of India etc. .. Respondents.

Presents:

Mrs. Shyamla Pappu, Sr. Advocate with Sh. Ajay Aggarwal, Advocate, and Mr. R.L.Sethi, Advocate, Counsel for the Applicants.

Mr. G.Ramaswamy, Addl. Solicitor General of India of India and S/Shri P.P.Khurana, H.K.Gangwani, S.P.Talwar, P.H.Ramchandani, Advocates for the Respondents. Mr. B.D.Dutta, Addl. Solicitor General for Nehru Yuva Kendra Sangathan.

CORAM:

Hon'ble Mr. Justice J.D.Jain, Vice-Chairman.

Hon'ble Mr. Kaushal Kumar, Administrative Member.

JUDGMENT:

(Judgment of the Bench delivered by Hon'ble
Mr. Justice J.D.Jain, Vice Chairman).

-.-.-

Since in all the above mentioned seven applications filed under Section 19 of the Administrative Tribunals Act, 1985 (for short the 'Act') common questions of law and fact are involved, we are disposing them of by this common judgment.

The undisputed facts in these cases are that the Government of India, the then Ministry of Education and Social Welfare (Department of Education) now re-designated as the Ministry of Human Resource Development (Department of Youth Affairs and Sports), launched a scheme of establishing a Nehru Yuvak Kendra (Centre) in every District of the Country w.e.f.

14-11-1972 i.e. the Birth anniversary of late Pt. Jawahar Lal Nehru and the year of the Silver Jubilee celebration of the independence of the Country to enable the non-student Rural Youths to act as vanguard in the process of development in the rural areas and in furtherance of the nationally accepted objectives like Democracy, Secularism, Indianess, Self-reliance, Integrity and Development of Scientific temper. With that object in view, the Government of India called upon the State Governments to recommend the names of enthusiastic and experienced officers having an aptitude and back-ground for working of rural activities for selection for the post of Youth Co-ordinator which was Class-I (Gazetted) Central Government post. The process of selection involved initial assessment and selection

by a Selection Committee of high ranking officers of the concerned State Government to be followed by further selection by the Central Government Selection Committee constituted by the Government of India. The candidates so selected and recommended by the State Level Selection Committee and the Central Government Selection Committee were offered appointment to the posts of Youth Co-ordinators on deputation basis.

Annexure-A to the application in OA 869 of 1987 is a specimen letter, which was likewise issued to all concerned States for appointment of the selected candidates on deputation as Youth Co-ordinators in the Nehru Yuvak Kendras being set up by the Government of India. As per the Terms and Conditions, the persons selected were/be initially on deputation for a period of one year in the first instance and their further continuance beyond this period depended on their selection in consultation with the Union Public Service Commission (for short 'UPSC') after the Recruitment Rules had been finalised. However, it appears that the Draft Rules for recruitment to the post of Youth Co-ordinator were not notified despite concurrence of the UPSC having been accorded in 1975 till 13-9-1980 when the Ministry of Education and Culture (Department of Education)Nehru Yuvak Kendra (Youth Co-ordinator)Rucruitment Rules, 1980 (hereinafter referred to as "the Recruitment Rules") were published in the Government of India Gazette dated 13th of September, 1980. A perusal of the said Rules would show that the total number of posts of Youth Co-ordinators was 255. It was a General Central Service (Group-A Gazzeted)post.

24

The period of probation as envisaged was two years and the method of recruitment was "by transfer on deputation" (including short term contract), failing which by 'direct recruitment'. The Rules further provided that "selection shall be made in consultation with the Commission on each occasion. Consultation with the Commission was also necessary while amending/relaxing any of the provisions of these rules". Still later, the Recruitment Rules were modified vide Notification dated 13th of October, 1986 called the Ministry of Education and Culture (Department of Education) Nehru Yuva Kendra (Youth Co-ordinator) Recruitment (Amendment) Rules, 1986. The said Rules came into force on the date of their publication in the official Gazette. By way of amendment in the Schedule to the Rules under column 10 after the existing entries viz. by transfer on deputation (including short term contract), failing which by direct recruitment, the following note was inserted:-

"Note:- The suitability of the holders of the posts of Youth Co-ordinator of Nehru Yuva Kendra in the scale of Rs. 700-1300, on the date of notification of these rules, will be initially assessed by the Union Public Service Commission and if found suitable, they shall be deemed to have been appointed to the post of Youth Co-ordinator on regular basis at the initial constitution."

On the heels of the Amendment Rules followed the Resolution dated 25th of February, 1987 of the Govt. of India, Ministry of Human Resource Development (Dept. of Youth Affairs and Sports), vide which the Government

25

decided that keeping in view the growing need for developing, improving and broad-basing the youth programmes which were being implemented for the rural youth through Nehru Yuva Kendras ^{out} at the district level through the country and also devising and providing new opportunities for the youth in sports, adventure and other youth development programmes, they were satisfied that the /object/ could best be achieved through the establishment of a well knit organisational structure with necessary resource and flexibility and for this purpose an autonomous society under the Societies Registration Act of 1860 would be the best agency. Hence it was resolved to establish a Nehru Yuva Kendra Sangathan to take over, manage, administer and run the existing Nehru Yuva Kendras.

The functions and the duties of the Sangathan were also outlined in the said resolution. Pursuant to the said resolution, Office Memo dated 24th of March, 1987 was issued to the Youth Co-ordinators informing them that the Sangathan would take over the management and administration of Nehru Yuva Kendras located in various districts in phases/and* Sangathan would give direction for implementation of programmes and activities of

*the

Nehru Yuva Kendras keeping in view the Govt. resolution issued on the subject on 25th of February, 1987. Vide another letter of even date, the Government of India, Ministry of Human Resource Development (Dept. of Youth Affairs and Sports) conveyed the sanction of the President to the extension in the period of deputation in all respect of the existing Youth Co-ordinators upto 30th of June, 1987 with the warning that the deputation could be terminated even before 30th of June, 1987 without assigning any reasons in public interest. In another

letter dated 13th of April, 1987 addressed to all Youth Co-ordinators, it was stated that Sangathan would administer, supervise, monitor and expand etc. the rural youth programmes in a phased manner from 1-4-1987 and that the Sangathan was in the process of framing its own Rules for various categories of posts.

It was explained that the deputation of all Youth Co-ordinators had been extended till 30th of June, 1987 to facilitate easy transfer of work to the Sangathan and also to ensure some continuity in the programmes and activities. After the Recruitment Rules of the Sangathan were finalised and approved by the Government, the Sangathan would start functioning as per its rules.

Those Youth Co-ordinators, who were on deputation at that time may have to opt for absorption or otherwise, if they were willing and with the consent of their respective parent department depending upon the Sangathan selecting them through its process of recruitment. They clarified that the Youth Co-ordinators on deputation might have to revert back if they were not selected or if they did not want to be absorbed on such terms and conditions as the Nehru Yuva Kendra Sangathan might prescribe. Feeling aggrieved by the aforesaid action of the Government of India, the applicants have filed these applications under Section 19 of the Act challenging the legality and validity of termination of their deputation and repatriation to their parent States coupled with the warning that they may or may not be selected by the Sangathan and if selected they will have to accept the terms and conditions of employment as per Rules of the Sangathan.

27
The contention of the applicants in these

cases is that under the relevant provisions contained in the Fundamental Rules, the period of probation could not exceed three years at a time and it could be extended at best by one year under special circumstances.

Further according to them, approval of the UPSC was obtained by the respondents from time to time with respect to all Youth Co-ordinators appointed on deputation for extension of their period of deputation beyond one year.

Not only that, by letter dated 7th of February, 1977 addressed to all deputationist Youth Co-ordinators, the sanction of the President to the extension of their term of deputation for a further period upto 30th of June, 1977 beyond the date on which they had completed 3 years of their term of deputation respectively as Youth Co-ordinators in the Nehru Yuva Kendras under the Central Government or till they were permanently absorbed in the NYK whichever event happened earlier, was conveyed.

The learned Additional Solicitor General Sh. Ramaswamy that the has candidly admitted/last such approval of the UPSC for continuance of these ad hoc appointments was taken till 30th of June, 1977. Thereafter a proposal was sent to the UPSC for continuance of these ad hoc appointments beyond 30-6-1977, but the Commission did not agree to it and insisted on notification of the Recruitment Rules.

Hence the period of deputation of the deputationists was extended from time to time with the approval of the Secretary, Department of Personnel till 31st of December, 1985.

In the meanwhile, the Department moved a proposal to exclude the posts of Youth Co-ordinators

from the purview of the UPSC but the Commission did not agree to it.

The learned Counsel for the applicants Mrs. Shyamla / Pappu has urged with considerable vehemence that on the expiry of the said term, they were deemed to have been taken on regular basis. At any rate, according to her, all the Youth Co-ordinators were again called by the UPSC for a personal talk and a list of the candidates (deputationist Youth Co-ordinators) was duly forwarded by the UPSC to the Central Government on the basis of which letter dated 30th of December, 1985 (copy Annexure -F in QA 869 of 1987) was issued to all the Deputationist Youth Co-ordinators by the Government of India, Ministry of Human Resource Development (Dept. of Youth Affairs and Sports). Since the said letter is the main anchorsheet of the applicants' case, the relevant portion thereof is extracted below for ready reference:-

"As a result of the personal talks conducted with the UPSC, your name has been recommended for appointment to the post of Youth Co-ordinator on deputation basis. Accordingly, I am directed to convey the sanction of the President to your appointment to the post of Youth Co-ordinator on deputation basis w.e.f. 1.1.1986.

2. Your regular appointment to the post of Youth Co-ordinator on deputation basis will initially be for a period of one year. However, it can be terminated even before completion of one year in public interest without assigning any reason.

3. The terms and conditions of the regular

29

deputation will continue to be the same as on which you were initially appointed to the post on deputation on ad hoc basis.

4. xx xx xx xx

5. xx xx xx xx

6. The receipt of this letter should be acknowledged and your acceptance of regular appointment on deputation basis on the terms and conditions contained herein should reach this Department immediately

On the strength of this letter and the Note below
the amended Recruitment Rules, it has been fervently canvassed
by the learned Counsel for the applicants that they
must be deemed to have been substantively appointed to
the posts of Youth Co-ordinators at the "initial constitution".

It is well settled canon of interpretation of Statutes/Statutory Rules that in determining either the general object of the legislature, or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most in accord with convenience, reason, justice and legal principles should, in all cases of doubtful significance, be presumed to be the true one. An intention to produce an unreasonable result is not to be imputed to a statute if there is some other construction available. Where to apply words literally would defeat the obvious intention of the legislation and produce a wholly unreasonable result, we may do some violence to the words and so achieve that obvious intention and produce a rational construction." (see Maxwell on The Interpretation of Statutes, 12th Edition)

The learned Additional Solicitor General Shri G.Ramaswamy, on the other hand, has with equal fervor, contended that the applicants/for that matter the other deputationist Youth Co-ordinators could not claim substantive appointments to the posts of Youth Co-ordinators on regular basis merely because of the aforesaid facts namely, letter dated 30th of December, 1985 and the Note below the Amended Recruitment Rules. His contention is that throughout these years the deputation of the applicants and other deputationist Youth Co-ordinators was extended from time to time by the President and under the relevant rules they retained their ^{respective} lien on the posts held by them in their parent departments. Further according to him, the Recruitment Rules, 1980 were never given effect to and no appointments were made to the posts of Youth Co-ordinators pursuant thereto. As for the Note inserted by the Recruitment Amendment Rules, 1986, he points out that the same envisaged initial assessment of suitability of the holders ^{of} to the posts of Youth Co-ordinator by the UPSC and it was only when a Youth Co-ordinator was found suitable, he could be deemed to have been appointed to the post of Youth Co-ordinator on regular basis at the initial constitution. Since the amendment was prospective, the assessment was to be made by the UPSC after the same came into force. However, that was never done. He has further explained the reasons for introducing the aforesaid amendment saying that apart from the deputationists, about a score of Youth Co-ordinators had been directly recruited from the very inception of the Nehru Yuva Kendra Scheme and they had been continuously in service and performing their duties creditably. Thus the basic idea of the amendment was to consider those persons also alongwith the deputationists.

as there was no provision in the Recruitment Rules of 1980 for direct recruitment. He has also filed a statement showing that out of nearly 118 Youth Coordinators only 33 including applicants were being reverted for the present and that all of them still retained their liens on the posts held by them respectively in their parent departments.

In order to substantiate his stand, the learned Additional Solicitor General has referred to Fundamental Rules 12-A, 14 and 14-A as also the decisions of the Government of India made thereunder. Fundamental Rule 12-A provides that "Unless in any case it be otherwise provided in these Rules, a Government servant on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post." So, the question would arise whether the applicants have acquired a lien on confirmation/substantive appointment against the posts of Youth Coordinators.

Fundamental Rule 14(a) lays down that the President shall suspend the lien of a Government servant on a permanent post which he holds substantively if he is appointed in a substantive capacity - (1) to a tenure post etc. and clause (e) of FR 14 provides that a Government servant's lien which has been suspended under clause (a) of the said rule shall revive as soon as he ceases to hold a lien on a post of the nature specified in sub-clause (1) or (3) of that clause. Further under Fundamental Rule 14.A(a), except as provided in clause (c) and (d) of that rule and Rule 97, a Govt. servant's lien on a post may in no circumstances be terminated.

even with his consent, if the request will be to leave him without a lien or a suspended lien upon a permanent post. In substance, therefore, his contention is that the question of the lien of the applicants having been terminated on the posts held by them respectively in their parent departments does not arise and as such they are liable to be reverted/repatriated to their parent departments on the Government of India passing on the work of Nehru Yuva Kendras to the Sangathan. As regards the question whether the appointment of a person is substantive or not, he states that the following tests are to be applied in determining the status of a Civil servant concerned:-

"(i) The conditions imposed in the order of appointment;

(ii) the condition, if any, incorporated in the rules regulating the appointment prescribing a period of officiation or deputation, and

iii) the vacancy against which the appointment has been made i.e. whether temporary or permanent?

By way of answer, he has urged that the offer of appointment issued to the applicants/deputationists was not for substantive appointment, but their appointment was only temporary or ad hoc on deputation basis. Further, even after selection and appointment on deputation to another post, a Government servant/State continues to hold the lien on his former post until he is confirmed on the latter post and acquires a lien on that post. Reliance

in this context has been placed by him on G.S. Mahadeviah Vs. State of Mysore, 1968(2) Mysore Law Journal 34. So even if the lien of the applicants has been suspended by their/parent departments, the same is bound to revive as and when they return to the parent cadre.

He has also emphasised that in law there is at present no post called Youth Co-ordinator under the Central Government for the reason that:

- "(a) the temporary Scheme of Nehru Yuvak Kendra has been abolished by the Central Government; and
- (b) the sanctions to these posts have not been renewed beyond 29.2.1988"

He asserts that the UPSC's sanction was obtained upto 1977 and thereafter they were continued with the approval of the Secretary/Department of Personnel upto 29-2-1988.

On a consideration of the matter, however, we are not persuaded to agree with the arguments advanced by the learned Additional Solicitor General.

It is for the simple reason that right from the inception of the scheme to setup Nehru Yuvak Kendras all over the country, the intention of the Government was to man the posts by transfer on deputation. Needless to say that the "transfer on deputation" is one of the recognised modes of filling up the post in a service or a cadre permanently. The Recruitment Rules of 1980 do not suggest even remotely to create only temporary posts of Youth Co-ordinators.

Likewise the amended Recruitment Rules do not envisage that the posts were/filled up on temporary basis. The very concept of 'initial constitution' of the cadre militates against such an inference. It is common knowledge that the question

in a cadre/service of initial constitution by filling up temporary posts as such does not arise. So, we entertain no doubt in our mind that the whole scheme of the Government of India for establishment of Nehru Yuvak Kendras was devised to be on a permanent footing.

It is a different thing that the posts of Youth Co-ordinators numbering 25 as envisaged in the Recruitment Rules were not sanctioned permanently, but sanction was being accorded to their continuance ^{from} year to year. The said posts having continued for nearly 15 years, it passes one's comprehension as to why these were not made permanent. It was perhaps due to inordinate delay in framing the Rules. The fact that the respondents wanted to absorb the Youth Co-ordinators permanently is manifest from the letter dated 7th of February, 1977.

Significantly, no consultation was made with the UPSC after 30th of June, 1977 for continuing the deputation of the applicants beyond 30-6-1977 by which date they were proposed to be permanently absorbed in Nehru Yuvak Kendras. Of course, sanction for continuance of deputation was issued from time to time by the Ministry of Human Resource (Dept. of Youth Affairs & Sports) etc. on their own. All this is indicative of the fact that the intention of the Govt. was to absorb the applicants and other Youth Co-ordinators on deputation into a permanent cadre, rather than continuing them on purely temporary basis on deputation. Normally the term of deputation is 3 years which may be extended to 5 years if need be.

Thus the very fact that the applicants and other deputationist-
Youth Co-ordinators were retained on deputation for a long period of 5-12 years would countenance the plea of the applicants that the intention of the respondents was to absorb them permanently at the 'initial constitution' in the cadre of Youth Co-ordinators.

There was hardly any occasion for the Government to extend the deputation of the applicants and others like them for over 10-15 years had it been envisaged that the Nehru Yuvak Kendras ^{by} were to be manned/only temporary hands taken on.

35

deputation from time to time. Indeed the applicants and other Youth Co-ordinators having gained valuable experience in the specialised field and ^{been} having/groomed for the task for which Nehru Yuvak Kendras had been established, the respondents would have been very much reluctant not to utilise their services in future and send them back to their parent departments with which they had virtually severed their links for over long periods. Further the very fact that the advice of the UPSC was sought for regularising their deputation subsequent to the coming into force of the Recruitment Rules would fortify the conclusion that the intention of the Government was to absorb them on regular basis. The mere use of the word 'deputation' would not be conclusive of the inference that they were to be continued on deputation for ever. Indeed, it is not intelligible as to what else could have been the purpose or intention of the respondents in regularising their deputation on ad hoc/temporary basis as before, if they were not to be absorbed permanently. Still worse for the respondents, no plausible reason is forthcoming for the amendment introduced in 1986 providing for the "initial constitution" ^{the cadre of} of the Youth Co-ordinators, if it was not intended to put the Nehru Yuvak Kendras on/permanent footing under the Central Government itself. Of course, it would appear that another line of thought, which was concurrently engaging the attention of some of the top-brass in the Ministry was to entrust the task of running the Nehru Yuvak Kendras to an autonomous body like the Sangathan ^{itself} rather than the Government/continuing with the same, but

3C

that by itself would not warrant the conclusion that the Rules which had been framed after due deliberation over such a long period of time were intended to be thrown to the winds immediately after the amendment came into force.

Much emphasis was laid by the Additional Solicitor General on the words "suitability of the holders to the posts of Youth Co-ordinator on the date of notification of these rules will be initially assessed by the UPSC" appearing in the Note in the amended Recruitment Rules, 1986 to urge that the amendment being prospective in nature, a fresh reference to the UPSC for assessment was absolutely necessary and that having/been done, the applicants cannot derive any assistance from their earlier approval. No doubt the foregoing words contemplate a future action, but the same have to be interpreted in a just and reasonable and not pedantic manner. It bears repetition that it was only in November, 1985 that the UPSC had conveyed their approval for appointment on deputation of the applicants and other deputationists to the posts of Youth Co-ordinators for a period prescribed in the Recruitment Rules (vide letter dated 28th of November, 1985 addressed to the Secretary, Govt. of India, Department of Youth Affairs & Sports). It would have been making a mockery of the whole process if the UPSC were to undertake the exercise of interviewing and according approval in respect of those already interviewed and approved by them over again. So, nothing will turn on the mere use of the word "will" in the said Note. Indeed, the deputation of the applicants and other deputationists had already been regularised pursuant to the recommendations of the UPSC vide Respondents' letter dated 30th of December, 1985, as noticed above.

Obviously, therefore, the word 'will' was used in the context of direct recruits, who had not yet been interviewed by the UPSC (at any rate not to our knowledge). Indeed as was frankly stated by the learned Additional Solicitor General, that was the avowed aim of the amendment as there was no provision in the Recruitment Rules for absorption of directly recruited Youth Coordinators numbering about 20 only. The approval of the UPSC for appointing them on deputation on regular basis vide letter dated 28th of Nov., 1985 was therefore quite enough for their permanent absorption in the cadre of Youth Coordinators and taking into account all these facts cumulatively, we hold that the applicants and other similarly situated deputationists holding the post of Youth Coordinators would be deemed to have been appointed to the said posts on regular basis at the 'initial constitution'. In other words, they would be deemed to have become Central Govt. employees.

Finding himself in this predicament, the learned Addl. Solicitor General laid stress on the fact that it is not necessary to examine what in law is the status of the applicants, who were holding posts, which have been abolished and working in a department, which has been closed, because the appointment of the applicants in the instant case was on a temporary basis to a temporary post in a particular temporary scheme under the Central Govt. However, even assuming that the appointments were on permanent basis to permanent posts, the facts of the cases would lead to the position that the posts have themselves been abolished and the applicants viz. both deputationists as well as direct recruits have no right to these posts, which do not, in law, exist. It is no doubt true that, as observed by the Constitution Bench of the Supreme Court in M. Ramanatha Pillai Vs. The State of Kerala and another 1973(2) SCC 650, "the power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of Govt. policy. Every sovereign Government has this power in the

interest and necessity of internal administration.

The creation or abolition of post is dictated by Policy decision, exigencies of circumstances and administrative necessity. The creation, ^{the} continuance and the abolition of post are/decided by the Government in the interest of administration and general public..

• • • • •

The power to abolish any civil post is inherent in every sovereign Government and this power is a policy decision exercised by the executive, it being necessary for the proper functioning and internal administration of the State! It was further observed by the Supreme Court in the aforesaid case that "the abolition of post may have the consequence of termination of service of a Government servant, but such termination is not dismissal or removal within the meaning of Article 311 of the Constitution. The abolition of post is not a personal penalty against the Government servant". The same view was reiterated by the Supreme Court in K.Rajendran Vs. State of Tamil Nadu, 1982(2) SCC 273 and T. Venkatareddy Vs. State of Andhra Pradesh, (1985)3 SCC 198.

In the former case, it was ruled that "the power to abolish a civil post is inherent in the right to create it. The Government has always the power, subject, of course, to the constitutional provisions, to reorganise a department to provide efficiency and bring about economy. Whether or not a post should be retained or abolished is essentially a matter of policy decision. But the decision should be taken in good faith and the action to abolish a post should not be just a pretence taken to get rid of an inconvenient incumbent. The law is well settled that whether a post should be retained or abolished is essentially a matter for the Government

39

to decide. As long as such decision of the Government is taken in good faith, the same cannot be set aside by the Court. It is not open to the Court to go behind the wisdom of the decision and substitute its own opinion for that of the Government on the point as to whether the post should or should not be abolished."

In view of this well settled proposition of law, it is not at all open to us to question the wisdom of the respondents in taking the policy decision to create/autonomous body like the Sangathan and entrust, the task of running and administering the Nehru Yuva Kendras as a suitable mechanism to supervise, administer/and evaluate the programmes of the Nehru Yuva Kendras in the country vide resolution dated 25th of February, 1987, even though it sounds somewhat strange that such a decision was taken just a few months after the Recruitment Rules were amended in October, 1986. Presumably the volume of administrative work, the measures of economy and the need of streamlining their administration to make it more efficient induced the Government to convert the Establishment to that extent into an autonomous body viz. the Sangathan. Any-how we are more concerned with the consequences which flow from discontinuance of the posts of Youth Co-ordinators under the Central Government with effect from 1st of March, 1988.

The learned Additional Solicitor General has canvassed with considerable force that after the abolition, the Government was under no obligation

legal or otherwise to provide alternative jobs to the Youth Co-ordinators and it was optional with them either to revert to their respective parent departments, where they still had a lien or to join service as Youth Co-ordinators in the Sangathan if they or any one of them were duly selected by the Sangathan on the terms and conditions offered by the Sangathan itself. Adverting to the observations made by the Supreme Court in Ramanatha Pillai Vs. State of Kerala and another (supra) he has reiterated that the right to hold a post comes to an end on the abolition of the post which a Government servant holds. Therefore, a Govt. servant cannot complain of violation of Articles 311 and 31 of the Constitution when the post is abolished. Further, according to him, even Article 19(1)(f) is not attracted on the facts of the present case.

On bestowing our careful thought and consideration on the peculiar facts and circumstances of these cases, we are of the opinion that even though technically speaking the learned Additional Solicitor General may be right in taking shelter under this legal proposition, but the stand of the respondents can by no stretch of reasoning or sense of fair-play be termed as just and equitable. It bears repetition that the so-called deputation of the applicants and other Youth Co-ordinators was unduly protracted from the normal period of 3-5 years to 10-12 years and an expectation was generated in them that on the finalisation of the Recruitment Rules, they would be absorbed in the cadre of Youth Co-ordinators. The words "till you are permanently absorbed in the Nehru Yuva Kendra" appearing in the letter dated 7th of February, 1977 are very significant

41

to note in this respect. They were continued on deputation beyond the period of 30-6-1977 even though the UPSC declined to accord their approval for their further continuance on deputation and insisted that the Recruitment Rules be notified as early as possible.

However, the Government kept sitting on the fence for fairly a long time and it was only in 1980 that the Recruitment Rules were notified. Even then the anxiety of the respondents to somehow regularise the services of direct recruits by making necessary amendment in the Recruitment Rules delayed the absorption of the deputationist- Youth Coordinators further until 1985 when the so-called deputation was regularised vide letter dated 30th of December, 1985. As already observed by us, the said regularisation was, in fact and law, tantamount to their absorption in the cadre of Youth Co-ordinators as per the Recruitment Rules, the only mode of recruitment prescribed being "by transfer on deputation".

Unless it is so construed, it would be nullifying the very method of filling up the posts of Youth Co-ordinators prescribed under the Recruitment Rules. The

Government has tried to draw a distinction between ad hoc deputation and regular deputation. If ad hoc deputation could have lasted for 10-12 years, it would be preposterous to suggest that the regular deputation would suffer from the same infirmity as ad hoc deputation. Conceptually both the expressions 'ad hoc deputation' and "regular deputation" cannot be synonymous. Obviously, the term "regular deputation" was used to connote their absorption in the cadre of Youth Co-ordinators by following a recognised mode of recruitment. As for the fact that the posts of Youth Coordinators were still described as temporary in letter dated 24th of March, 1987 and their continuance

sanctioned until 29th of February, 1988, suffice it to say that in service jargon a post continues to be termed as temporary even though it is continued for a long period say 10 or 15 years, contrary to the express instructions of Government itself in this behalf.

According to the said instructions, 80% of the temporary posts in the permanent departments which have been in existence for a period of not less than three years ^{may} be converted into permanent ones. Even in non-permanent departments, such as the Department of Rehabilitation, 50% of the temporary posts as have existed for not less than 10 years and are not proposed to be wound up in the near future may also be made permanent, provided the posts have been in continuous existence for a period of five years and more and are required indefinitely. The directions further mandate the concerned authority to take action immediately to conduct review for converting temporary posts into permanent ones in the light of the instructions mentioned above and the Ministries/Departments may also ensure that no temporary posts which qualify ^{for} conversion into permanent ones are continued as temporary in or under a Ministry/Department and all posts so converted are utilised immediately for confirmation of eligible temporary employees.

(See Swamy's Complete Manual on Establishment and Administration page 254). Thus the mere fact that the respondents did not take any action for converting temporary posts into permanent posts in time would not detract from the conclusion that the Cadre of Youth Co-ordinators was to consist of permanent posts, rather than temporary posts. It is indeed extraordinary to visualise 'initial ^{totally} constitution' in the case of a cadre comprising temporary posts. Further the fact that the applicants may still have lien on the posts held by them in their

43

respective parent Departments would not be of much consequence inasmuch as by serving the Govt. of India for long years ranging from 5-12, they have virtually lost their moorings in their parent Departments. To force them to revert to the posts in their parent Departments with which they have virtually severed their links for such a long time, is unjust and unreasonable.

As held by the Supreme Court of India in Un-union of India vs. Godfrey Philips India Ltd. - (1985) 4 SCC 369 " The doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true to its form, stepped in to mitigate the rigour of strict law. The true principle of promissory estoppel is that where one party has by his word of conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. The doctrine of promissory estoppel is not limited in its application only to defence but it can also be found a cause of action. This doctrine is applicable against the Government in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of this doctrine." The said doctrine was applied by the Supreme Court in its earlier decision in Surya Narain Yadav vs. Bihar State Electricity Board and Others - (1985) 3 SCC 38 in which case it was held that the employees (trainee Engineers in the said case) formed a special class and very

44

peculiar circumstances warranted a definitely special treatment in regard to them. It was further observed that a Public Body is not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice. The Supreme Court went ahead to a stage that the doctrine of promissory estoppel is not really based on the principle of estoppel but it is a doctrine evolved by equity in order to prevent injustice and it can be the basis of a cause of action. Applying this equitable principle of promissory estoppel, there can be no room for doubt that the Respondents were bound to absorb the deputation-ist Youth Coordinators in the cadre of Youth Coordinators on permanent footing and even if they have not done so, we can require the Respondents to treat the Applicants as having been permanently absorbed by the Central Govt. and as such they should accord special treatment to them in the matter of their future absorption as Youth Coordinators in the Sangathan irrespective of the legal proposition as propounded in M. Ramanatha Pillai Vs. The State of Kerala and another - (1973) 2 SCC 650.

Another vital factor which needs notice at this stage is that the Sangathan itself, although an autonomous body, is the creation of the Govt. itself. As per resolution dated 25.2.1987, it is to be financed by the Govt. of India on 'meet the deficit' basis and for this purpose funds will be provided by the Govt. as Grant-in-Aid. Further, Rules and Regulations to be framed by the Sangathan for the conduct of its business and the management of its affairs are subject to the approval of the Govt. of India. Last but not the least, even though it is registered as a Society under the Societies Registration Act of 1860, its Board of Governors inter alia comprises the Minister of State, Incharge of Youth Affairs and Sports (Ex-officio Chairman), two Members of Parliament, Lok Sabha nominated by the Govt., and one Member of Parliament, Rajya Sabha etc.

Thus, there can be no room for doubt that Sangathan is an instrumentality of the State and the sole aim of establishing

the same is to carry on the scheme of Nehru Yuva Kendras from the point it is being entrusted to the Sangathan for management, administration and running the existing Nehru Yuva Kendras. Hence, it is highly unjust and inequitous on the part of the Respondents to wash their hands off the applicants i.e. the deputationists - Youth Coordinators, who have rendered valuable service for over 5-12 years, in this arbitrary manner. Since the institution of Nehru Yuva Kendras as well as the posts of Youth Coordinators are being continued, although by conversion of the Govt. Establishment into ^{an} autonomous body, it would have been just, proper and equitable on the part of the respondents to ensure that the services of the Youth Co-ordinators and the valuable experience gained by them over the years in this special field were utilised and their service conditions including pay and allowances duly ensured and safeguarded by making appropriate Rules about the terms and conditions of the Youth Co-ordinators etc by the Sangathan. Obviously it is not a case of abolition of posts of Youth Co-ordinators, simpliciter inasmuch as not only the Scheme of Nehru Yuva Kendra but also the posts of Youth Co-ordinators still subsist - the only difference being that instead of the Govt. or the State running it, it is being run, monitored and administered by its Instrumentality. It may be pertinent to notice here that vide letter dated 24th March, 1987 sanction of the President of India was conveyed to the continuance of 311 posts of Youth Co-ordinators upto 29.2.88 but the actual number of Youth Co-ordinators in position as on 30.6.87 was much less.

Significantly, the resolution dated 25th February, 1987 in terms recognises that the scheme of Nehru Yuva Kendras for each district started in 1972 was found to be very useful in initiating and formulating programmes to involve the rural youth, who do not have otherwise opportunities for participation in programmes of self, social and national development and that the implementation of the scheme of Nehru Yuva Kendras has brought out the successful role, which can

be played by the Kendras in the process of social transformation in rural areas and in preserving, promoting, and developing concept of Unity and national integration, discipline, self-help, secularism, democracy, scientific temper, cultural heritage, functional literacy, building awareness amongst the rural youth and in providing avenues to the youth to strive towards excellence in all spheres of activity. Thus having regard to the fact that the work done by the Youth Co-ordinators is not of a conventional nature, which is normally done by Government

servants in the administration and other field jobs, imperatives of the situation demanded that the special type of experience gained by the Youth Co-ordinators over these years should have been utilised in a ^{-ful} grace/and dignified manner. Unfortunately,

however, the respondents chose to leave them in the lurch and they are literally faced with the Hobson's choice either to go back to their parent departments and restart career afresh from the stage where they had left the jobs and duties which were being carried on by them there before coming over to Nehru Yuva Kendra or in the alternative, if they want to continue their activities in Nehru Yuva Kendras, they must accept unfavourable terms and conditions including lower scale of pay and status. The

arguments of the respondents that absorption of the applicants in Nehru Yuva Kendra Sangathan is a separate issue and that they i.e. answering respondent have nothing to do in this regard is totally misconceived and untenable. We are, therefore, constrained to observe that this action on the part of the respondents

amounts to arbitrary and colourful exercise of power. It would appear that they have tried to do indirectly what they could not do directly by letting down and shutting off the Youth Coordinators rather unceremoniously even though on their own showing they have rendered really useful and admirable work in bringing about social awareness and energising the rural youth etc. This, to our mind, would constitute infraction of Art.14 and 16 of the Constitution.

It is well settled by a long catena of judgments of highest Court of the country that "Article 14 strikes at arbitrariness in State action, whether it be of the Legislature or of the executive or of an authority under

Article 12, because any action that is arbitrary must necessarily involve the negation of equality and if it affects any matter relating to public employment, it is also violative of Article 16.

One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equal protection by law. (See E.P.Royappa Vs. State of Tamil Nadu, (1974) 4 SCC 3, which effectively answers the contention of the learned Additional Solicitor General that the Government is not bound to provide jobs to the applicants and other similarly placed Youth Co-ordinators. As observed by the Constitution Bench speaking through Bhagwati J. in a concurring judgment in Royappa case, "Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is anti-thetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch". Reference in this context be also made to other Constitution Bench decisions in Ajay Hasia Vs. Mujib Sehravardi, 1981(1) 2 SCC 722, ^{and} Menaka Gandhi Vs Union of India, 1978(1) 248 besides A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., (1984) 3 SCC 316. In Menaka Gandhi case, it was observed that "Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment".

On the facts and circumstances of ~~the~~ these cases, therefore, we are constrained to hold that the order

their
of the respondent- Government in ~~the~~/letter
dated 13th of April, 1987 that "those Youth
Co-ordinators, who are presently on deputation,
may have to opt for absorption or otherwise, if
they are willing and with the consent of their
respective department, depending upon the Nehru
Yuva Kendra Sangathan selecting them through its
process of recruitment. The Youth Co-ordinators
on deputation may have to revert back, if they are
not selected or if do not want to be absorbed on
such terms and conditions as Nehru Yuva Kendra
Sangathan may prescribe", suffers from the vice of
arbitrariness and colourful exercise of power and
as such it cannot be sustained especially in so far
as it leaves them at the whim and caprice of the
Sangathan whether to select them or not as also to
absorb them on such terms and conditions which
the Sangathan may prescribe. It was incumbent on
the respondents as a model employer in/socialistic
and welfare State like ours to ensure that public
servants like Youth Co-ordinators are not left high
and dry and relegated to a position from which they
had come out several years ago. Hence, the impugned
order dated 13th of April, 1987 has to be quashed
in its present form and suitable directions to ensure
justice to the applicants have to be made.

Shmt. Suraksha Markande, applicant in
OA 876 of 1987 was formerly employed in the Department
of Education, Delhi Administration and she was selected
for and appointed to the post of Youth Co-ordinator
on deputation vide letter dated 18th of February, 1976
(copy Annexure A- therein) and she has continued to

work as a Youth Co-ordinator continuously since then in a Nehru Yuvak Kendra. She sought permission to file the application on behalf of all other similarly situated Youth Co-ordinators. Having regard to common questions of law and fact involved in the cases of all of them, the requisite permission was granted to her by Court No.1 of the Principal Bench vide order dated 30th of June, 1987 to sue in a representative capacity. Subsequently, a Review Application was filed by the respondents for recalling the said order. However, rejecting the Review Application, the Court No.1 of the Principal Bench upheld the aforesaid order vide its detailed order dated 8th of September, 1988. So, the directions being made in this judgment being general in nature, shall govern the cases of all the Youth Co-ordinators, whose services have been terminated w.e.f. 30th of June, 1987 pursuant to orders dated 24th of March, 1987 and 13th of April, 1987 of the respondents.

It was brought to our notice that the lien of Shri R.R. Sharma, applicant in OA 869 of 1987 has also been terminated and the decision communicated to him by Assistant Director of Education (Basic), Bareilly vide letter dated 1-8-1987, a copy of which has been placed on record. The genuineness and authenticity of this letter has been controverted by the respondents, but apparently without verifying the same from the concerned authority. In case the lien of the applicant in his parent department has been actually determined, his whole career will be virtually ruined by the impugned order.

However, as already observed, he like other Youth Co-ordinators, who are deemed to have been absorbed at the 'initial constitution' in the cadre of the Youth Co-ordinators, has to be accorded the same treatment.

Shri

As for Y.N. Sexana, he has placed on record a copy of order dated 29th of November, 1988 of Director of Education (Basic) U.P. Allahabad vide Deputy which he has been posted to the post of Sub Inspector of Schools at Lucknow, a post which he held nearly 15 years ago.

High-handedness on the part of the respondents in

Shri
the case of Attar Singh Sharma, a applicant in QA 877 of 1987 is still more glaring and astounding. Before joining the Nehru Yuva Kendra as a Youth Co-ordinator, he was employed as a Lecturer in Mathematics in the Education Department of Haryana (School Cadre). Vide order dated 18th of July, 1985, he was promoted to the post of Principal, Senior Secondary School, Ding, Distt. Sirsa which was a post in H.E.S. Class-II (School and Inspection Side) and carried the pay scale of Rs. 1200-1700. Thereupon, the applicant wrote a letter dated 30th of July, 1985 to the Commissioner & Secretary to the Government of Haryana Education Department that the Under Secretary, Youth Services-I, Department of Youth Affairs & Sports, Govt. of India be intimated about his promotion order, so that they might be able to make alternative arrangement for relieving him. He also represented to the Under Secretary, Youth Services-I that in view of his promotion and posting

as Principal in Senior Secondary School at Ding, arrangement be made to relieve him from his assignment as a Youth Co-ordinator so as to enable him to join the new post. However, he also stated in the said letter that in case his services were required ^{further} there i.e. Nehru Yuva Kendra, the Secretary to the Government of Haryana, Education Department be requested accordingly.

A similar letter was addressed by the Commissioner and Secretary to Government Haryana Education Department to the Under Secretary, Youth Services-I, Deptt. of Youth Affairs and Sports, Govt. of India. However, the applicant was not relieved with the result that the Haryana Government cancelled the order of his promotion to H.E.S-Grade-II on the ground that he failed to join duty as Principal, Govt. Senior Secondary School, despite several directives from the Government vide order dated 4-6-1987. As ill luck would have it, he was given ^a marching order by the respondents vide impugned order w.e.f. 30th of June, 1987. Naturally, therefore, he feels literally ditched ^{ed} by the respondents.

Pertinently, it may be noticed that vide subsequent order dated 29-8-1988 of the Director of School Education, Haryana, he has ^{been} posted as District Math. Specialist (D.M.S) in the office of District Education Officer, which is obviously a lower post than the one to which he had been promoted and was equivalent to that of Lecturer in a School Cadre. The only explanation by the respondents is that they had vide letter dated 17-10-1985 requested the State Govt. that it was not possible in the public interest to

52

to repatriate the Applicant at that stage and he might be given proforma promotion with effect from the date from which his immediate junior in the grade had been promoted and his pay in the higher scale be refixed notionally, so that he could be given the benefit of pay fixation on a deputation post. On the receipt of the said letter, the State Government permitted the Applicant to continue his deputation until 31st of December, 1986 in public interest. However, the Applicant did not take up the issue relating to his repatriation immediately after 31.12.1986 as per order of the State Govt. and fresh orders of his repatriation with effect from 30th of June, 1987 (afternoon) were passed by the Respondents. Obviously, it is the Applicant, who is the sufferer for no fault of his. Strangely enough, however, the Respondents disown their responsibility in not repatriating the Applicant immediately after 31st of December, 1986, the date upto which deputation had been consented to by the State Govt.

etc.

Dr. M.P. Aggarwal Vs. Union of India/- OA No.574

of 1987. The Applicant Dr. M.P. Aggarwal joined service as a Youth Coordinator on selection by the Govt. of India as a deputationist with effect from 27.3.1973 and has continued to serve as a Youth Coordinator since then continuously.

Pertinently, he successfully completed Common-Wealth Youth Programme at Asia Pacific Centre, Bangladesh in May, 1985. That was a Regional Course for training of Youth Work Trainers. A photostat copy of the Certificate has been placed on record. This is only to show that as a Youth Coordinator, he has acquired special knowledge about the affairs of the Rural Youth etc. for development of Self and Social uplift etc. His case is at par with other Applicants. The only stand taken by the Respondents is that his suitability had been assessed by the UPSC for appointment

on deputation in accordance with the Recruitment Rules of 1980 and not for permanent absorption in terms of Amendment Recruitment Rules 1986. In fact, the Amendment Recruitment Rules of 1986 have not been given effect to in view of the fact that an autonomous Organisation called the Nehru Yuva Kendra Sangathan has been established to take over, manage, administer and evaluate the Nehru Yuva Kendras. Since we have already dwelt upon this aspect of the matter at considerable length, we need not cover the same field again. It may, however, be pertinent to notice that the Respondents have in terms conceded that the Amendment Recruitment Rules of 1986 were intended for permanent absorption of the Youth Coordinators as Central Govt. employees. Hence the Applicant is entitled to the same relief.

Mohd. Agil Vs. Union of India etc. - OA No. 2329 of 1988. Mehd. Agil had filed an Application under Section 19 of the Act before Allahabad Bench and pursuant to order dated 8.9.1988 in Mrs. Suraksha Markande's case, this case has been transferred to the Principal Bench. He too joined service as a Youth Coordinator on deputation in May, 1976. He was formerly employed as a Public Relation Officer in the Department of Small Scale Industries, U.P. His case is absolutely similar to those of other Applicants. However, it may be mentioned that his term of deputation was extended up to 30th June, 1988 vide order dated 26th June, 1987. The said order was in respect of 24 Youth Coordinators in all. Anyhow, this Applicant is too/entitled to the same relief as others mentioned above.

S.M. Mehta Vs. Union of India etc. - OA No. 960 of 1987. In OA No. 1960 of 1987, there are as many as 13 Applicants who were appointed as Youth Coordinators on deputation. Of these, Applicants S.M. Mehta, S.N. Acharya, T.C. Jain, K.N. Harit, M.R. Shastri, D.N. Arya, N.C. Joshi,

N.N.Tiwari and Sudha Shankar Pandey joined service as Youth Coordinators on different dates during the years 1976, 1977 and 1978 whereas Applicants S.C.Chopra, H.C.S.Rautella, and F.L.Rawal joined service on different dates during the years 1986 and 1987. As for C.S.Singh, his contention is that he joined service as a Youth Coordinator with effect from 28.9.1977. However, according to the Respondents, he joined service after 1.1.1986 on the recommendation of UPSC as was the case of Applicants S.C.Chopra, H.C.S.Rautella and F.L.Rawal. Since there is no clearcut evidence on record, this is a matter for the Respondents to verify while giving relief to him.

On a consideration of the matter, we are of the view that while the Applicants S/Shri S.M.Mehta, S.N. Acharya, T.C.Jain, K.N.Hare, M.R.Shastry, N.N.Tiwari and Sudha Shankar Pandey are entitled to the same relief as other Applicants mentioned above, the cases of Applicants S.C.Chopra, H.C.S.Rautella and F.L.Rawal stand on a different footing. On their own showing, they joined service as Youth Coordinators with effect from 12.3.1987, 27.5.1987 and 2.7.1986, respectively. So the question of S/Shri H.C.Chopra and H.C.S.Rautella, Applicants 5 and 8 being deemed to have been appointed to the post of Youth Coordinators on regular basis at the initial constitution does not arise at all, the Amendment Recruitment Rules having come into force much earlier viz. 13.10.1986. (F.L.Rawal)

As seen above, Applicant No. 13/joined service as a Youth Coordinator on 2nd July, 1986. Obviously, it was in accordance with the Recruitment Rules of 1980. Technically speaking, therefore, he was holding the post of Youth Coordinator on the date when the Amendment Recruitment Rules came into force and therefore by virtue of the legal fiction embodied in the Note under Column No. 10

of the Recruitment Rules, he would be deemed to have been appointed to the post of Youth Coordinator on regular basis at the initial constitution. Needless to say that the expression 'holders of the posts' will embrace within its fold all those persons who were actually working on the posts of Youth Coordinators on 13.10.1986 irrespective of whether they were on deputation or they were directly appointed as Youth Coordinators. Even the period of deputation will not matter because the aforesaid Note does not contemplate any such restriction or limitation. Even the fact that he had not been appointed on regular basis on deputation would not detract from this conclusion having regard to the wide amplitude of the expression 'holders of the posts' which, as already observed, does not admit of any restriction, limitation or qualification.

The vital question which would still survive is whether despite Applicant No. 13 having rendered hardly a year's service as a deputationist on the post of Youth Coordinator, can legitimately claim his absorption as a Youth Coordinator in the Sangathan on existing terms and conditions of his service in the Central Government.

In other words, whether the existing terms and conditions of the Applicant as on 13.6.1987 ought to be protected or not. Once it is held that the posts of Youth Coordinators have been abolished pursuant to the policy decision dated 25.2.1987. On bestowing our careful thought and consideration on the matter, we are of the view that there are no equities in favour of the said Applicant which will persuade us to equate his case with that of other Applicants like Smt. Suraksha Markande, R.R.Sharma and Attar Singh who had rendered nearly 10 to 12 years of service by the time their deputation was terminated by the Respondents vide impugned

orders with effect from 30.6.1987. It bears repetition that for all intents and purposes, they had severed their connection with their respective parent Departments and would have gone back there as almost fresh hands. Further, the valuable experience and expertise gained by them as Youth Coordinators over a long period would have been rendered useless for all intents and purposes. Hence, the same relief cannot be accorded to Applicant No. 13 in this case. In case, however, the lien of applicant No. 13 has already been terminated by the parent Department, it shall be the responsibility of the Respondent Union of India to ensure that he too, like other deputationist Youth Coordinators is absorbed in the Sangathan and his existing terms and conditions including emoluments are protected.

Parmar Narottam Lavjibhai (N.L.Verma) & Others v/s Union of India etc - OA No. 2328 of 1988 (OA No. 355 of 1988): This case has been received on transfer from the Central Administrative Tribunal, Ahmedabad Bench pursuant to the order of Hon'ble Chairman dated 8.9.1988 in OA No. 876 of 1987 - Mrs. Suraksha Markande v/s Union of India etc.

There are six applicants in this case namely Parmar Narottam Lavjibhai (N.L.Parmar), Joshiara Rajesh R., Kum. Mahasweta S. Vaidya, Vyas Vindrai Mathurdas, Ranjitsinh Panwar and Sharma Gian Prakash. All of them were formerly serving on different posts in the State of Gujarat and they were appointed as Youth Coordinators in the Nehru Yuva Kendras on deputation basis during the period 1976-1980. Since applicants 5 and 6 are stated to have already been repatriated to their parent State, we are now concerned with only first four applicants.

applicants 3 and 4 joined service as Youth Coordinators on deputation in July, 1976 whereas N.L.Parmar and Joshi are Rajesh R., applicants 1 and 2 joined service as Youth Coordinators in February, 1978. All the four applicants have since then been continuously working as Youth Coordinators in Nehru Yuva Kendras and their names too were approved by the UPSC for appointment on regular basis vide UPSC letter dated 28.11.1985 addressed to the Secretary to Government of India, Department of Youth Affairs & Sports. They are amongst those who are sought to be repatriated to their parent Departments on the establishment of the Sangathan. Hence, they have sought the same relief as claimed by Smt. Suraksha Markande etc.

No Written Statement appears to have been filed by the Respondents in this case. However, their Counsel states that the stand of the Respondents is the same as in the case of Smt. Suraksha Markande etc. Hence, they will be entitled to the same relief.

Foregoing facts are simply illustrative of the precarious situation in which many of the Youth Coordinators may find themselves on repatriation to their parent Departments vide impugned orders.

It may be pertinent to mention here that the learned Additional Solicitor General gave an assurance at the Bar that so far as the direct recruits are concerned, whose number is about 20 only, the Respondents undertake the responsibility to ensure their absorption in the Sangathan and protecting their present terms and conditions of service including emoluments. If that be so, it is not comprehensible why the same assurance cannot be extended by the Respondents with regard to the deputationist Youth Coordinators. The

-: 30 :-

only explanation forthcoming for this differentiation is that the deputationist Youth Co-ordinators whose lien subsists till today on the posts in their respective parent departments can well go back to their parent departments and as such the respondents have no legal liability for keeping them here. However, we have already dealt with this aspect of the matter and we need not recapitulate the same.

The upshot of the whole discussion, therefore, is that the foregoing applications succeed and are allowed with the following directions:-

- (i) the impugned orders dated 24th March, 1987 and 13th of April, 1987 are hereby quashed as being violative of Articles 14 and 16 of the Constitution, as indicated above;
- (ii) the applicants are declared to be Central Government employees and they are deemed to have been absorbed in the cadre of Youth Co-ordinators at the 'initial constitution' as per amended Recruitment Rules, 1986;
- (iii) the respondents shall ensure and guarantee to those of the Youth Co-ordinators who had put in five or more years of service upto 30.6.87, employment in the Nehru Yuva Kendra Sangathan, if they so choose as Youth Co-ordinators on the existing terms and conditions of their service including pay and other emoluments to which they were entitled as on 30.6.87 or on a subsequent date when they are so absorbed by the Sangathan. It shall, however, be open

to the respondents to repatriate those of the Youth Coordinators, who want to be repatriated to their respective parent departments 'of their own free will', provided their lien in the State Government has not yet been terminated. The absorption of the applicants shall be on "Ist come first serve" basis i.e. strictly in accordance with their continuous length of service as Youth Coordinators.

(iv) Till the respondents are able to get the applicants suitably absorbed in the Sangathan protecting their present conditions of service and emoluments, they shall retain the services of the applicants with them on the existing terms and conditions. Of course, it shall be open to the respondents to utilise their services on any other post of equal status and pay scale.

(v) As for applicants S/Shri S.C.Chopra and H.C.S.Rautella, Nos. 5 and 8 in OA No. 960 of 1987, they cannot be granted the above relief for the reasons already stated. Hence OA No. 960 of 1987 is dismissed to that extent.

(vi) Prayer of Shri T.L.Rawal, applicant No. 13 in the aforesaid OA No. 960 of 1987 too is allowed provided his lien on the post held by him in his parent Department has already been terminated, but not otherwise.

The respondents shall comply with our order as expeditiously as possible but not later than six months from today. However, no order is made as to costs.

(Kaushal Kumar)
Administrative Member

(J.D.Jain)
Vice-Chairman

March 10, 1989.