

ORIGIANL APPLICATION NO. 75 & 76 of 2008.

this the 15th of April, 2008.

CORAM :

HON'BLE MR. JUSTICE A.K. YOG, MEMBER [J]

HON'BLE MR. R.R. BHANDARI, MEMBER[A]

.....

Bhanwar Lal Bose S/o Late Sh. Uttam Ram Bose, aged about 36 years, resident of House No. 228, Ram Nagar, Jhanwar Road, Chopasani Jagir, Jodhpur, presently working on the post of Technical Assistant, T-II-3 (Electronics), in the office of Respondent No.2.

.....Applicant.

By Mr. S.K. Malik, Advocate.

Versus

- 1- Secretary, Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi.
- 2- Director, Central Arid Zone Research Institute (CAZRI), Jodhpur.
- 3- Under Secretary (NRM), ICAR, Krishi Anusandhan Bhawan - II, PUSA, New Delhi.

.....Respondents.

By Mr. Ashok Chhangani, Advocate .

[Alongwith Mr. S.P.Arora, Advocate]

.....

Connected with O.A. No. 76/2008.

Amit Kumar Singh S/o Shri Harpal Singh aged about 36 years, resident of House No. 18E/450, Chopasani Housing Board, Jodhpur presently working on the post of Technical Assistant, T-II-3, Mechanical Engineering in the office of Respondent No. 2.

.....Applicant.

By Mr. S.K. Malik, Advocate.

Versus

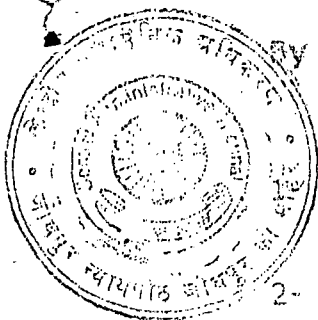
- 1- Secretary, Indian Council of Agricultural Research (ICAR), Krishi Bhawan, New Delhi.
- 2- Director, Central Arid Zone Research Institute (CAZRI), Jodhpur.
- 3- Under Secretary (NRM), ICAR, Krishi Anusandhan Bhawan - II, PUSA, New Delhi.

.....Respondents.

By Mr. Ashok Chhangani, Advocate.

[Alongwith Mr. S.P.Arora, Advocate]

.....



COMPARED &
CHECKED
36/

I/6

- 2 -

ORDER (ORAL)
[PER JUSTICE A.K.YOG, MEMBER (J)]

Above OAs were connected vide order dated 8.4.2008 and heard and decided together with the consent of the learned counsel for the parties on the ground that both the cases rest on similar facts, legal grounds and identical relief(s) hence they can be adjudicated by a common order.

2. The Indian Council of Agricultural Research (ICAR), a Registered Society owned and managed by the Central Government, ^{as is} a 'State' within the meaning of Article 12 of the Constitution of India. ICAR has several establishments - including Central Arid Zone Research Institute (CAZRI) Jodhpur. There is no dispute on this score.

3. Advertisement was issued vide Memorandum dated 30.9.1997 (Annex.A/2 to the leading OA), applications were invited from Employment Exchange, Jodhpur for filling-up two posts of T-II_3 in a Project 'called REDA (Rajasthan Energy Development Agency) read with 'Requisition form' dated 7.7.1997 (Annex. R/2 to counter reply). Applications were called for interview vide 'Interview Letter' dated 30.9.1997 (Annex. A/2 to the OA) on being selected they were issued Memo of Appointment dated 28.10.1997 (Annex.A/3 to the OA).

Relevant extract of it reads -



"The post is temporary. On appointment, his pay will be fixed in accordance with the normal rules. He/She will be entitled to draw such allowances (dearness allowance, house rent allowance etc.) as are admissible to other staff of the corresponding grade and status under the Indian Council of Agricultural Research, till the post exist in REDA Project at CAZRI, Jodhpur. The appointment is purely temporary & co-terminus with the Project."

[Signature]

4. The applicants were appointed on the basis of recommendation of 'Selection Committee / Interview' and Medical Examination as per ICAR Rules. In Para 4 (h), the respondents have referred to the relevant Order-sheet/Minutes of the proceedings relating to the case of the applicants and filed it as (Annex.R/8) to their counter-reply. According to these Minutes (Annex.R/8) the two posts in the project (REDA) were advertised in Employment News / News Papers and "The Selections" were made as per ICAR Rules / Guide-lines"; relevant Minutes / abstract of the Minutes dated 30.10.1999 read :

"With reference to Principal Investigator, REDA Project Dr. N.M. Waher's letter dated 29.10.99 and Director's comments dated 29.10.99 on the same for the adjustment of Two technical assistants, the following is clearly informed to the competent authority "-

1.The relevant rules / guidelines / provision were referred & we did not find any such rules / guidelines as provides adjustment / absorption of such technical assistants who have been appointed on purely temporary / co-terminus with the concerned scheme / project.

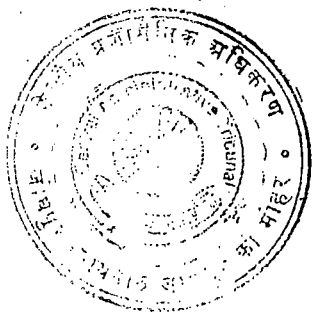
In the context of above, it is also stated that on the completion / discontinuation of such projects, the temporary employees appointed under such scheme / projects have no right whatsoever for adjustment / absorption in the main stream / institute, the offer of appointment issued to these employees also contained the same clause.

Xxxxxx xxxxx xxxxx xxxxx

In view of the above factual information and existing rules / guidelines, it clearly shows that both of these technical assistants cannot be adjusted / absorbed in the Institute strength (Non-Plan/Plan). It is also worthwhile to mention that there does not exist any financial outlay / provision in the R.E. 1999-2000 for adjustment of such vacancies / employees.

Accordingly, it is requested to kindly issue appropriate orders so that the services of these two technical assistants may be discontinued with effect from 30/31.10.99 & 31.12.99 respectively.

The post/s of T.II.3 (Mechanical Engineering) and T.II.3 (Electrical / Electronic) in REDA project were filled up in October, 1997 through open advertisement in the Employment News / Newspapers. The selections were made as per ICAR rules / guidelines. Shri Amit Kumar Singh was appointed as



318 -4-
T.II.3 (Mech. Engg.) and Shri Bhanwarlal Bose as T.II.3 (Electronic) in October, 1997.

After their appointments, some other posts in T.II.3 categories were also filled up in other schemes / non-plan scheme of the Institute. So these two persons are senior to some of the recently recruited T.II.3 employees. If their services are discontinued due to termination of the scheme, some legal complications may arise because posts of senior qualifications having same nature of duties and same pay scale are available in the Institute and they are in the process of filling up. Therefore, to avoid any legal complications Shri Amit Kumar Singh and Shri B.L. Bose are transferred from REDA project to the Non-plan scheme of the Institute w.e.f. 1/11/99 and 1/1/2000, respectively.
Necessary transfer orders be issued immediately."

Sd/-
(A.S. Faroda)
Director
30.10.1999.

The Director's comment dated 30.10.99 at para III on page 3 have been seen. It is again very clearly informed and recorded on the file that issue of such orders will not be in the interest of the Institute and are completely in violation of rules and guidelines pertaining to recruitment / appointment. Further, it is extremely important to recall that at present there is a ban on filling up of vacant posts at ICAR Institutes vide Council's letter No. 12(4) / 98 - CDN (A&A) dated 25.8.99 until further orders. Hence, filling up of these two posts / appointment will not be in conformity with the rules / guidelines / ICAR circulars. Accordingly, the undersigned refrains from issuing any such order and very humbly submits clearcut advice / suggestion to the Director that resorting to such filling up of vacancies / appointment / absorption / adjustment will not be within the rules and should be avoided in any case. The file is again being sent to Director for reconsideration of his decision dated 30.10.99 so that the sanctity of orders / guidelines may be ensured.

Submitted for giving a second thought on the matter and with a request / advice to take further necessary action in consonance with Council's / Govt. of India's orders as per administrative sanctity.

Sd/-
Sr. Administrative Officer.
(underlined to lay emphasis)

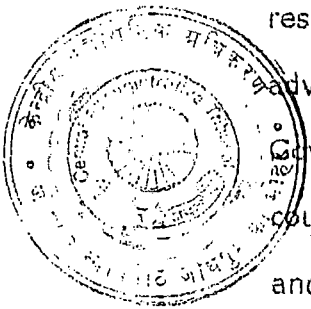
5. The applicant relies upon Clause (11) of the said appointment letter dated 28.10.1997 which contemplates that appointment was to be on probation for a period of two years from the date of joining but the copy of appointment letter in favour of Bhanwar Lal Bose dated 24.11.1997 (Annex.A/4 to the OA) clearly mentions that appointment is temporary to the post of T-II_3 (Electronics) in REDA Project w.e.f. 29.10.1997.



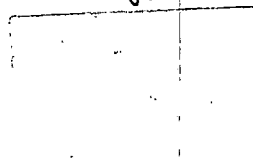
49

6. The respondents recommended for appointment in favour of the applicants as per the then prevalent ICAR Rules / Regulations. Order dated 30.11.1998 shows that steps were taken to terminate the services of the applicants in the Project but said order was subsequently withdrawn vide ICAR letter dated 18.2.1999 (Annex. R-3 & R-4, respectively to the counter-reply).

7. The respondents (as disclosed in their counter-reply), ICAR had issued an advertisement dated 11.09.1999 / Annex. R-5 for filling up three posts of T-II-3 (Technical Assistant), one post reserved for Scheduled Caste, one post reserved for OBC, and one post for Scheduled Tribe for making appointment in regular cadre of CAZRI. Bhanwar Lal Bose / applicant in OA No. 75/2008 belongs to S.C. category and Amit Kumar Singh / applicant in OA No. 76/2008 belong to OBC category (vide Para 12 of their representation copy filed as Annex. A-9 & A-8 to their respective OAs). According to the respondents, the ICAR did not proceed to fill-up the posts under said advertisement in view of 'Ban' on fresh appointment imposed by the Government of India vide O.M. dated 5.8.1999 (Annex. R/7 to the counter reply). It, however, shows that there was no absolute ban and appointment could be made with prior sanction / concurrence of the Ministry of Finance (Department of Expenditure).

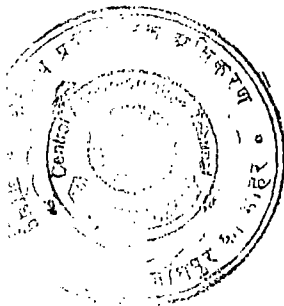


8. Letter of the Drawing and Disbursing Officer (Shri Uttam Kumar) dated 28.2.2003 / 1.3.2003 (Annex. R/9 to the counter-reply) shows that payments were made to the applicants subject to rectification / approval from the ICAR, New Delhi. From the facts and documents disclosed in the OA and the counter reply it is more than clear that applicants were taken-over on regular cadre of ICAR under the orders of competent authority, viz., 'Director' as early as in the year '1999'



itself and that matter was also referred to ICAR, New Delhi; there has been correspondence between the ICAR, Jodhpur and ICAR New Delhi on this subject but decision to discontinue the applicants was not taken promptly and the applicants were allowed to hold the 'posts' in regular cadre in ICAR Institute - CAZRI regular paid salary increments when due besides allowed to join GPF, etc., at par with other regular employees of the Institute. It is, however, surprising that in spite of Senior Administrative Officer's comments (at Annex. R/8) and also letter of the Drawing and Disbursing Officer dated 1.3.2003 (Annex. R-9) the applicants were regularly paid and allowed to continue in service.

9. Counsel appearing for respondents referred to the Rules 5.1 and 8.5 of ICAR Hand Book of Technical Services, Fourth Edition - relating to Composition of Selection Committee. On going through the same, we find that these Rules are not applicable to the facts of the instant case.

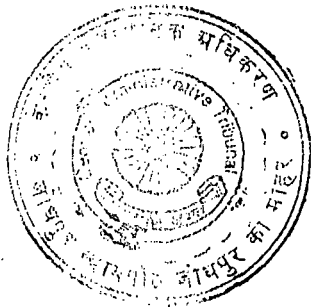


10. The learned counsel for the respondents have submitted that appointment of the applicants being in Project and there being no regular selection having been conducted, the applicants are not entitled to continue in service. This argument of the learned counsel for respondents has no merit considering that the respondents miserably failed to justify their belated action to terminate the services of the applicants after a decade on the facts and ground - within their knowledge and being fully conscious - ever since the inception of these appointments but still allowed the applicants to continue in ICAR, Jodhpur in regular cadre.

(11)

-7-

11. It is interesting to note that there is no whisper in the counter reply or the documents brought on record of this OA that the applicants' were guilty of concealment / fraud / mis-representation of fact(s) or abatement for collusion with concerned authority of ICAR in seeking appointment at any stage. ICAR did not proceed to take action against any of the 'then authority' responsible for these appointments. The respondents have failed to explain why ICAR at Delhi did not act promptly and kept the matter painfully pending for several years (about a decade). It may be recalled that ICAR, Jodhpur had referred the matter to ICAR Delhi as early as in the year 1999. Impugned termination order is issued in March 2008. The applicants have changed their position to their prejudice because the impugned order has been passed highly belatedly. Long silence, in the facts of this case, is conspicuously unexplained and amounts to 'Approval' / 'No Objection' to the 'appointments' in question. Approval / rectification of ICAR has to be inferred. The applicants are in no way responsible for their transfer / appointment from 'Project' to 'regular' cadre of ICAR. There is no reason as to why they should be punished for which they are not guilty. According to Legal Maxim -NEMO EX PROPRIO DOLUS CONSEQUITUR ACTIONEM - which means, 'No one can get a right consequence of his own wrong' - respondents' action to issue impugned order cannot be approved. CONSENSUS TOLLIT ERROREM, i.e. 'A man who does not speak where he ought to; shall not be heard later - when he desires to speak, is a well accepted 'Rule of Equity.'



12. In para 5 of the 'impugned-order' dated 28.3.2008 (Annex.A/1) (quoted below), the Respondents mentioned that it was 'irregular' (and not 'void ab initio' as later alleged in counter-reply. Para 5 of the impugned order reads :-

[Signature]

12

-8-

"5. Accordingly after examining the reply of Shri Bhanwar Lal Bose, the Secretary, ICAR has concluded that since he has been adjusted against a vacant post at CAZRI, Jodhpur irregularly, no legal right accrued to him to continue on the said post and that the ends of justice would be met if the services of Shri Bhanwar Lal Bose are terminated."

(underlined by us to lay emphasis)

Para 4 (h) - 'f' and 'g' of counter reply - read^{as} -

"f) That the averments made in para No. 4.6 of the original application are not disputed. However, it is submitted that when the initial appointment order of the applicant itself was void ab initio, nonest and nullity in the eye of law then by granting the revised pay scale and next increment a illegal order cannot become a legal order.

g) That the averments made in para No. 4.7 of the original application are not disputed. However, it is submitted that when the initial appointment order of the applicant itself was void ab initio, nonest and nullity in the eye of law then by allowing the GPF account number obtaining nomination form an illegal order cannot become a legal order."

Respondents, apparently on record, as an after thought, endeavored to 'improve' their defence. Respondents are conscious that 'irregular' appointment can be regularized and hence attempting to shift their 'stand', as exposed above. Respondents failed to discontinue the applicants at the 'earliest' opportunity and the applicants are not responsible of 'fraud' or mis-representation; and, therefore, their appointments have to be treated regularised/ratified by ICAR at least in the year 2004. Respondents cannot be allowed to fall back on the alleged 'irregularity' committed by their own after one decade - leaving 'the applicants' without 'job' in the mid of their life.



13. Plea of 'void-ab initio'/'nullity', as alleged in counter-reply, cannot be taken into account at this belated stage and liable to be ignored. An appointment (which may be irregular / voidable at initial stage) can be regular/valid in due course depending upon attending circumstances (including conduct of the parties)) of each case. Appointment of the applicants cannot be called through 'back door'. The impugned order to this extent, is without evidence on record and

13

-9-

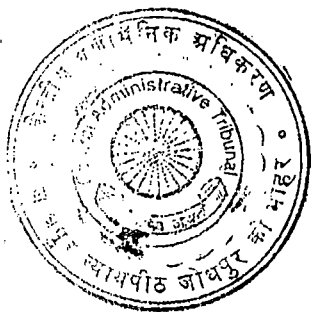
therefore - perverse - apart from the fact that such an observation in the impugned order is devoid of logic / rationale, opposed to "Fair-Play" and "Good Conscience" and arbitrary. It is, appropriate to infer "deemed-approval" on the principle - underlying the Latin Maxim - **QUI NON PROHIBIT QUOD PROHIBERE PROTEST ASSENT IRE VIDETUR, viz.-** He who does not prohibit when he can, is deemed to approve.

14. Difference between "Void" and "Voidable" has been explained time and again by Apex Court and High Courts. Reference is made to a few of them - as follows :

(i) In AIR (1978) SC 1536 (Para 3) - **Ram Sarup Vs. State of Haryana and others**, Apex Court noted -

"3. The question then arises as to what was the effect of breach of Cl.(1) of R. 4 of the Rules. Did it have the effect of rendering the appointment wholly void so as to be completely ineffective or merely irregular, so that it could be regularised as and when the appellant acquired the necessary qualifications to hold the post of Labour - cum - Conciliation Officer. We are of the view that the appointment of the appellant was irregular since he did not possess one of the three requisite qualifications but as soon as he acquired the necessary qualification of five years' experience of the working of labour laws in any one of the three capacities mentioned in Cl. (1) of R. 4 or in any higher capacity, his appointment must be regarded as having been regularised....."

The appointment of the appellant to the post of Labour-cum-Conciliation Officer, therefore, became regular from the date when he completed five years after taking into account the period of about ten months during which he worked as Chief Inspector of Shops. Once his appointment became regular on the expiry of this period of five years on his fulfilling the requirements for appointment as Labour-cum-Conciliation Officer and becoming eligible for that purpose, he could not thereafter be reverted to the post of Statistical Officer. The order of reversion passed against the appellant was, therefore, clearly illegal and it must be set aside."



(ii) In AIR 1999 SC 517 (Para 6) - **Union of India and others Vs. Kishori Lal Bablani**, while affirming order of C.A.T. Bombay Bench, - observed :-

-10-

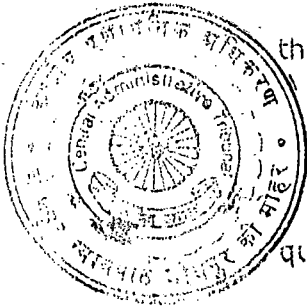
"6. Delay defeats equity is a well known principle of jurisprudence. Delays of 15 and 20 years cannot be overlooked when an applicant before the Court seeks equity. It is quite clear that the applicants for all these years had no legal right to any particular post. After more than 10 years, the process of selection and notification of vacancies cannot be and ought not to be reopened in the interest of the proper functioning and morale of the concerned services."

(iii) In AIR 2001 SC 1176 (Para 6) - **Buddhi Nath Chaudhary and others etc., Vs. Abahi Kumar and others.**-

reinstated above 'ratio-discedi' = as follows =

"6. The selected candidates, who have been appointed, are now in employment as Motor Vehicle Inspectors for over a decade. The effect of the conclusion is that appointments made long back pursuant to a selection need not be disturbed. Such a view can be derived from several decisions of this Court including the decisions in *Ram Sarup v. State of Haryana* (1979) 1 SCC 168 (AIR 1978 SC 1536 : 1978 Lab IC 1535); *District Collector and Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram v. M. Tripura Sundari Devi* (1990) 3 SCC 655; and *H.C. Puttaswamy v. Hon'ble Chief Justice of Karnataka High Court, Bangalore*, 1991 Supp (2) SCC 421 : (AIR 1991 SC 295 : 1991 Lab IC 235). Therefore, we must let the matters lie where they are."

15. Respondent emphasized upon the expression "Back-Door" used in the impugned order. Firstly, it is a 'grave' charge casting 'aspersion' as passion, against the applicants who were given no 'Show-Cause' notice to defend them. Admittedly, Respondents initiated no 'disciplinary-proceedings' under CCS (Classification, Control & Appeal) Rules, 1965. Otherwise also, Respondents have assigned no 'Role' to the applicants in seeking their appointments.



In the present case - both the applicants possess requisite qualification and they were eligible as per all criterion - to be appointed and they were appointed / absorbed against existing vacant post as per 'reservation quota'. They have not been blamed for either fraud or mis-representation or collusion. Such appointment is at best an infraction of procedure provided for appointment (on the part of

(5)

respondents) and, therefore, the 'applicants' cannot be dislodged on this score after a decade.

16. The applicants were transferred and adjusted against 'existing vacancies' within permissible quota; there was no absolute ban as such and appointment could be made with the concurrence of the Government. The respondents did not revoke 'appointment' in question at the first opportunity and the applicants were allowed to serve the Institute for about ten years (approx.) within the knowledge of all concerned authorities at ICAR Jodhpur and ICAR New Delhi.

17. Coupled with the above circumstances, there is no charge of fraud / mis-representation against the applicants, the impugned order. Record shows that the then Director / Officers in ICAR, Jodhpur acted bonafide in the interest of 'Institute'. There is nothing to show that the applicants were appointed/absorbed against regular cadre of ICAR, Jodhpur for extraneous considerations. It is not even the case of the respondents.



18. Apparently, the applicants have continued in job in the belief and hope that they are at par with other employees appointed in regular cadre of the ICAR. If action was taken promptly by the respondents at initial stage/s, the applicants could have looked for alternative job/occupation to maintain / sustain them and their families. By allowing the applicants to continue for several years, the applicants can claim for 'legitimate expectation' of being treated as regularly appointed employees of the ICAR. The applicants have acted to their prejudice and now at this stage, in a 'dis-advantaged' position. The

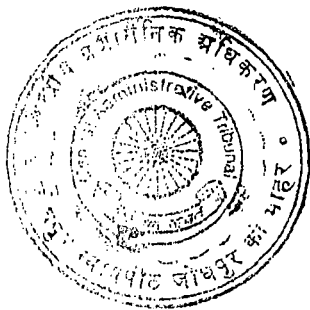
96
-12-

respondents failed to 'dis-continue' their appointment at the earliest available opportunity i.e. in 2003/2004 to the applicants. Therefore, failed to avail themselves of the opportunities to take alternative job / employment and now prevented due to their having become 'over-age'.

19. The learned counsel for the applicants, in support of the above, placed reliance on following decisions.

**District Collector & Chairman, Vizianagaram Soc. of
Welfare Residential School Society, Vizianagaram and Another
Vs. M. Tripura Sundari Devi** [1990 (3) SCC 655] Para 7. The Apex
Court observed-

"7. We are, however, informed that the respondent subsequently acquired another degree in MA with second class and has qualified herself to be appointed to the said post. Whatever the merits of the decision given by the Tribunal, we cannot forget that she was entitled to rely upon it till this time where she had succeeded. She was not allowed to join service on January 2, 1986 and thereafter she had approached the Tribunal in January 1987. The decision of the Tribunal was of August 31, 1987 and thereafter the present civil appeal was pending in this Court from December 1987 till this day. Considering the fact that she is compelled to serve, that she has acquired the requisite qualification, that today she may be overaged for the post and the further fact that many who were underqualified were appointed to the post earlier, we feel that it will be unjust to deprive her of the post at this stage. We, therefore, set aside the impugned order of the Tribunal but allow the appeal partially and direct that the respondent should be appointed in the post from the beginning of the ensuing academic year 1990-91. Since Shri Madhav Reddy contended that there is no vacant post at present, we further direct that, if necessary, a post be created to accommodate her. She will, however, not be entitled to any benefits including back wages till her appointment."



**H. C. Puttaswamy and Others Vs. The Hon'ble Chief Justice
of Karnataka High Court, Bangalore and Others**, [1991 (Suppl) 2
SCC 421](Paras 12, 13, 14 & 16). Relevant extract is reproduced
below -

17

-13-

"12. Having reaching the conclusion about the invalidity of the impugned appointments made by the Chief Justice, 'we cannot, however, refuse to recognize the consequence that involves on uprooting the appellants. Mr. Gopal Subramaniam, counsel for the appellants while highlighting the human problems involved in the case pleaded for sympathetic approach and made an impassioned appeal for allowing the appellants to continue in their respective posts. He has also referred to us several decisions of this Court where equitable directions were issued in the interests of justice even though the selection and appointments of candidates were held to be illegal and unsupportable.

13. There is good sense in the plea put forward for the appellants. The human problem stands at the outset in these cases and it is that problem that motivated us in allowing the review petitioners. It may be recalled that the appellants are in service for the past 10 years. They are either graduates or double graduates or post-graduates as against the minimum qualification of SSLC required for Second Division Clerks in which cadre they were originally recruited. Some of them seem to have earned higher qualification by hard work during their service. Some of them in the normal course have been promoted to higher cadre. They are now overaged for entry into any other service. It seems that most of them cannot get the benefit of age relaxation under Rule 6 of the Karnataka Civil Services (General Recruitment) Rules, 1977. One could only imagine their untold miseries and of their family if they are left at the midstream. Indeed, it would be an act of cruelty at this stage to ask Public Service Commission for fresh selection. (See *Lila Dhar vs. State of Rajasthan*).

14. We may briefly touch some of the decisions referred to us by counsel for the appellants. *A.K. Yadav v. State of Haryana* was concerned with the selection made by the Haryana Public Service Commission for appointment to the cadre of the Haryana Civil Service by allocating 33.3 per cent for viva voce. The selection was challenged before this Court on the ground that the marks awarded for the interview was high as it would open door for arbitrariness. This Court upheld that contention and held that the marks for viva voce test should not exceed 12.2 per cent. However, the court did not set aside the appointments, instead directed the Public Service Commission to give one more opportunity to the aggrieved candidates to appear at the competitive examinations. In *State of U.P. vs. Rafiquddin*, the validity of selection made by the Public Service Commission of Uttar Pradesh to the cadre of Munsifs came for consideration. Here again the court refused to quash the appointment even though the selection was found to be contrary to the rules of recruitment. In *Shainda Hasan (Miss) vs. State of U.P.* the legality of appointment of a Principal of a minority college was in question. The Principal was overaged for appointment, but she was given age relaxation which was held to be arbitrary. Yet the court has declined to strike down her appointment. On the contrary, the Chancellor was directed to grant the necessary approval for her appointment with effect from the date she was holding the post of the Principal. Her continuous working as Principal in the college seems to be the only consideration that weighed with this Court for giving that relief.

16. The precedents apart, the circumstances of this case justify an humanitarian approach and indeed, the appellants seem to deserve justice ruled by mercy. We take note of the fact that the writ petitioners also would be appointed in the High Court as stated by the learned Advocate General of the State."



**Surendra Kumar Singh Vs. Uttar Pradesh Financial Corporation
and Others, 2005 (1) ATJ 642 – Allahabad High Court – D.B. (Paras
9 to 14). Relevant extract is reproduced below :-**

32

"9. It is well settled by a series of decision of this Court and the Supreme Court that if an appointment order is to be questioned it must be questioned within a reasonable period thereafter and not after a very long period. Thus in *Kalu Ram v. State of UP*, (2000 All LJ 673) a Division Bench of this Court held that where the petitioner has put in about 36 years service as Executive Engineer then the consideration of validity of the petitioner's diploma on the basis of which he secured the initial appointment after a gap of 36 years is improper and the termination is wholly arbitrary.

10. In *Shainda Hasan v. State of U.P.*, AIR 1990 SC 1381 (1990 All LJ 335) the Supreme Court observed that though the selection of the appellant was invalid yet since she had been working for 16 years to ask her to leave her job at this stage would be doing injustice.

11. In *Ashok Kumar Sharma v. Chander Shekher*, 1993 Supp (2) SCC 611 (vide paragraph 23) it was held that it is unreasonable to quash an appointment after 10 years.

12. In *Arun Kumar Rout v. State of Bihar*, AIR 1998 SC 1477 the Supreme Court held that termination of service after a long time on the ground that the initial appointment was irregular was improper.

13. In *Rajendra Prasad Srivastava v. District Inspector of Schools*, 1994 (3) ESC 117 (All) it was held that an employee whose initial appointment is bad on account of some infirmity therein but if he has been allowed to work for a long period it will be unfair to remove him from service. A similar view has been taken by another Division Bench in *Rani Srivastava v. State of U.P.*, 1990 All CJ 243. *Secretary, State of Karnataka and Others Vs. Umadevi* (3) and Others. [2006 (4) SCC 1] (Para 53). Relevant extract is reproduced below :-

14. In *Roshni Devi v. State of Haryana*, 1998 (8) SCC 59, (AIR 1998 SC 3268), it was found that the employees have worked for more than nine years. Hence, it was held that even if their initial appointments were found to be invalid, they should not be removed from service."

Decision in the case of **M.P. State Co-operative Bank Versus Nanu Ram Yadav and Others** [2007 (8) SCC 264] relied upon by the respondents is distinguishable on facts and not relevant to the case in hand. Learned counsel does not when confronted, disputed it.



20. We may notice the plea of 'bar of alternative remedy' vide para 6 of the counter reply - inspite of the fact that this 'objection' is not argued / pressed while hearing the O.A. - for final decision.

21. The respondents cannot be permitted to blow 'Hot' and 'Cold' in same breath. According to the respondents, the applicants were never

#19

-15-

appointed as per rules on 'regular cadre' of ICAR and their adjustment/ appointment was void. If that be so, then CCS (Classification, Control & Appeal) Rules, 1965 - are not attracted and, therefore, the question of filing Appeal against 'Termination' - under those Rules - does not arise at all. Moreover, "Alternative Remedy" is not an 'absolute bar'.

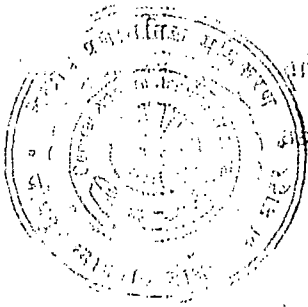
22. The applicants, who have been working since long for good ten years (approx.), have to be treated at par with other regularly selected / appointed employees on regular cadre of ICAR and they could not be 'fired' vide impugned order. "A good judge decides according to 'Justice' and 'Equity' in preference to 'Strict Law' - **BONUS JUDEX SECUNDUM ACQUUM ET BONUM JUDICAT ET ACQUITATEM STRICTO PRAEFERT**" is the well established principle - followed consistently by the Apex Court and other Courts/Tribunal.

23. Taking into account the entirety of the circumstances, the irresistible conclusion is that the impugned order in question is illegal, arbitrary, manifestly unjust, against fair play and 'Equity' and cannot be sustained in law.

24. No other argument or point urged and pressed.



25. In the result, the impugned orders, Annex. A/1 dated March 28, 2008 (in the above two OAs) are quashed, the Respondents are directed to treat them at par with other regularly employees on regular cadre of Indian Council of Agricultural Research - in accordance with Act / Rules, etc. in future without break, to pay all



arrears (if any) and continue to pay - all emoluments with increments and when due.

26, OAs allowed. No costs.

SJ/-
[R.R.BHANDARI]
MEMBER[A]

Sd/-
[A.K.YOG]
MEMBER[J]

CERTIFIED TRUE COPY

Dated 25.4.2008

[Signature]

मनुष्य अधिकारी (न्याय)
Section Officer (Judl)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ, जोधपुर
Jodhpur Bench, Jodhpur.

frm

[Signature]
S. Koralike
Adv.
25/4/08

[Signature]
2/5/08

Part II and III destroyed
in my presence on 15/12/14
under the supervision of
section officer (J) as per
order dated 19/8/2014
[Signature]
Section officer (Record)