CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00155/2019

AND

MISCELLANEOUS APPLICATION NO. 170/00059/2019

DATED THIS THE 13TH DAY OF JUNE, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C V SANKAR, MEMBER (A)

B.M. Vijay Shankar,
S/o H.S. Munikrishnachari,
Aged 57 years, I.A.S (Karnataka Cadre)
Presently working as Deputy Commissioner,
Bengaluru Urban District,
Kandaya Bhavan,
Bengaluru – 560 009
And Residing at No. 623,
22nd Main, 36th Cross,
4th 'T' Block,
Jayanagar, Bengaluru – 560 041 .....Applicant

(By Advocate M/s Subbarao & Co.)

Vs.

1. Union of India,
Represented by its Secretary,
Department of Personnel and Training
Ministry of Personnel
(Public Grievance & Pensions),
North Block,
New Delhi – 110 001

2. Union Public Service Commission,
Represented by its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi – 110 069

3. State of Karnataka,
Represented by its Principal Secretary,
Department of Personnel & Administrative Reforms,
Vidhana Soudha,
Dr. B.R. Ambedkar Veedhi,
Bengaluru – 560 001

4. Sri V. Srirama Reddy,
No. 628, 11th Main,
HAL II Stage,
Bengaluru – 560 008

5. Sri M.V. Vedamurthy
No. 8/14, 3rd Cross,
K.V. Layout,
Jayanagar 4th Block,
Bengaluru – 560 011

6. Sri N.M. Panali
No. 750, 6th Main,
10th Cross, I Stage,
III Block, HBR Layout,
Bengaluru – 560 043

7. Sri S.T. Anjan Kumar IAS
Residing at No. 3183,
21st 'C' Cross,
Vijayanagara, 2nd Stage,
Mysuru – 570 017

8. Sri Umesh Kusugal
Plot. 86, Rajajinagara,
Satturu,
Dharwad – 580 009 .....Respondents

(By Shri V.N. Holla, Counsel for Respondent No.1,
Shri M. Rajakumar, Counsel for Respondent No.2,
Shri Sathyanarayana Singh, Counsel for Respondent No.3,
Shri P. Kamalesan, Counsel for Respondent No.5,
Shri V.P. Kulkarni, Counsel for Respondent No.8,
Respondent No. 4,6, and 7 set ex parte)

ORDER

DR. K.B. SURESH, MEMBER (J):

Judicial discretion is an essential element of Rule of Law. It is the responsibility to sift between truth and falsity and devise methods to practically bring in Rule of Law into the tenor of justice.

2. The very concept of 'discretion' means a right to choose between more than one possible course of action. Professor K. Davis in his "Discretionary Justice" defines discretion in the following manner: "A public officer has discretion whenever the effective limits on his power leave him free to make a choice among possible courses of action or inaction". He quotes William Pitt, who said "where law ends tyranny begins", and proceeds, in his book, to develop the theory that where law ends, tyranny does not necessarily begin; where law ends, discretion begins and discretion may mean beneficence of tyranny, justice or injustice or reasonableness or arbitrariness. And discretion is indeed tyranny if it is unfettered. The

question for the decision-maker usually is – how to structure the exercise of discretionary power, that is, how to regularize it, organize it, produce order in it, so that there is equality and like cases are decided alike.

3. Therefore, how to use judicial discretion in furthering the cause of 'Satyameva Jayate' seem to be the crux of the matter.

4. The applicant seeks that the selection and appointment of Respondent No. 4 – 8 to be set aside so that he may find a place in the select list in the year 2008. He relies on a judgment by the Hon'ble Apex Court in State of Karnataka and Others Vs. M.L. Kesari and Others reported in (2010) 9 SCC 247 which we quote:

> ***"R.V.RAVEENDRAN, J.***
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> *Delay condoned. Leave granted.*
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> *2. Respondents 1 to 3 were appointed on daily wage basis by the Zila Panchayat, Gadag, between 1985 and 1987. Their services were utilized as Typist, Literate Assistant and Watchman respectively in the office of the Executive Engineer, Zila Panchayat Engineering Sub-Division, Ron, Gadag District. They were continued as daily wagers for more than 15 years without the intervention of any court and without the protection of any interim orders of any court or tribunal. In the year 2002 they filed Writ Petitions (Nos.31687-31689/2002) seeking regularization. The said writ petitions were allowed by a learned Single Judge of Karnataka High Court by order dated 27.9.2002 with a direction to consider their representations in accordance with the judgment dated 24.1.2001 in W.A. Nos.5697/2000 and 6677-7351/2000.*
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> *3. The writ appeals filed by the appellants against the said order*

were dismissed by a Division Bench by the impugned order dated 28.7.2004 holding that the respondents will be entitled to regularization, depending upon the terms and conditions of appointment, availability of existing substantive vacancies, eligibility, qualifications, continuity of service, seniority and the prevailing rules. The Division Bench directed that the case of each of the appellants shall be considered independently on its own facts, within four months. The said judgment is challenged in this appeal by special leave.

4. When the matter came up for hearing on 10.3.2006, the matter was adjourned to await the decision of the Constitution Bench in CA Nos. 3595- 3612/1999 - State of Karnataka v. Umadevi. However, subsequently notice was directed to be issued both on the application for condonation of delay for 361 days' in filing the SLP as also on the special leave petition.

5. The decision in State of Karnataka v. Umadevi was rendered on 10.4.2006 (reported in 2006 (4) SCC 1). In that case, a Constitution Bench of this Court held that appointments made without following the due process or the rules relating to appointment did not confer any right on the appointees and courts cannot direct their absorption, regularization or re- engagement nor make their service permanent, and the High Court in exercise of jurisdiction under Article 226 of the Constitution should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment had been done in a regular manner, in terms of the constitutional scheme; and that the courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities, nor lend themselves to be instruments to facilitate the bypassing of the constitutional and statutory mandates.

6. This Court in Umadevi further held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. This Court however made one exception to the above position and the same is extracted below :

> *"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [1967 (1) SCR 128], R.N. Nanjundappa [1972 (1) SCC 409] and B.N. Nagarajan [1979 (4) SCC 507] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have*

continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date.

(emphasis in original)

7. It is evident from the above that there is an exception to the general principles against `regularization' enunciated in Umadevi, if the following conditions are fulfilled :

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.

8. Umadevi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Umadevi, directed that such one-time measure must be set in motion within six months from the date of its decision (rendered on 10.4.2006).

9. The term `one-time measure' has to be understood in its proper perspective. This would normally mean that after the decision in Umadevi, each department or each instrumentality should undertake a one-time exercise and prepare a list of all casual, daily-wage or ad hoc employees who have been working for more than ten years without the intervention of courts and tribunals and subject them to a process verification as to whether they are working against vacant posts and possess the requisite qualification for the post and if so, regularize their services.

10. At the end of six months from the date of decision in Umadevi, cases of several daily-wage/ad-hoc/casual employees were still pending before Courts. Consequently, several departments and instrumentalities did not commence the one-time regularization process. On the other hand, some Government departments or instrumentalities undertook the one-time exercise excluding several employees from consideration either on the ground that their cases were pending in courts or due to sheer oversight. In such circumstances, the employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 53 of Umadevi has expired. The one-time exercise should consider all daily-wage/adhoc/those employees who had put in 10 years of continuous service as on 10.4.2006 without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 53 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 53 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise. The one time exercise will be concluded only when all the employees who are entitled to be considered in terms of Para 53 of Umadevi, are so considered.

11. The object behind the said direction in para 53 of Umadevi is two- fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad-hoc/casual for long periods and then periodically regularize them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The

true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.

12. These appeals have been pending for more than four years after the decision in Umadevi. The Appellant (Zila Panchayat, Gadag) has not considered the cases of respondents of regularization within six months of the decision in Umadevi or thereafter.

13. The Division Bench of the High Court has directed that the cases of respondents should be considered in accordance with law. The only further direction that needs be given, in view of Umadevi, is that the Zila Panchayat, Gadag should now undertake an exercise within six months, a general one- time regularization exercise, to find out whether there are any daily wage/casual/ad-hoc employees serving the Zila Panchayat and if so whether such employees (including the respondents) fulfill the requirements mentioned in para 53 of Umadevi. If they fulfill them, their services have to be regularized. If such an exercise has already been undertaken by ignoring or omitting the cases of respondents 1 to 3 because of the pendency of these cases, then their cases shall have to be considered in continuation of the said one time exercise within three months. It is needless to say that if the respondents do not fulfill the requirements of Para 53 of Umadevi, their services need not be regularised. If the employees who have completed ten years service do not possess the educational qualifications prescribed for the post, at the time of their appointment, they may be considered for regularization in suitable lower posts.

14. This appeal is disposed of accordingly."

5. This matter is about irregularity in appointment and illegality in appointment. It stipulates that where the persons appointed do not possess the prescribed minimum qualifications, their appointments would be considered to be illegal. This decision also relies on the decision of

the Hon'ble Apex Court in State of Karnataka Vs. Umadevi reported in (2006) 4 SCC 1. We quote from the judgment:

> *"J U D G M E N T WITH CIVIL APPEAL NO.1861-2063/2001, 3849/2001, 3520-3524/2002 and CIVIL APPEAL NO. 1968 of 2006 arising out of SLP(C)9103-9105 OF 2001 P.K. BALASUBRAMANYAN, J.*
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> *Leave granted in SLP(C) Nos.9103-9105 of 2001*
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> *1. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated equals. Thus, any public employment has to be in terms of the constitutional scheme.*
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> *2. A sovereign government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. Going by a law newly enacted, The National Rural Employment Guarantee Act, 2005, the object is to give employment to at least one member of a family for hundred days in an year, on paying wages as fixed under that Act. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.*
>
> *3. But, sometimes this process is not adhered to and the Constitutional scheme of public employment is by-passed. The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts,*

seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts. Courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called 'litigious employment', has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution of India. Whether the wide powers under Article 226 of the Constitution is intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognized by our Constitution, has to be seriously pondered over. It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance, tends to defeat the very Constitutional scheme of public employment. It has to be emphasized that this is not the role envisaged for High Courts in the scheme of things and their wide powers under Article 226 of the Constitution of India are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten.

4. This Court has also on occasions issued directions which could not be said to be consistent with the Constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualization of justice. The question arises, equity to whom? Equity for the handful of people who have approached the Court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for employment? When one side of the coin is considered, the other side of the coin, has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the Constitutional scheme, certainly tend to water down the Constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench.

5. The power of a State as an employer is more limited than that of a private employer inasmuch as it is subjected to constitutional

limitations and cannot be exercised arbitrarily (See Basu's Shorter Constitution of India). Article 309 of the Constitution gives the Government the power to frame rules for the purpose of laying down the conditions of service and recruitment of persons to be appointed to public services and posts in connection with the affairs of the Union or any of the States. That Article contemplates the drawing up of a procedure and rules to regulate the recruitment and regulate the service conditions of appointees appointed to public posts. It is well acknowledged that because of this, the entire process of recruitment for services is controlled by detailed procedure which specify the necessary qualifications, the mode of appointment etc. If rules have been made under Article 309 of the Constitution, then the Government can make appointments only in accordance with the rules. The State is meant to be a model employer. The Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 was enacted to ensure equal opportunity for employment seekers. Though this Act may not oblige an employer to employ only those persons who have been sponsored by employment exchanges, it places an obligation on the employer to notify the vacancies that may arise in the various departments and for filling up of those vacancies, based on a procedure. Normally, statutory rules are framed under the authority of law governing employment. It is recognized that no government order, notification or circular can be substituted for the statutory rules framed under the authority of law. This is because, following any other course could be disastrous inasmuch as it will deprive the security of tenure and the right of equality conferred on civil servants under the Constitutional scheme. It may even amount to negating the accepted service jurisprudence. Therefore, when statutory rules are framed under Article 309 of the Constitution which are exhaustive, the only fair means to adopt is to make appointments based on the rules so framed.

6. These two sets of appeals reflect the cleavage of opinion in the High Court of Karnataka based on the difference in approach in two sets of decisions of this Court leading to a reference of these appeals to the Constitution Bench for decision. The conflict relates to the right, if any, of employees appointed by the State or by its instrumentalities on a temporary basis or on daily wages or casually, to approach the High Court for the issue of a writ of mandamus directing that they be made permanent in appropriate posts, the work of which they were otherwise doing. The claim is essentially based on the fact that they having continued in employment or engaged in the work for a significant length of time, they are entitled to be absorbed in the posts in which they had

worked in the department concerned or the authority concerned. There are also more ambitious claims that even if they were not working against a sanctioned post, even if they do not possess the requisite qualification, even if they were not appointed in terms of the procedure prescribed for appointment, and had only recently been engaged, they are entitled to continue and should be directed to be absorbed.

7. In Civil Appeal Nos.3595-3612 of 1999 the respondents therein who were temporarily engaged on daily wages in the Commercial Taxes Department in some of the districts of the State of Karnataka claim that they worked in the department based on such engagement for more than 10 years and hence they are entitled to be made permanent employees of the department, entitled to all the benefits of regular employees. They were engaged for the first time in the years 1985-86 and in the teeth of orders not to make such appointments issued on 3.7.1984. Though the Director of Commercial Taxes recommended that they be absorbed, the Government did not accede to that recommendation. These respondents thereupon approached the Administrative Tribunal in the year 1997 with their claim. The Administrative Tribunal rejected their claim finding that they have not made out a right either to get wages equal to that of others regularly employed or for regularization. Thus, the applications filed were dismissed. The respondents approached the High Court of Karnataka challenging the decision of the Administrative Tribunal. It is seen that the High Court without really coming to grips with the question falling for decision in the light of the findings of the Administrative Tribunal and the decisions of this Court, proceeded to order that they are entitled to wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service with effect from the dates from which they were respectively appointed. It may be noted that this gave retrospective effect to the judgment of the High Court by more than 12 years. The High Court also issued a command to the State to consider their cases for regularization within a period of four months from the date of receipt of that order. The High Court seems to have proceeded on the basis that, whether they were appointed before 01.07.1984, a situation covered by the decision of this Court in Dharwad District Public Works Department vs. State of Karnataka (1990 (1) SCR 544) and the scheme framed pursuant to the direction thereunder, or subsequently, since they have worked for a period of 10 years, they were entitled to equal pay for equal work from the very inception of their engagement on daily wages and were also entitled to be considered for regularization in their posts.

8. Civil Appeal Nos.1861-2063 of 2001 reflects the other side of the coin. The appellant association with indefinite number of members approached the High Court with a writ petition under Article 226of the Constitution of India challenging the order of the government directing cancellation of appointments of all casual workers/daily rated workers made after 01.07.1984 and further seeking a direction for the regularization of all the daily wagers engaged by the government of Karnataka and its local bodies. A learned Single Judge of the High Court disposed of the writ petition by granting permission to the petitioners before him, to approach their employers for absorption and regularization of their services and also for payment of their salaries on par with the regular workers, by making appropriate representations within the time fixed therein and directing the employers to consider the cases of the claimants for absorption and regularization in accordance with the observations made by the Supreme Court in similar cases. The State of Karnataka filed appeals against the decision of the learned Single Judge. A Division Bench of the High Court allowed the appeals. It held that the daily wage employees, employed or engaged either in government departments or other statutory bodies after 01.07.1984, were not entitled to the benefit of the scheme framed by this Court in Dharwad District Public Works Department case, referred to earlier. The High Court considered various orders and directions issued by the government interdicting such engagements or employment and the manner of entry of the various employees. Feeling aggrieved by the dismissal of their claim, the members of the associations have filed these appeals.

9. When these matters came up before a Bench of two Judges, the learned Judges referred the cases to a Bench of three Judges. The order of reference is reported in 2003 (9) SCALE 187. This Court noticed that in the matter of regularization of ad hoc employees, there were conflicting decisions by three Judge Benches of this Court and by two Judge Benches and hence the question required to be considered by a larger Bench. When the matters came up before a three Judge Bench, the Bench in turn felt that the matter required consideration by a Constitution Bench in view of the conflict and in the light of the arguments raised by the Additional Solicitor General. The order of reference is reported in 2003 (10) SCALE 388. It appears to be proper to quote that order of reference at this stage. It reads:

1. "Apart from the conflicting opinions between the three Judges' Bench decisions in Ashwani Kumar and Ors. Vs. State of Bihar and Ors., reported in 1997 (2) SCC 1, State of Haryana and Ors vs., Piara Singh and Ors. Reported in 1992 (4) SCC 118 and Dharwad

Distt. P.W.D. Literate Daily Wage Employees Association and Ors. Vs. State of Karnataka and Ors.

Reported in 1990 (2) SCC 396, on the one hand and State of Himachal Pradesh vs. Suresh Kumar Verma and Anr., reported in AIR 1996 SC 1565, State of Punjab vs. Surinder Kumar and Ors. Reported in AIR 1992 SC 1593, and B.N. Nagarajan and Ors. Vs. State of Karnataka and Ors., reported in 1979 (4) SCC 507 on the other, which has been brought out in one of the judgments under appeal of Karnataka High Court in State of Karnataka vs. H. Ganesh Rao, decided on 1.6.2000, reported in 2001 (4) Karnataka Law Journal 466, learned Additional Solicitor General urged that the scheme for regularization is repugnant to Articles 16(4), 309, 320 and 335 of the Constitution of India and, therefore, these cases are required to be heard by a Bench of Five learned Judges (Constitution Bench).

2. On the other hand, Mr. M.C. Bhandare, learned senior counsel, appearing for the employees urged that such a scheme for regularization is consistent with the provision of Articles 14 and 21 of the Constitution.

3. Mr. V. Lakshmi Narayan, learned counsel, appearing in CC Nos.109-498 of 2003, has filed the G.O. dated 19.7.2002 and submitted that orders have already been implemented.

4. After having found that there is conflict of opinion between three Judges Bench decisions of this Court, we are of the view that these cases are required to be heard by a Bench of five learned Judges.

5. Let these matters be placed before Hon'ble the Chief Justice for appropriate orders."

We are, therefore, called upon to resolve this issue here. We have to lay down the law. We have to approach the question as a constitutional court should.

10. In addition to the equality clause represented by Article 14 of the Constitution, Article 16 has specifically provided for equality of opportunity in matters of public employment. Buttressing these fundamental rights, Article 309 provides that subject to the provisions of the Constitution, Acts of the legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of a State. In view of the interpretation placed on Article 12 of the Constitution by this Court, obviously, these principles also govern the instrumentalities that come within the purview of Article 12 of the Constitution. With a view to make the procedure for

selection fair, the Constitution by Article 315 has also created a Public Service Commission for the Union and Public Service Commissions for the States. Article 320 deals with the functions of Public Service Commissions and mandates consultation with the Commission on all matters relating to methods of recruitment to civil services and for civil posts and other related matters. As a part of the affirmative action recognized by Article 16 of the Constitution, Article 335 provides for special consideration in the matter of claims of the members of the scheduled castes and scheduled tribes for employment. The States have made Acts, Rules or Regulations for implementing the above constitutional guarantees and any recruitment to the service in the State or in the Union is governed by such Acts, Rules and Regulations. The Constitution does not envisage any employment outside this constitutional scheme and without following the requirements set down therein.

11. In spite of this scheme, there may be occasions when the sovereign State or its instrumentalities will have to employ persons, in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of the relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.

12. What is sought to be pitted against this approach, is the so called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such

considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions. In this context, we have also to bear in mind the exposition of law by a Constitution Bench in State of Punjab Vs. Jagdip Singh & Ors. (1964 (4) SCR 964). It was held therein, "In our opinion, where a Government servant has no right to a post or to a particular status, though an authority under the Government acting beyond its competence had purported to give that person a status which it was not entitled to give, he will not in law be deemed to have been validly appointed to the post or given the particular status."

13. During the course of the arguments, various orders of courts either interim or final were brought to our notice. The purport of those orders more or less was the issue of directions for continuation or absorption without referring to the legal position obtaining. Learned counsel for the State of Karnataka submitted that chaos has been created by such orders without reference to legal principles and it is time that this Court settled the law once for all so that in case the court finds that such orders should not be made, the courts, especially, the High Courts would be precluded from issuing such directions or passing such orders. The submission of learned counsel for the respondents based on the various orders passed by the High Court or by the Government pursuant to the directions of Court also highlights the need for settling the law by this Court. The bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with and deciding the validity of such orders on the touchstone of constitutionality. While approaching the questions falling for our decision, it is necessary to bear this in mind and to bring about certainty in the matter of public employment. The argument on behalf of some of the respondents is that this Court having once directed regularization in the Dharwad case (supra), all those appointed temporarily at any point of time would be entitled to be regularized since otherwise it would be discrimination

between those similarly situated and in that view, all appointments made on daily wages, temporarily or contractually, must be directed to be regularized. Acceptance of this argument would mean that appointments made otherwise than by a regular process of selection would become the order of the day completely jettisoning the constitutional scheme of appointment. This argument also highlights the need for this Court to formally lay down the law on the question and ensure certainty in dealings relating to public employment. The very divergence in approach in this Court, the so-called equitable approach made in some, as against those decisions which have insisted on the rules being followed, also justifies a firm decision by this Court one way or the other. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down.

14. Even at the threshold, it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. In STATE OF MYSORE Vs. S.V. NARAYANAPPA [1967 (1) S.C.R. 128], this Court stated that it was a mis-conception to consider that regularization meant permanence. In R.N. NANJUNDAPPA Vs T. THIMMIAH & ANR. [(1972) 2 S.C.R. 799], this Court dealt with an argument that regularization would mean conferring the quality of permanence on the appointment. This Court stated:- "Counsel on behalf of the respondent contended that regularization would mean conferring the quality of permanence on the appointment, whereas counsel on behalf of the State contended that regularization did not mean permanence but that it was a case of regularization of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized.

Ratification or regularization is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules."

In B.N. Nagarajan & Ors. Vs. State of Karnataka & Ors. [(1979) 3 SCR 937], this court clearly held that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any

procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This court emphasized that when rules framed under Article 309of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.

16. Without keeping the above distinction in mind and without discussion of the law on the question or the effect of the directions on the constitutional scheme of appointment, this Court in Daily Rated Casual Labour Vs. Union of India & Ors. (1988 (1) SCR 598) directed the Government to frame a scheme for absorption of daily rated casual labourers continuously working in the Posts and Telegraphs Department for more than one year. This Court seems to have been swayed by the idea that India is a socialist republic and that implied the existence of certain important obligations which the State had to discharge. While it might be one thing to say that the daily rated workers, doing the identical work, had to be paid the wages that were being paid to those who are regularly appointed and are doing the same work, it would be quite a different thing to say that a socialist republic and its Executive, is bound to give permanence to all those who are employed as casual labourers or temporary hands and that too without a process of selection or without following the mandate of the

Constitution and the laws made thereunder concerning public employment. The same approach was made in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation (1989 Suppl. (2) SCR 513) where this Court directed regularization of daily rated workers in phases and in accordance with seniority.

17. One aspect arises. Obviously, the State is also controlled by economic considerations and financial implications of any public employment. The viability of the department or the instrumentality or of the project is also of equal concern for the State. The State works out the scheme taking into consideration the financial implications and the economic aspects. Can the court impose on the State a financial burden of this nature by insisting on regularization or permanence in employment, when those employed temporarily are not needed permanently or regularly? As an example, we can envisage a direction to give permanent employment to all those who are being temporarily or casually employed in a public sector undertaking. The burden may become so heavy by such a direction that the undertaking itself may collapse under its own weight. It is not as if this had not happened. So, the court ought not to impose a financial burden on the State by such directions, as such directions may turn counter-productive.

18. The Decision in Dharwad Distt. P.W.D. Literate Daily Wage Employees Association & ors. Vs. State of Karnataka & Ors. (1990 (1) SCR 544) dealt with a scheme framed by the State of Karnataka, though at the instance of the court. The scheme was essentially relating to the application of the concept of equal pay for equal work but it also provided for making permanent, or what it called regularization, without keeping the distinction in mind, of employees who had been appointed ad hoc, casually, temporarily or on daily wage basis. In other words, employees who had been appointed without following the procedure established by law for such appointments. This Court, at the threshold, stated that it should individualize justice to suit a given situation. With respect, it is not possible to accept the statement, unqualified as it appears to be. This Court is not only the constitutional court, it is also the highest court in the country, the final court of appeal. By virtue of Article 141 of the Constitution of India, what this Court lays down is the law of the land. Its decisions are binding on all the courts. Its main role is to interpret the constitutional and other statutory provisions bearing in mind the fundamental philosophy of the Constitution. We have given unto ourselves a system of governance by rule of law. The role of the Supreme Court is to render justice according to law. As one jurist put it, the Supreme

Court is expected to decide questions of law for the country and not to decide individual cases without reference to such principles of law. Consistency is a virtue. Passing orders not consistent with its own decisions on law, is bound to send out confusing signals and usher in judicial chaos. Its role, therefore, is really to interpret the law and decide cases coming before it, according to law. Orders which are inconsistent with the legal conclusions arrived at by the court in the self same judgment not only create confusion but also tend to usher in arbitrariness highlighting the statement, that equity tends to vary with the Chancellor's foot.

19. In Dharwad case, this Court was actually dealing with the question of 'equal pay for equal work' and had directed the State of Karnataka to frame a scheme in that behalf. In paragraph 17 of the judgment, this Court stated that the precedents obliged the State of Karnataka to regularize the services of the casual or daily/monthly rated employees and to make them the same payment as regular employees were getting. Actually, this Court took note of the argument of counsel for the State that in reality and as a matter of statecraft, implementation of such a direction was an economic impossibility and at best only a scheme could be framed. Thus a scheme for absorption of casual/daily rated employees appointed on or before 1.7.1984 was framed and accepted. The economic consequences of its direction were taken note of by this Court in the following words.

"We are alive to the position that the scheme which we have finalized is not the ideal one but as we have already stated, it is the obligation of the court to individualize justice to suit a given situation in a set of facts that are placed before it. Under the scheme of the Constitution, the purse remains in the hands of the executive. The legislature of the State controls the Consolidated Fund out of which the expenditure to be incurred, in giving effect to the scheme, will have to be met. The flow into the Consolidated Fund depends upon the policy of taxation depending perhaps on the capacity of the payer. Therefore, unduly burdening the State for implementing the constitutional obligation forthwith would create problems which the State may not be able to stand. We have, therefore, made our directions with judicious restraint with the hope and trust that both parties would appreciate and understand the situation. The instrumentality of the State must realize that it is charged with a big trust. The money that flows into the Consolidated Fund and constitutes the resources of the State comes from the people and the welfare expenditure that is meted out goes from the same Fund back to the people. May be that in every situation the same tax payer is not the beneficiary. That is an

incident of taxation and a necessary concomitant of living within a welfare society."

With respect, it appears to us that the question whether the jettisoning of the constitutional scheme of appointment can be approved, was not considered or decided. The distinction emphasized in R.N. NANJUNDAPPA Vs T. THIMMIAH & ANR. (supra), was also not kept in mind. The Court appears to have been dealing with a scheme for 'equal pay for equal work' and in the process, without an actual discussion of the question, had approved a scheme put forward by the State, prepared obviously at the direction of the Court, to order permanent absorption of such daily rated workers. With respect to the learned judges, the decision cannot be said to lay down any law, that all those engaged on daily wages, casually, temporarily, or when no sanctioned post or vacancy existed and without following the rules of selection, should be absorbed or made permanent though not at a stretch, but gradually. If that were the ratio, with respect, we have to disagree with it.

20. We may now consider, State of Haryana Vs. Piara Singh and Others [1992) 3 SCR 826]. There, the court was considering the sustainability of certain directions issued by the High Court in the light of various orders passed by the State for the absorption of its ad hoc or temporary employees and daily wagers or casual labour. This Court started by saying:

"Ordinarily speaking, the creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issued rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any governing the conditions of service"

This Court then referred to some of the earlier decisions of this Court while stating:

"The main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16. It also means that the State should not exploit its employees nor should it seek to take advantage of the helplessness and misery of either the unemployed persons or the employees, as the case may be. As is often said, the State must

be a model employer. It is for this reason, it is held that equal pay must be given for equal work, which is indeed one of the directive principles of the Constitution. it is for this very reason it is held that a person should not be kept in a temporary or ad hoc status for long. Where a temporary or ad hoc appointment is continued for long the court presumes that there is need and warrant for a regular post and accordingly directs regularization. While all the situations in which the court may act to ensure fairness cannot be detailed here, it is sufficient to indicate that the guiding principles are the ones stated above."

This Court then concluded in paragraphs 45 to 50:

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment

does not run counter to the reservation policy of the State "

With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent -- the distinction between regularization and making permanent, was not emphasized here -- can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in paragraph 50 of Piara Singh (supra) are to some extent inconsistent with the conclusion in paragraph 45 therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.

21. We shall now refer to the other decisions. In State of Punjab and others Vs. Surinder Kumar and others (1991 Suppl. (3) SCR 553), a three judge bench of this Court held that High Courts had no power, like the power available to the Supreme Court under Article 142 of the Constitution of India, and merely because the Supreme Court granted certain reliefs in exercise of its power under Article 142 of the Constitution of India, similar orders could not be issued by the High Courts. The bench pointed out that a decision is available as a precedent only if it decides a question of law. The temporary employees would not be entitled to rely in a Writ Petition they filed before the High Court upon an order of the Supreme Court which directs a temporary employee to be regularized in his service without assigning reasons and ask the High Court to pass an order of a similar nature. This Court noticed that the jurisdiction of the High Court while dealing with a Writ Petition was circumscribed by the limitations discussed and declared by judicial decisions and the High Court cannot transgress the limits on the basis of the whims or subjective sense of justice varying from judge to judge. Though the High Court is entitled to exercise its judicial discretion in deciding Writ Petitions or Civil Revision Applications coming before it, the discretion had to be confined in declining to entertain petitions and refusing to grant reliefs asked for by the petitioners on adequate considerations and it did not permit the High Court to grant relief on such a consideration alone. This Court set aside the directions

given by the High Court for regularization of persons appointed temporarily to the post of lecturers. The Court also emphasized that specific terms on which appointments were made should be normally enforced. Of course, this decision is more on the absence of power in the High Court to pass orders against the constitutional scheme of appointment.

22. In Director, Institute of Management Development, U.P. Vs. Pushpa Srivastava (Smt.) (1992 (3) SCR 712), this Court held that since the appointment was on purely contractual and ad hoc basis on consolidated pay for a fixed period and terminable without notice, when the appointment came to an end by efflux of time, the appointee had no right to continue in the post and to claim regularization in service in the absence of any rule providing for regularization after the period of service. A limited relief of directing that the appointee be permitted on sympathetic consideration to be continued in service till the end of the concerned calendar year was issued. This Court noticed that when the appointment was purely on ad hoc and contractual basis for a limited period, on the expiry of the period, the right to remain in the post came to an end. This Court stated that the view they were taking was the only view possible and set aside the judgment of the High Court which had given relief to the appointee.

23. In Madhyamik Shiksha Parishad, U.P. Vs. Anil Kumar Mishra and Others [AIR 1994 SC 1638], a three judge bench of this Court held that ad hoc appointees/temporary employees engaged on ad hoc basis and paid on piece-rate basis for certain clerical work and discontinued on completion of their task, were not entitled to reinstatement or regularization of their services even if their working period ranged from one to two years. This decision indicates that if the engagement was made in a particular work or in connection with particular project, on completion of that work or of that project, those who were temporarily engaged or employed in that work or project could not claim any right to continue in service and the High Court cannot direct that they be continued or absorbed elsewhere.

24. In State of Himachal Pradesh Vs. Suresh Kumar Verma (1996 (1) SCR 972), a three Judge Bench of this Court held that a person appointed on daily wage basis was not an appointee to a post according to Rules. On his termination, on the project employing him coming to an end, the Court could not issue a direction to re-engage him in any other work or appoint him against existing vacancies. This Court said: "It is settled law that having made rules of recruitment to various services under the State or to a class of

posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. From the date of discharging the duties attached to the post the incumbent becomes a member of the services. Appointment on daily wage basis is not an appointment to a post according to the Rules."

Their Lordships cautioned that if directions are given to re-engage such persons in any other work or appoint them against existing vacancies, "the judicial process would become another mode of recruitment dehors the rules."

25. In Ashwani Kumar and others Vs. State of Bihar and others (1996 Supp. (10) SCR 120), this Court was considering the validity of confirmation of the irregularly employed. It was stated: "So far as the question of confirmation of these employees whose entry was illegal and void, is concerned, it is to be noted that question of confirmation or regularization of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorized and is not against any sanctioned vacancy, question of regularizing the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularization or confirmation is given it would be an exercise in futility."

This Court further stated :

"In this connection it is pertinent to note that question of regularization in any service including any government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily-wage basis by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularize them so that the employees concerned can give their best by being assured security of tenure. But this would require one precondition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularization may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise

though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by a competent authority and the irregular initial appointment may be regularized and security of tenure may be made available to the incumbent concerned. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment."

The Court noticed that in that case all constitutional requirements were thrown to the wind while making the appointments. It was stated, "On the contrary all efforts were made to bypass the recruitment procedure known to law which resulted in clear violation of Articles 14 and 16(1) of the Constitution of India, both at the initial stage as well as at the stage of confirmation of these illegal entrants. The so called regularizations and confirmations could not be relied on as shields to cover up initial illegal and void actions or to perpetuate the corrupt methods by which these 6000 initial entrants were drafted in the scheme."

26. It is not necessary to notice all the decisions of this Court on this aspect. By and large what emerges is that regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment.

27. In A. Umarani Vs. Registrar, Cooperative Societies and Others (2004 (7) SCC 112), a three judge bench made a survey of the authorities and held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularized by the State. The State could not invoke its power under Article 162 of the Constitution to regularize such appointments. This Court also held that regularization is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act or the Rules framed thereunder. Regularization furthermore cannot give

permanence to an employee whose services are ad hoc in nature. It was also held that the fact that some persons had been working for a long time would not mean that they had acquired a right for regularization.

28. Incidentally, the Bench also referred to the nature of the orders to be passed in exercise of this Court's jurisdiction under Article 142 of the Constitution. This Court stated that jurisdiction under Article 142 of the Constitution could not be exercised on misplaced sympathy. This Court quoted with approval the observations of Farewell, L.J. in Latham vs. Richard Johnson & Nephew Ltd. (1913 (1) KB 398)"

"We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o' the wisp to take as a guide in the search for legal principles."

This Court also quoted with approval the observations of this Court in Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh (2004 (2) SCC 130) to the effect:

"We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision."

This decision kept in mind the distinction between 'regularization' and 'permanency' and laid down that regularization is not and cannot be the mode of recruitment by any State. It also held that regularization cannot give permanence to an employee whose services are ad hoc in nature.

29. It is not necessary to multiply authorities on this aspect. It is only necessary to refer to one or two of the recent decisions in this context. In State of U.P. vs. Niraj Awasthi and others (2006 (1) SCC 667) this Court after referring to a number of prior decisions held that there was no power in the State under Art. 162 of the Constitution of India to make appointments and even if there was any such power, no appointment could be made in contravention of statutory rules. This Court also held that past alleged regularisation or appointment does not connote entitlement to further regularization or appointment. It was further held that the High Court has no jurisdiction to frame a scheme by itself or direct the framing of a scheme for regularization. This view was reiterated in State of Karnataka vs. KGSD Canteen Employees Welfare

Association (JT 2006 (1) SC 84).

30. In Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Others [2006 (2) SCALE 115], this Court answered the question, who was a Government servant and stated:-

"Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words "employment" or "appointment" cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution (See B.S. Minhas Vs. Indian Statistical Institute and others AIR 1984 SC 363)."

31. There have been decisions which have taken the cue from the Dharwad (supra) case and given directions for regularization, absorption or making permanent, employees engaged or appointed without following the due process or the rules for appointment. The philosophy behind this approach is seen set out in the recent decision in The Workmen of Bhurkunda Colliery of M/s Central Coalfields Ltd. Vs. The Management of Bhurkunda Colliery of M/s Central Coalfields Ltd. (JT 2006 (2) SC 1), though the legality or validity of such an approach has not been independently examined. But on a survey of authorities, the predominant view is seen to be that such appointments did not confer any right on the appointees and that the Court cannot direct their absorption or regularization or re-engagement or making them

permanent.

32. At this stage, it is relevant to notice two aspects. In Kesavananda Bharati Vs. State of Kerala (1973 Supp. S.C.R. 1), this Court held that Article 14, and Article 16, which was described as a facet ofArticle 14, is part of the basic structure of the Constitution of India. The position emerging from Kesavananada Bharati (supra) was summed up by Jagannatha Rao, J., speaking for a Bench of three Judges in Indira Sawhney Vs. Union of India (1999 Suppl. (5) S.C.R. 229). That decision also reiterated how neither the Parliament nor the Legislature could transgress the basic feature of the Constitution, namely, the principle of equality enshrined in Article 14 of which Article 16 (1) is a facet. This Court stated, " The preamble to the Constitution of India emphasises the principle of equality as basic to our constitution. In Keshavananda Bharati v. State of Kerala, it was ruled that even constitutional amendments which offended the basic structure of the Constitution would be ultra vires the basic structure. Sikri, CJ. laid stress on the basic features enumerated in the preamble to the Constitution and said that there were other basic features too which could be gathered from the Constitutional scheme (para 506 A of SCC). Equality was one of the basic features referred to in the Preamble to our Constitution. Shelat and Grover, JJ. also referred to the basic rights referred to in the Preamble. They specifically referred to equality (paras 520 and 535A of SCC). Hegde & Shelat, JJ. also referred to the Preamble (paras 648,

652). Ray, J. (as he then was) also did so (para 886).

Jaganmohan Reddy, J. too referred to the Preamble and the equality doctrine (para 1159). Khanna, J. accepted this position (para 1471). Mathew, J. referred to equality as a basic feature(para 1621). Dwivedi, J. (paras 1882, 1883) and Chandrachud, J.(as he then was) (see para 2086) accepted this position.

What we mean to say is that Parliament and the legislatures in this Country cannot transgress the basic feature of the Constitution, namely, the principle of equality enshrined in Article 14 of which Article 16(1) is a facet."

33. In the earlier decision in Indra Sawhney Vs. Union of India [1992 Supp. (2) S.C.R. 454), B.P. Jeevan Reddy, J. speaking for the majority, while acknowledging that equality and equal opportunity is a basic feature of our Constitution, has explained the exultant position of Articles 14 and 16 of the Constitution of India in the scheme of things. His Lordship stated:-

"6. The significance attached by the founding fathers to the right to

equality is evident not only from the fact that they employed both the expressions 'equality before the law' and 'equal protection of the laws' in Article 14 but proceeded further to state the same rule in positive and affirmative terms in Articles 15 to 18

7. Inasmuch as public employment always gave a certain status and power --- it has always been the repository of State power ---besides the means of livelihood, special care was taken to declare equality of opportunity in the matter of public employment by Article 16. Clause (1), expressly declares that in the matter of public employment or appointment to any office under the state, citizens of this country shall have equal opportunity while clause (2) declares that no citizen shall be discriminated in the said matter on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. At the same time, care was taken to, declare in clause (4) that nothing in the said Article shall prevent the state from making any provision for reservation of appointments or posts in favour of any backward class of citizen which in the opinion of the state, is not adequately represented in the services under the state.."

(See paragraphs 6 and 7 at pages 544 and 545) These binding decisions are clear imperatives that adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.

34. While answering an objection to the locus standi of the Writ Petitioners in challenging the repeated issue of an ordinance by the Governor of Bihar, the exalted position of rule of law in the scheme of things was emphasized, Chief Justice Bhagwati, speaking on behalf of the Constitution Bench in Dr. D.C. Wadhwa & Ors. Vs. State of Bihar & Ors. (1987 (1) S.C.R. 798) stated:

"The rule of law constitutes the core of our Constitution of India and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the Executive or any other authority should be within the constitutional limitations and if any practice is adopted by the Executive which is in flagrant and systematic violation of its constitutional limitations, petitioner No. 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice."

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article

14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

35. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no

process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain -- not at arms length -- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another

mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

37. Learned Senior Counsel for some of the respondents argued that on the basis of the doctrine of legitimate expectation, the employees, especially of the Commercial Taxes Department, should be directed to be regularized since the decisions in Dharwad (supra), Piara Singh (supra), Jacob, and Gujarat Agricultural University and the like, have given rise to an expectation in them that their services would also be regularized. The doctrine can be invoked if the decisions of the Administrative Authority affect the person by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or

(ii) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn {See Lord Diplock in Council of Civil Service Unions V. Minister for the Civil Service (1985 Appeal Cases 374), National Buildings Construction Corpn. Vs. S. Raghunathan, (1998 (7) SCC 66) and Dr. Chanchal Goyal Vs. State of Rajasthan (2003 (3) SCC 485). There is no case that any assurance was given by the Government or the concerned department while making the appointment on daily wages that the status conferred on him will not be withdrawn until some rational reason comes into existence for withdrawing it. The very engagement was against the constitutional scheme. Though, the Commissioner of the Commercial Taxes Department sought to get the appointments made permanent, there is no case that at the time of appointment any promise was held out. No such promise could also have been held out in view of the circulars and directives issued by the Government after the Dharwad decision. Though, there is a case that the State had made regularizations in the past of similarly situated employees, the fact remains that such regularizations were done only pursuant to judicial directions, either of the Administrative Tribunal or of the High Court and in some case by this Court. Moreover, the invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate. The argument in that behalf has therefore to be rejected.

38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons

either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

39. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

40. It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to

perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

41. It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Article 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article 21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

42. The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of

time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution.

43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.

44. One aspect needs to be clarified. There may be cases where

irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

45. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.

46. In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore,

of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them. In view of our conclusion, that Courts are not expected to issue directions for making such persons permanent in service, we set aside that part of the direction of the High Court directing the Government to consider their cases for regularization. We also notice that the High Court has not adverted to the aspect as to whether it was regularization or it was giving permanency that was being directed by the High Court. In such a situation, the direction in that regard will stand deleted and the appeals filed by the State would stand allowed to that extent. If sanctioned posts are vacant (they are said to be vacant) the State will take immediate steps for filling those posts by a regular process of selection. But when regular recruitment is undertaken, the respondents in C.A. No. 3595-3612 and those in the Commercial Taxes Department similarly situated, will be allowed to compete, waiving the age restriction imposed for the recruitment and giving some weightage for their having been engaged for work in the Department for a significant period of time. That would be the extent of the exercise of power by this Court under Article 142 of the Constitution to do justice to them.

47. Coming to Civil Appeal Nos. 1861-2063 of 2001, in view of our conclusion on the questions referred to, no relief can be granted, that too to an indeterminate number of members of the association. These appointments or engagements were also made in the teeth of directions of the Government not to make such appointments and it is impermissible to recognize such appointments made in the teeth of directions issued by the Government in that regard. We have also held that they are not legally entitled to any such relief. Granting of the relief claimed would mean paying a premium for defiance and insubordination by those concerned who engaged these persons against the interdict in that behalf. Thus, on the whole, the appellants in these appeals are found to be not entitled to any relief. These appeals have, therefore, to be dismissed.

48. C.A. Nos. 3520-24 of 2002 have also to be allowed since the

decision of the Zilla Parishads to make permanent the employees cannot be accepted as legal. Nor can the employees be directed to be treated as employees of the Government, in the circumstances. The direction of the High Court is found unsustainable.
49. In the result, Civil Appeal Nos. 3595-3612 of 1999, Civil Appeal No. 3849 of 2001, Civil Appeal Nos. 3520-3524 of 2002 and Civil appeal arising out of Special Leave Petition (Civil) Nos. 9103-9105 of 2001 are allowed subject to the direction issued under Article 142 of the Constitution in paragraph 46 and the general directions contained in paragraph 44 of the judgment and Civil Appeal Nos. 1861-2063 of 2001 are dismissed. There will be no order as to costs."

6. We heard all the parties who appeared in detail and perused the replies given by them and had examined the files produced by the government. In this connection, Annexure- A20 seem to us to be of some value as it gives the list of persons who are selected to be considered. In this Annexure-A20, persons shown from 2 to 8 are included in the list as per direction of the Hon'ble Apex Court. Shri B.N. Suresh is included in the list because of his seniority. At a later point of time it is submitted at the Bar that Shri F.R. Jamadar was included on a court direction. That brings it to 9 persons who are included. **The total number of vacancies available in 2008 selection is 12 according to the State Government. The next one in the list, it is pointed out that, it is Shri Srirama Reddy, Shri M.V. Vedamurthy, Shri N.M. Panali, Shri Umesh Kusugal, Shri S.T. Anjan Kumar, Smt. G. Sathyavathi and Shri B.M. Vijayashankar, who is the applicant herein.** The case of the applicant seems to be that if the persons aforesaid, who are the Respondent No. 4 to 8 herein, are removed from the list, then in their place he would find an

opportunity in the list as he has been found suitable throughout and has a better record, allegedly than all these people. Therefore, the first question we need to decide is what is the lacunae attached to Respondent No. 4 to 8. It appears that applicant and all these others were in the same batch for consideration in 2008 also, therefore, if at least one of these persons could have been unsettled in the process of selection, then applicant would have had a chance; as on 01.01.2008 applicant was apparently eligible to be considered for promotion to IAS against the vacancy that have occurred during 2007. He laments that his case has been in the consideration for years together even thereafter. Therefore, let us examine these respondents one by one.

7. Respondent No. 4 is Shri Srirama Reddy, the 17th in the list of 2008. It appears that a departmental inquiry was being contemplated against Shri Srirama Reddy. It seems that he was working in the Department of Disabled and Senior Citizens' Welfare and two private complaints were allegedly filed against him by two different people citing the following allegations.

1) Making illegal appointments in the Department;
2) Release of grant-in-aid beyond the powers delegated to him.
3) Release of grant-in-aid to NGOs illegally.
4) Release of grant-in-aid in violation of the interim order granted by certain courts
5) Illegalities in purchase of printing and stationery items
6) Appointment of First Division Assistants and Second Division

Assistants as investigating inspectors of the projects undertaken by the Department, contrary to rules.

At the time of admission of the case, we had directed production of the files and the said files were called for and produced. It appears that even without any administrative sanction by the government Rs. 4.5 crores was released by him in grant-in-aid. Rs. 40 lakhs was released for an allegedly incorrectly run school for visually impaired. Apparently violating the orders of the Hon'ble High Court of Karnataka, he had, even without the permission from the government, released grant-in-aid but apparently he had taken a defence that in view of the impediment of March Financial Year coming to an end, since in the past government had ratified these actions, at least in some cases he thought that even this also might be ratified and had released grants to several parties even though against the law. But the government had taken a view that the 4th respondent had acted beyond his powers and requirement and that strong action were postulated against him and going by Annexure-A6, his general assessment in the form of Annual Performance Report for the period ending 31.03.2007 was ‘Average’. In this connection, vide Annexure-A7 his representation was considered by the State Government and in terms of the KAT order dated 06.12.2010 in Application No. 7359/2010 (please note this date as it is very crucial) even though the Reporting Authority refused to give a view about Shri Srirama Reddy, the Reviewing Authority has given the following opinion:

“I have gone through the representation given by Shri Sriramareddy and the Annexure enclosed by him. After careful consideration and assessing the work done by him, I am of the opinion that the grading given to him for the particular year can be graded to ‘Very good’. Hence, I upgrade the grading given for the year to “Very good” and therefore a government order was issued on 15.07.2011 upgrading the grading from ‘Average’ to ‘Very good’. But this was in 2011 and hence in the year 2008 he was still under the cloud of allegations.

8. But then since this was done only in 2011, Shri Srirama Reddy could not have been considered in the year 2008 as at that point of time he was still under the cloud of lack of requisite qualifications and the cloud of departmental inquiry was against him. It is pointed out that nowhere in the government order it is stated that the alleged siphoning of the money from government account during the year in question has been condoned. It appears that Reviewing Authority has merely misinterpreted the Dev Dutt judgment of the Hon'ble Apex Court to hold that if at all an adverse entry is not communicated it must immediately be set aside. Other than the vague assertion that he had carefully gone through everything, he had not answered to any of the allegations made against Shri Srirama Reddy which seems to us as a great failure which has resulted in public interest being vitiated. After having carefully gone through the files produced by the government in this regard and the file

notings of the Under Secretary and the Deputy Secretary in this regard, if a superior officer has to override these observations of the subordinates, application of mind must be apparent on the face of records. Following several decisions of the Hon'ble Apex Court including the famous Bommai case in this juncture the file notings assume great importance. Once the subordinates have raised an issue the mere words 'I have considered' will not be sufficient. He will have to explain how he had considered all these elements, whether he had found it necessary to condone the siphoning of funds and what are the reason behind him taking a different stand than his subordinates. That not being done, this decision taken by the government is vitiated by non-application of mind and virtual illegality.

9. Coming to Respondent No. 5 Shri Vedamurthy, similar issues seem to be raised against him as well as he succeeded to the office of the 4th respondent and was working in the same department. It appears that the Controller and Auditor General and the Accountant General's office had indicted him on heavy financial irregularities. Annexure-A4 seems to provide certain material in this regard. Apparently the Accountant General had pointed out that:

1) Out of Rs. 875. 24 lakhs which were given out, only 3.62% were recovered leaving a balance of Rs. 843.54 lakhs.

2) In the five districts of Bidar, Chitradurga, Gulbarga, Kolar and Gadag, total recovery was only Rs. 20,000/- against the loan of Rs.

178.45 lakhs.

3) In another account, it was observed that as against a disbursement of Rs. 501.66 lakhs in the year between 2004-07 only Rs. 0.32 lakhs has been recovered which works out to 0.07%.

10. A detailed report was given by the Auditor and Accountant General relating to Respondent No. 4 & 5 in this regard which we quote:

"INSPECTION REPORT ON THE ACCOUNTS OF THE DIRECTOR, DEPARTMENT OF WELFARE OF DISABLED AND SENIOR CITIZEN, BANGALORE FOR THE YEAR 2006-07.

Directors:

1.Sri Shivakumar, KAS 01.05.2005 to 08.05.2006

2.Sri Ashok V, KAS 01.07.2006 to 08.05.2006

3.Sri Sree Rama Reddy v, KAS 08.05.2006 to 27.07.2007

4.Sri M.V. Vedamurthy, KAS 26.07.2007 to date.

Audit Staff

1.Sri Prasanna L.C. Assistant Audit Officer 07.12.07 to 15.12.07

2.Sri Ramamurthy B.V, Sr. Auditor 07.12.07 to 15.12.07

3.Sri Narayana V, Sr. Auditor 07.12.07 to 15.12.07

Inspecting Officer:

1.Sri H.K. Ravi Kumar

Dates of Audit:

07.12.2007 to 15.12.2007

Dates of Inspection:

11.12.2007 to 15.12.2007

PART – I

(a) *Introductory:*

The accounts of the Director, Department of Welfare of Disabled

and Senior Citizen, Bangalore for the year 2003-04 to 2005-06 were audited during May, 2006. No replies were furnished to the outstanding paragraphs of the previous report. Outstanding paragraphs have been carried forward in this part of the report.

(b) *OUTSTANDING PARAGRAPHS OF THE PREVIOUS AUDIT REPORT:*

1. *Para IV/II B/81-82:*

   Payment of scholarship to physical handicapped during 80-81 and 81-82 – Rs. 15,14,025 and Rs. 28,74,945/-/

2. *Para I/II/85-86:*

   Maintenance allowance to physically handicapped in Karnataka.

3. *Para VI/II B/85-86:*

   Purchase and distribution of motorized tricycles to physically handicapped.

4. *Para II/II B/90-91:*

   Supply of petrol/diesel @ 50% subsidy to handicapped owning motorized transport.

5. *Para I/II B/96-97:*

   Purchase of hand operated tricycles.

6. *Para II/V B/96-97:*

   Purchase of site at Davangere possession certificates not yet received.

7. *Para I/II B/97-98:*

   Fraudulent drawal of Rs.19,809/- lakh by M/s Arunodaya Angasikalara vrudhanee Samsanesthe, Gulbarga.

8. *Para I/II B/97-98:*

Non recovery of heavy amounts from the officials Rs. 8.44 lakh.

9. *Para II/II B/97-98:*

Time barred Cheques.

10. Para III/II B/97-98:

Group insurance scheme for the parents/students of mentally retarded persons.

11.Para IV/II B/97-98:

Aradhana Scheme for the welfare of Disabled.

12.Para VIII/II B/97-98:

Cultural and sports activities promotion programmes for the disabled.

13.Para IX/II B/97-98:

Employment of Group 'D' staff on deputation basis.

14.Para I/II B/98-01:

Assistance for self employment for disabled under Aradhana Scheme non obtaining of UC's Annual Progress reports.

15.Para II/II B/98-01:

Seed money scheme to disabled enterprise to start small industries non obtaining of UC's.

16.Para III/II B/98-01:

Non recovery of amount given for sports unutilized balance Rs.45,000/-

Sri Rudra Swamy – Rs.15,000/-. Sri. Manjunatha Rs. 15,000/-

Sri Shivakumar – Rs. 15,000/-

17.Para IV/II B/98-01:

Non obtaining of Group Insurance policy from LIC (Group Insurance for the mentally retorted)

18.Para V/II B/98-01:

Non obtaining of UC's audited statement from Karanataka State Physically Handicapped Association, Bangalore for the year 2000-2001.

19.Para VI/II B/98-01:
Non obtaining of UC's from Teacher Integrated Education Rs.5 lakh.
DIET, Bangalore Urban 17.12.1998 Rs.1 lakh

DIET, Bangalore Urban	*26.10.1998*	*Rs.1 lakh*
DIET, Bangalore Urban	*24.08.2000*	*Rs.1 lakh*
DIET, Bangalore Rural	*28.11.1998*	*Rs.1 lakh*
DIET, Bangalore Rural	*13.11.2005*	*Rs.1 lakh*
		Rs. 5 lakh.

20.Para VIII/II B/98-01:
Drawal of funds to avoid budget lapse and non obtaining of final stamped receipts from the firm depts.

PART – II

Current Audit:

During current audit, the accounts of the Director, Department of Disabled and Senior Citizens, Bangalore for the period 2006-07, were test checked besides conducting a general review of records upto date. The important points noticed are detailed below"

SECTION – A

1.National programme for rehabilitation of persons with disabilities (NPRPW) scheme –

(i)Diversion of Central Grants Rs. 52 lakhs.

(ii)Non reflection of interest earned for grants in the utilization certificate- Rs. 49.86 lakhs.

The Government of India (2000-01 and 2002-02) had released Rs.3.79 Crore for the implementation of National Programme for Rehabilitation of persons with Disabilities (NPRPW) Scheme which was to be implemented in three districts (Tumkur, Mysore and Bellary) and also for establishment of a state referral Centre at Bangalore in the Sanjay Gandhi Accident Care Hospital, Bangalore premises. The centres were to be established in 24 taluks of the Districts to promote early detention and prevention of disabilities and provide vocational training to the disabled which enable them to find gainful employment. On a review of records relating to the scheme, the following observations are made.

(1) *The State Government submitted its utilization certificate to the Central Government only during October 2007 in which it was stated that out of Rs.3.79 Crores, Rs.298.92 lakh was utilized and Rs. 80.48 lakh was available as unspent balance. It was also conveyed that the balance*

available would be utilized for the State referral centre activities. However, it was observed in audit that the Department had kept the grant received in different nationalized banks for which Rs.49.86 lakh was credited as interest. As the same was not disclosed in the utilization certificate, the retention of interest amounts to suppression of information which therefore makes t6he statement factually incorrect. As the norms for any Central Government grant stipulate the treatment of interest earned as also grant, non-reflection of the same is therefore irregular. No information was on record to justify the action of the department.

(2) *It was further noticed in audit that during November 2007, the department had transferred Rs.52 lakh for the NPRPD Scheme to the State Government which was also later released to information Department to Publicise the State Government programmes for the welfare of the department. As the government of India had released the grants to a specific scheme, any expenditure outside the preview of the scheme amounts to diversion. Hence the release of Rs. 52 lakh to State Government for purpose other than those specified in the scheme was therefore irregular. Since the scheme had already been closed since October 2004 and the balance as already communicated to the Government of India was to be utilized only for the State Referral Scheme diversion of fund allocated would definitely affect the scheme thus defeating the very purpose of implementation of the Central Scheme. This is brought to notice.*

SECTION – B

I. ***Outstanding recovery of loan amount in respect of Adhara Scheme Rs.843.51 lakh:***

Under the Adhara Scheme the depart is providing working capital to the eligible persons in the form interest free loan which is required to be in equal instalments from the loanees fixed by the department from time to time.

The department has disbursed an amount of Rs.875.24 lakh to the selected beneficiaries between 1995-1996 to 2006-07 including Rs.494.40 disbursed during 2006-07.

On a review of records/files relating to the above following observations are made.

(a) *Till date meagre Rs. 31.70 lakh has been recovered out of Rs. 875.24 lakh which works out to 3.62% leaving a balance of Rs. 843.54 lakhs outstanding to be recovered.*

(b) *Recovering from the following five districts i.e. Bidar, Chitradurga, Gulbarga, Kolar and Gadag were Rs. 20,000/- against a loan of Rs. 178.45 lakh which is very dismal.*

(c) *Further, it was observed that against a total disbursement of Rs.501.66 lakh loan between 2004-05 to 2006-07 only Rs.0.32 lakh has been recovered which works out to 0.07%.*

From the above it is evident that no effective mechanism has been devised by the department for timely recovery of the loans disbursed which has resulted in non recovery of Rs. 843.54 lakh.

On being pointed out, the department in its reply agreed to take suitable action after examining the facts.

II. ***Drawal of funds not required for immediate disbursement in respect of Spoorthi scheme:***

An amount of Rd. 81 lakh was drawn unauthorizedly by the department vide GLA bill No.77 dated 30.03.2004 and the same was deposited in the S.B A/c of Indian Overseas Bank for the implementation of "Spoorthi Scheme". The scheme required identification of self help groups NGO's prior to incurring expenditure. However, it is seen from the records/ files that till date only Rs.3 lakh has been spent leaving a balance of Rs.78 lakh unspent which clearly indicate that amount was not required for immediately disbursement. No reasons were forthcoming in the records to draw and kept the money in SB A/c i.e. outside the Government Account.

On being pointed out, the department agreed to take suitable action after examining the facts.

III. ***Improper selection of agents for training of candidates:***

Government formulated a programme for conducting training and job placement for disabled persons for which notification was issued calling for agencies to train the eligible agencies in computer software, customer relationship (six months), D.T.P Data Entry etc. (three months) and subsequent placement by the successful candidates. One of the condition is that the agency

should submit Income Tax returns pertaining past three years along with the tenders (Clause-27). However one of the tenders i.e. Sri Sadguru Educational Trust has submitted only audited balance sheets instead of IT returns. Technical evaluation committee over looking the above lapse, recommended the above agency for the job and the department entrusted training of 750 candidates in vocational courses (three months course) and another agency M/s Educare Infotech was entrusted with the training of 1650 candidates (six months course) i.e. total 2400 persons were selected for training under different courses.

Further Sri Sadguru Educational Trust provided training to 405 candidates (leaving 345 untrained) only but failed to get placement i.e. job to any one of these which was a pre-requisition as per tender condition (75% of the of the trained candidates should get placement before final payments)

As seen from the above an agency which has not complied with the tender condition was entrusted with the job training the candidates which is against the tender condition there was no alternative arrangement to train the remaining 345 candidates. Non monitoring of training conducted by the agency and remedial action has resulted in deprival of training benefit to 345 candidates and lapse of Government funds provided for that particular programme.

On being pointed out, the department agreed to submit detailed below in the due course.

Sd/-

DEPUTY ACCOUNTANT GENERAL(I-CIVIL)

Sr. AUDIT OFFICER(OAD-II)"

11. But then unfortunately the same things which happened in the case of 4th respondent happened here also as the concerned authorities does not seem to have applied their minds at all. There seems to be a serious lacunae here on the concerned State Government officials who had shown green flag when absolute red seems to be mandated. Even

though a draft chargesheet was prepared against him, no conclusion seems to have been raised on it.

12. Coming to the case of Respondent No. 6 Shri Noor Mohammed Panali, Karnataka Lokayukta had laid a trap and he was caught red-handed and he had filed a Writ Petition No. 3855 of 2007. Vide order dated 05.08.2011, the process against him seems to be quashed on the ground that the government sanction was not given but the record produced indicate that in fact sanction was granted for prosecuting Shri Panali. Annexure-A16 certificate issued by the Chief Secretary to Government in No. DPAR 66 SAS 2009 dated 17.07.2010 points to this. We quote from it:

"GOVERNMENT OF KARNATAKA

No. DPAR 66 SAS 2009

Karnataka Government Secretariat
Vidhana Soudha,
Bangalore, dated 17.07.2010

CERTIFICATE

The State Government withholds the integrity of Sri N.M. Panali for the reasons indicated against his name:-

Sl. No.	*Name of Officers (S/Shri)*	*Reasons (in brief) for withholding the integrity certificate*
1	*N.M. Panali*	*Lokayukta had laid a trap case against the officer. As per the Lokayukta Police, permission has been granted to prosecute the officer u/s 7, 13 (1)(d) r/w Sec. 13 (2) of P.C. Act 1988, vide G.O. No. DPAR 66 SEN 2005, dated 28.04.2007. The Lokayukta Police has filed the Chargesheet against the officer in the 23rd Additional Civil and session court Bangalore on 15.02.2007*

Sd/-
(S.V. RANGANATH)
Chief Secretary to Government"

This sanction was given on 28.04.2007 itself and the chargesheet against Shri Panali was filed on 15.02.2007. It appears that a misrepresentation had been made by Shri Panali in the Hon'ble High Court of Karnataka and believing it to be correct and may be because it was not opposed by the State Government counsel the Court believed it and had quashed the chargesheet on the ground of lack of sanction where in fact sanction was very much available in the file itself. This is a greater fraud than committed by anybody as it had practiced a fraud on the Hon'ble High Court of Karnataka. That itself is a criminal offence coming under Indian Penal code. But then while issuing integrity certificate to this person all these facts are available to the Government of Karnataka but yet suppressing all these and misrepresenting facts an integrity certificate has been given to this person also by the Government of Karnataka. Serious misconduct is writ large in the face of things.

13. We quote from the order of the Hon'ble High Court in Writ Petition No. 3855 of 2007 dated 05.08.2011:

"O R D E R

The petitioner in this writ petition is seeking for a writ order or direction in the nature of certiorari quashing issuance of summons to the petitioner by the XIII Addl. City Civil & Sessions Judge and Special Judge, Bangalore City in Special CC No.42/2007.

2. The petitioner was selected and appointed as Group-A Officer on the recommendations of the Karnataka Public Service Commission. He was appointed to the Karnataka Administrative Service in the year 1986. On the date of filing of the writ petition, he was holding the post of KAS (Selection Grade) and was working as Director of Minorities in the services of Government of Karnataka.

3. The respondents filed FIR for the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, for short, hereinafter referred to as the 'Act' against the petitioner. It was numbered as Crime No.12/2005 on the file of the first respondent. After investigation, the Investigating Officer sent the case papers to the State Government for its permission to file charge sheet against the petitioner as mandatorily required under Section 19(1)(b) of the Act. It is alleged that when the matter was pending consideration before the State Government, the first respondent, on the dictation and command of the Hon'bleLokayukta, filed charge sheet against the petitioner for the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Act. The charge sheet was filed on 02.02.2007 and the same was registered on 15.02.2007 against the petitioner for the aforesaid offence. The learned Judge ordered for issue of summons to the petitioner on 15.02.2007returnable by 23.03.2007.

4. It is contended that the Special Judge before whom the charge sheet was filed, was required to apply his mind as to the entire material placed on record before taking cognizance of the criminal case filed against the petitioner for the offences punishable under Section 7, 13(1)(d) read with Section 13(2) of the Act, before issuing summons to the petitioner. It was incumbent on the part of the learned Judge to insist upon the respondents to produce the sanction from the State Government before taking cognizance of the offences alleged. If there was no sanction, a statutory duty is cast on the learned Special Judge to return the charge sheet with a direction to file the same with the previous sanction of the competent authority as mandatorily required under Section 19(1)(d) of the Act. The learned Judge without noticing the mandatory provisions of Section 19(1)(b) and several judgments rendered by the Hon'ble Supreme Court of India from time to time interpreting the provisions of Section 19(1)(b) of the Act, took cognizance of the offence on 15.02.2007 and issued summons to the petitioner returnable by 23.03.2007. Taking cognizance of the offence by the learned Special Judge is highly illegal, without authority of law and issue of

summons to the petitioner without previous sanction is illegal. Therefore the petitioner has preferred this writ petition seeking quashing of the proceedings before the learned Special Judge.

5. This Court after entertaining the writ petition, granted interim order of stay of all further proceedings before the Special Judge in CC No.42/07, which interim order is continued from time to time and is in force till today.

6. After serviced of notice, the respondents entered appearance and filed statement of objections. They contended that it is only after due investigation and verification, the authorities have sought permission of the Government to prosecute the petitioner. However, in view of the recent pronouncements of the Hon'ble Supreme Court reported in 2007(1) KLJ 497 (Prakash Singh BadalYadav Vs. State of Bihar), sanction under Section 19 of the Act, is automatic and factual aspects are of no relevance in view of this legal position. The Government was bound to accord sanction. In view of the legal position enunciated by the Hon'ble Supreme Court in the aforesaid decisions, no prior sanction of the Government is required to prosecute a public servant. Therefore, they sought for dismissal of the writ petition.

7. It is in this background, in number of cases pending before this Court, the question arose for consideration was whether a public servant can be prosecuted without sanction under Section 19(1) of the Act. On the request of the learned counsel appearing in the said proceedings, the preliminary point that arose for consideration was answered by this Court by order dated 29th July 2011. In the aforesaid order, the preliminary point formulated, reads as under:

> *"Whether a Court can take cognizance of offence punishable under Section 7, 10, 11, 13, and 15 alleged to have been committed by a public servant without the previous sanction of the Central Government/ State Government/ Authority competent to remove him from office"*

8. The preliminary point is answered as under:-

> *"15. Therefore the afore said observation of the Apex Court has to be understood in the context in which it is made. They were pointing out the differences in the language employed in Section 197 of the Code and Section 19 of the Act. In Section 197 of the Code and Section 19 of the Act. In Section 197 of the Code, the words used are "is accused of*

any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty" .Whereas the words used in Section 19 are, "alleged to have been committed b y a public servant." In case of Section 197, before according sanction, the authority has to find out whether the alleged act has any nexus with the discharge of duties. Conversely, while granting sanction under Section 19 of the Act, no such obligation is cast on the authorities according sanction. In that context, it was said that under Section 19 of the Act, sanction is of automatic nature. In other words, the question of authority considering the nexus with the discharge of duties is not there. If a public servant is alleged to have committed any offence under the Act, if the authority is satisfied about the allegations, without going into the question whether such offence was committed while acting or purporting to act in the discharge of official duty, sanction could be accorded. In other words, sanction is automatic. It is this phrase 'sanction is of automatic nature' is sought to be construed as no sanction is required under Section 19 of the Act. If such an interpretation is accepted, it runs counter to the provisions contained in Section 19 of the Act. It is well settled that a decision is an authority for what it actually decided. Reference to a particular sentence in the context of factual scenario cannot be read our of context. If the aforesaid words are read in the context in which it is used, it is clear that sanction is imposed on the Court taking cognizance of the offence committed under the Act by a public servant. If the aforesaid word 'automatic' is read out of context, it would defeat the object with which Section 19 of the Act is enacted and renders the section otiose.

16. Therefore, in so far as public servants are concerned, the cognizance of any offence by any Court is barred by Section 197 of the Code or Section 19 of the Act. The mandatory character of the protection afforded to public servants is brought out by the expression "no Court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" make it abundantly clear that bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. The very cognizance is barred. That is, the complaint cannot be taken notice of 'Cognizance' in the context in which it is used means 'jurisdiction' or 'power to try and determine causes'. In common parlance it means 'taking notice of'. The Court therefore is precluded from entertaining

a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty.

17. A valid sanction is a pre-requisite to the taking of cognizance of the enumerated offences alleged to have been committed by a public servant. The bar is to the taking of cognizance of offence by the Court. Therefore, when the Court is called upon to take cognizance of such offences, it must enquire whether there is a valid sanction to prosecute the public servant for the offence alleged to have been committed by him as public servant. The accused must be a public servant when he is alleged to have committed the offence of which he is accused. If it is contemplated to prosecute public servant who has committed such offences, when the Court is called upon to take cognizance of the offence, a sanction ought to be available otherwise, the Court would have no jurisdiction to take cognizance of the offence. A trial without a valid sanction, where one is necessary, under Section 19 is a trial without jurisdiction by the Court. A trial without a sanction renders the proceedings ab initio, void.

18. The terminus a quo for a valid sanction is the time when the Court is called upon to take cognizance of the offence. If, therefore, when the offence is alleged to have been committed, the accused was a public servant but by the time the court is called upon to take cognizance of the offence committed by him as public servant, he has ceased to be a public servant, no sanction would be necessary for taking cognizance of the offence against him. At the time a Court is asked to take cognizance not only the offence must have been committed by a public servant but the person accused is still a public servant removable from his office by a competent authority, before the provisions of S. 19 can apply. The relevant date with reference to which a valid sanction is sine qua non for taking cognizance of an offence committed by public servant as required by S. 19 is the date on which the Court is called upon to take cognizance of the offence of which he is accused.

19. The holder of the office alone would have opportunity to abuse or misuse the office. These sections codify a well-recognised truism that power has the tendency to corrupt. It

is the holding of the office which gives an opportunity to use it for corrupt motives. Therefore, the corrupt conduct is directly attributable and flows from the power conferred on the office. This interrelation and interdependence between individual and the office he holds is substantial and not severable. Each of the three clauses of sub-section (1) of S. 19 uses the expression 'office' and the power to grant sanction is conferred on the authority competent to remove the public servant from his office and S. 19 requires a sanction before taking cognizance of offences committed by public servant. The offence should be committed by the public servant, by misusing or abusing the power of office and it is from that office, the authority must be competent to remove him so as to be entitled to grant sanction.

20. The expression offices in the three sub-clauses of Section 19 (1) would clearly denote that office which the public servant misused or abused for corrupt motives for which he is to be prosecuted and in respect of which a sanction to prosecute him is necessary by the competent authority entitled to remove him from that office which he has abused. This interrelation between the office and its abuse, if severed, would render S.19 devoid of any meaning. This interrelation clearly provides a clue to the understanding of the provision in S. 19 providing for sanction by a competent authority who would be able to judge the action of the public servant before removing the bar, by granting sanction, to the taking of the cognizance of offences by the court against the public servant. Therefore, it unquestionably follows that the sanction to prosecute can be given by an authority competent to remove the public servant form the office which he has misused or abused because that authority alone would be able to know whether there has been a misuse or abuse of the office by the public servant and not some rank outsider.

21. The grant of sanction is not an idle formality. The solemn and sacrosanct act which removes the umbrella of protection of Government servants against frivolous prosecutions and the aforesaid requirements must therefore be strictly complied with before any prosecution could be launched against public servants. That is why the Parliament clearly provided that the authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office.

22. Therefore from the aforesaid discussion it is clear that no sanction is required to file FIR or to register an FIR. No sanction is required to investigate after registering an FIR and also no sanction is required to file charge sheet before the jurisdictional court. Sanction is required, before the Court takes cognizance of the offence alleged to have been committed by the public servant under the Act and before issue of process. If at that point of time, if the accused continues to be a public servant and if there is no sanction under Section 19 of the Act, the Court has no jurisdiction to take cognizance of the offence committed under the Act. If it takes cognizance of such offence and issues process, it is one without jurisdiction, void ab initio and non est in the eye of law. It will have no legal effect. The Court is vested with the power to take cognizance of an offence under the Act, only when there is sanction accorded by the appropriate Government or appropriate authority. In spite of it, if it exercises power, the illegality is committed and the very object behind this provision making the sanction mandatory would be defeated, i.e., harassment to the public officials in discharge of their official duties. Then it becomes the duty of this Court to step in to undo the injustice done to such public servant.

23. A Court cannot take cognizance of offence punishable under Section 7, 10, 11, 13 and 15 alleged to have been committed by a public servant without the previous sanction of the Central Government/State Government/Authority competent to remove him from office."

9. In the light of what is stated above, no Court shall take cognizance of the offence committed by the public servant while in office in respect of the offences enumerated under the Act. The order impugned in this writ petition where the Court has issued summons cannot be sustained. The petitioner is a public servant on the date he is said to have committed the offence under the Act. On the date the Court took cognizance of the said offences, he was working as a public servant. Therefore sanction was a must. Without sanction, the Court could not have taken cognizance. Therefore the entire proceedings before the Court is void ab initio, illegal and liable to be quashed. In that view of the matter, I pass the following order:

Writ petition is allowed.

The impugned order passed by the learned Special Judge in CC No. 42/07 on the file of the XIII Addl. City Civil & Sessions Judge and Special Judge, Bangalore City, taking cognizance and issue of process are hereby quashed.

No costs."

But sanction was already granted but suppressed from the knowledge of the Court.

14. Coming to the Respondent No. 7 Shri S.T. Anjan Kumar, Annexure-A17 seems to be very relevant. We quote from No. DPAR SAS 66 2009 dated 16.11.2010:

"GOVERNMENT OF KARNATAKA

No. DPAR 66 SAS 2009

Karnataka Government Secretariat
Vidhana Soudha,
Bangalore, dated 16.11.2010

CERTIFICATE

*Certified that the Annual Performance Report of **Sri S.T. Anjan Kumar** for the periods 1997-98, 1999-2000 and 2002-03 to 2007-08 are not available for the reason that the same have not been initiated and that there is no valid reason for the non-initiation as stipulated in DoPT Letter No. 14015/7/88-AIS(I), dated 22nd July 1988. Also certified that having regard to the provisions of rule 4 and 5 of Karnataka Civil Service (Performance Reports) Rules, 2000, it would not be just and proper to make good for any missing Annual Performance Report for any period at this juncture as the same is badly delayed.*

Sd/-
(K.G. Anantha)
Under Secretary to Government
DP&AR (Services-I)"

We also quote from Annexure-A18:

"NO REPORT CERTIFICATE
IN RESPECT OF SHRI S.T. ANJAN KUMAR, KAS
FOR THE PERIOD FROM 01-04-2002 TO 31-03-2003

The Annual Confidential Report in respect of Shri S.T. Anjan Kumar, KAS, for the period from 01-04-2002 to 31-03-2003 is not available for the following reason:-

The Reporting Authority or the Reviewing Authority has not initiated the APR of the officer and the Accepting Authority, i.e., the Chief Secretary to Govt., as the then Chief Secretary Shri B.S. Patil, IAS, has retired from service on superannuation on the 31st of January, 2004.

Hence this No Report Certificate.

Sd/-
(K.L. Lokanatha)
Personal Secretary to the Chief Secretary &
Joint Secretary to Government"

"NO REPORT CERTIFICATE
IN RESPECT OF SHRI S.T. ANJAN KUMAR, KAS
FOR THE PERIOD FROM 01-04-2004 TO 31-03-2005

The Annual Confidential Report in respect of Shri S.T. Anjan Kumar, KAS, for the period from 01-04-2004 to 31-03-2005 is not available for the following reason:-

The Reporting Authority or the Reviewing Authority has not initiated the APR of the officer and the Accepting Authority, i.e., the Chief Secretary to Govt., as the then Chief Secretary Shri K.K. Misra, IAS, has retired from service on superannuation on the 30th of July, 2005.

Hence this No Report Certificate.

Sd/-
(K.L. Lokanatha)
Personal Secretary to the Chief Secretary &
Joint Secretary to Government"

"NO REPORT CERTIFICATE
IN RESPECT OF SHRI S.T. ANJAN KUMAR, KAS

FOR THE PERIOD FROM 01-04-2005 TO 31-03-2006

The Annual Confidential Report in respect of Shri S.T. Anjan Kumar, KAS, for the period from 01-04-2005 to 31-03-2006 is not available for the following reason:-

The Reporting Authority or the Reviewing Authority has not initiated the APR of the officer and the Accepting Authority, i.e., the Chief Secretary to Govt., as the then Chief Secretary Dr. Malati Das, IAS, has retired from service on superannuation on the 31st of December, 2006.

Hence this No Report Certificate.

Sd/-
(K.L. Lokanatha)
Personal Secretary to the Chief Secretary &
Joint Secretary to Government"

"NO REPORT CERTIFICATE
IN RESPECT OF SHRI ANJAN KUMAR S.T., KAS
FOR THE YEAR 2007-2008

The Annual Confidential Report in respect of Shri Anjan Kumar S.T., KAS, for the period from 2007-2008 is not available for the following reasons:-

The Reporting Authority or the Reviewing Authority has not initiated the APR of the officer and the Accepting Authority, i.e., the Chief Secretary to Govt., as the then Chief Secretary Shri P.B. Mahishi, IAS, has retired from service on superannuation on the 31st of March, 2009.

Hence this No Report Certificate.

Sd/-
(K.L. Lokanatha)
Personal Secretary to the Chief Secretary &
Joint Secretary to Government"

"NO REPORT CERTIFICATE
IN RESPECT OF SHRI S.T. ANJAN KUMAR, KAS
FOR THE PERIOD FROM 01-04-2003 TO 31-03-2004

The Annual Confidential Report in respect of Shri S.T. Anjan Kumar, KAS, for the period from 01-04-2003 to 31-03-2004 is not available for the following reason:-

The Reporting Authority or the Reviewing Authority has not initiated the APR of the officer and the Accepting Authority, i.e., the Chief Secretary to Govt., as the then Chief Secretary Shri B.S. Patil, IAS, has retired from service on superannuation on the 31st of January, 2004.

Hence this No Report Certificate.

Sd/-
(K.L. Lokanatha)
Personal Secretary to the Chief Secretary &
Joint Secretary to Government"

15. It indicates only one thing. If the Reporting and Reviewing Authorities are not willing to write the report of somebody for the year 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2009-10 it can only mean one thing. His performance must have been so bad that the Reporting and Reviewing Authorities were unwilling to write it. But then how these lacunaes were overcome defies belief.

16. Coming to Respondent No. 8 Shri Umesh Kusugal, regarding him also the same situation operates. Apparently during the time of 2008-11 none of these people could have been considered going by the tenor of government files. The penalty imposed on the 8th respondent and the criminal proceeding against the Respondent No. 6 & 8 were given a go by calmly and coolly. In Annexure-A 4.2 at Sl. No. 19, 8th respondent is

mentioned as it is stated that penalty was imposed on him. In Annexure-A5 it is indicated that the integrity certificates are being withheld.

17. Going by the files in 2008 there were 12 vacancies, in 2009 there were 5 vacancies, in 2010 there were 9 vacancies, in 2011 there was 1 vacancy and in 2012 there were 8 vacancies. In fact when the file was checked and verified, we found to our utter dismay that many things which ought not to have been done had been done. But in view of the order we propose to pass, in view of the trials and tribulations already faced by the Respondent No. 4 to 8, we are not saying anything more about the contents of the file rather than to say that it places the State Government in a very unenviable position. The grant of integrity certificates are a solemn act which requires application of mind on the part of everyone concerned and, even though we want to regulate our findings in this regard as low as possible, **we have to say that non-application of mind and probably even more is evident in this issue.**

18. Therefore, what is the relief to which the applicant will be entitled to is the question.

19. The list of candidates who were considered to be eligible in 2008, 2009 and 2010 are given hereunder. The applicant seem to be in all these lists. The question thus would be as to what consequential benefit should visit the applicant. We quote:

"**Particulars of State Civil Service Officers who are eligible for consideration for promotion to the IAS in their order of seniority as on 1st January of the Select List Years as on 01-01-2008**

Sl No	Name of the officers Smt/Shri	Whether SC/ ST/ OBC	Date of Birth	Date of appointment in the State Civil Service	Date of confirmation in the State Civil Service	Date of continuous officiation in the post of Dy. Collector or equivalent	Remarks
1.	B.N. Suresh	OBC	01-10-1954	10-01-1983	10-01-1983	10-01-1983	
2.	Shivananjaiah	SC	02-04-1951	10-01-1983	10-01-1983	10-01-1983	Included as per Supreme Court direction
3.	S. Puttaswamy	Although included as per Supreme Court direction, the name may be deleted in view of his appointment to IAS.					
4.	Mendonca Antony	OBC	16-05-1951	25-08-1983	25-08-1983	25-08-1983	Included as per Supreme Court direction
5.	Dr. P. Boregowda	OBC	16-07-1952	25-08-1983	25-08-1983	25-08-1983	Included as per Supreme Court direction
6.	G.S. Shivaswamy	SC	22-10-1953	25-08-1983	25-08-1983	25-08-1983	Included as per Supreme Court direction
7.	S. Anees Siraj	OBC	06-06-1952	09-07-1984	09-07-1984	09-07-1984	Included as per Supreme Court direction
8.	K.R. Ramakrishna	GM	26-11-1953	09-07-1984	09-07-1984	09-07-1984	Included as per Supreme Court direction
9.	F.R. Jamadar	OBC	01-06-1956	09-07-1984	09-07-1984	09-07-1984	-
10.	M. Manjunath Naik	ST	22-07-1959	09-07-1984	09-07-1984	09-07-1984	-
11	M.V. Savithri	OB	10-03-	09-07-	07-08-	07-08-	-

		C	1959	1984	1984	1984	
12.	B.A. Nagesh	-	30-10-1956	27-01-1986	27-01-1986	27-01-1986	-
13.	M.V. Veerabhadraiah	OBC	08-03-1955	27-01-1986	27-01-1986	27-01-1986	-
14.	N. Prakash	OBC	01-06-1955	27-01-1986	27-01-1986	27-01-1986	-
15.	R.R. Jannu	OBC	01-06-1960	27-01-1986	14-03-1986	14-03-1986	-
16.	Meer Anees Ahmed	OBC	25-05-1956	27-01-1986	06-06-1986	06-06-1986	-
17.	*V. Srirama Reddy	OBC	12-12-1954	27-01-1986	06-05-1987	06-05-1987	-
18.	M.V. Vedamurthy	OBC	28-03-1954	27-01-1986	30-09-1988	30-09-1988	-
19.	V. Shankar	ST	20-06-1959	27-11-1986	29-10-1988	29-10-1988	-
20.	S.A. Jeelani	OBC	15-03-1956	22-12-1986	20-09-1989	20-09-1989	-
21.	Muddumohan	GM	01-08-1955	22-12-1986	31-05-1990	31-05-1990	-
22.	S.N. Nagaraju	OBC	20-06-1954	22-12-1986	31-08-1990	31-08-1990	-
23.	V. Yashwanth	OBC	06-04-1960	22-12-1986	31-10-1990	31-10-1990	-
24.	B.F. Patil	OBC	01-01-1955	22-12-1986	06-12-1990	06-12-1990	-
25.	Hemajinaik	SC	09-03-1959	22-12-1986	13-12-1990	13-12-1990	-
26.	H.S. Ashokananda	OBC	15-05-1958	24-10-1990	31-12-1990	31-12-1990	-
27.	K.R. Sundar	-	06-01-1955	24-10-1990	31-10-1991	31-10-1991	-
28.	Dr Ramegowda	OBC	15-07-1956	24-10-1990	27-11-1991	27-11-1991	-
29.	Panduranga Bommaiah Naik	OBC	22-07-1958	23-05-1991	27-11-1991	27-11-1991	-
30.	Neela S. Manjunath	OBC	21-01-1961	24-10-1990	27-11-1991	27-11-1991	-
31.	N.M. Panali	OBC	09-09-1956	27-01-1986	27-01-1986	27-01-1986	-
32.	Umesh Kusgal	OBC	05-04-1958	24-10-1990	14-12-1991	14-12-1991	-
33.	A.B. Ibrahim	OBC	10-10-1960	24-10-1990	10-01-1992	10-01-1992	-
34.	Shivayogi C. Kalasad	OBC	20-05-1963	17-06-1991	10-01-1992	10-01-1992	-
35.	Mohd. Salauddin	OBC	26-01-1956	17-06-1991	10-01-1992	10-01-1992	-

36.	N. Jayaram	OBC	01-06-1965	17-06-1991	10-01-1992	10-01-1992	-
37.	B.S. Shekharappa	OBC	24-01-1960	17-06-1991	10-01-1992	10-01-1992	-
38.	S.T. Anjan Kumar	SC	12-06-1956	17-06-1991	10-01-1992	10-01-1992	-
39.	P.A. Meghannavar	ST	17-05-1959	17-06-1991	10-01-1992	10-01-1992	-
40.	G. Sathyavathi	OBC	06-06-1965	17-06-1991	10-01-1992	10-01-1992	-
41.	Virupakshi Mysore	SC	04-12-1954	17-06-1991	10-01-1992	10-01-1992	-
42.	B.M. Vijayashankar	OBC	12-06-1961	10-01-1992	10-01-1992	10-01-1992	-
43.	L. Radhakrishna	OBC	28-02-1954	29-06-1991	31-05-1996	31-05-1996	-

Note:

* Although the officer at Sl. No. 17 Sri V. Srirama Reddy is included on the basis of interim orders of the Supreme Court, the name of the officer finds place in the list of officers in the zone of consideration as on 1-1-2008 in terms of the guidelines issued by the Government of India on the basis of the judgment in Sri Praveen Kumar's case.

Sd/-
(N. SRINIVASA MURTHY)
Under Secretary to Government
DP&AR (Services-I)"

"Particulars of State Civil Service Officers who are eligible for consideration for promotion to the IAS in their order of seniority as on 1st January of the Select List Year as on01-01-2009

Sl No	Name of the officers Smt/Shri	Whether SC/ ST/ OBC	Date of Birth	Date of appointment in the State Civil Service	Date of confirmation in the State Civil Service	Date of continuous officiation in the post of Dy. Collector or equivalent	Remarks
1.	F.R. Jamadar	OBC	01-06-1956	09-07-1984	09-07-1984	09-07-1984	-
2.	M. Manjunath Naik	ST	22-07-1959	09-07-1984	09-07-1984	09-07-1984	-
3.	M.V. Savithri	OBC	10-03-1959	09-07-1984	07-08-1984	07-08-1984	-
4.	B.A. Nagesh	-	30-10-1956	27-01-1986	27-01-1986	27-01-1986	-
5.	M.V.	OB	08-03-	27-01-	27-01-	27-01-	-

	Veerabhadraiah	C	1955	1986	1986	1986	
6.	N. Prakash	OBC	01-06-1955	27-01-1986	27-01-1986	27-01-1986	-
7.	R.R. Jannu	OBC	01-06-1960	27-01-1986	14-03-1986	14-03-1986	-
8.	Meer Anees Ahmed	OBC	25-05-1956	27-01-1986	06-06-1986	06-06-1986	-
9.	V. Shankar	ST	20-06-1959	27-11-1986	29-10-1988	29-10-1988	-
10.	S.A. Jeelani	OBC	15-03-1956	22-12-1986	20-09-1989	20-09-1989	-
11.	Muddumohan	GM	01-08-1955	22-12-1986	31-05-1990	31-05-1990	-
12.	V. Yashwanth	OBC	06-04-1960	22-12-1986	31-10-1990	31-10-1990	-
13.	Hemajinaik	SC	09-03-1959	22-12-1986	13-12-1990	13-12-1990	-
14.	H.S. Ashokananda	OBC	15-05-1958	24-10-1990	31-12-1990	31-12-1990	-
15.	K.R. Sundar	-	06-01-1955	24-10-1990	31-10-1991	31-10-1991	-
16.	Dr Ramegowda	OBC	15-07-1956	24-10-1990	27-11-1991	27-11-1991	-
17.	Panduranga Bommaiah Naik	OBC	22-07-1958	23-05-1991	27-11-1991	27-11-1991	-
18.	Neela S. Manjunath	OBC	21-01-1961	24-10-1990	27-11-1991	27-11-1991	-
19.	N.M. Panali	OBC	09-09-1956	27-01-1986	27-01-1986	27-01-1986	-
20.	Umesh Kusgal	OBC	05-04-1958	24-10-1990	14-12-1991	14-12-1991	-
21.	A.B. Ibrahim	OBC	10-10-1960	24-10-1990	10-01-1992	10-01-1992	-
22.	Shivayogi C. Kalasad	OBC	20-05-1963	17-06-1991	10-01-1992	10-01-1992	-
23.	Mohd. Salauddin	OBC	26-01-1956	17-06-1991	10-01-1992	10-01-1992	-
24.	N. Jayaram	OBC	01-06-1965	17-06-1991	10-01-1992	10-01-1992	-
25.	B.S. Shekharappa	OBC	24-01-1960	17-06-1991	10-01-1992	10-01-1992	-
26.	S.T. Anjan Kumar	SC	12-06-1956	17-06-1991	10-01-1992	10-01-1992	-
27.	P.A. Meghannavar	ST	17-05-1959	17-06-1991	10-01-1992	10-01-1992	-

Sd/-
(N. SRINIVASA MURTHY)
Under Secretary to Government

DP&AR (Services-I)"

"Particulars of State Civil Service Officers who are eligible for consideration for promotion to the IAS in their order of seniority as on 1st January of the Select List Years as on 01-01-2010

Sl No	Name of the officers Smt/Shri	Whether SC/ ST/ OBC	Date of Birth	Date of appointment in the State Civil Service	Date of confirmation in the State Civil Service	Date of continuous officiation in the post of Dy. Collector or equivalent	Remarks
1.	F.R. Jamadar	OBC	01-06-1956	09-07-1984	09-07-1984	09-07-1984	-
2.	M. Manjunath Naik	ST	22-07-1959	09-07-1984	09-07-1984	09-07-1984	-
3.	M.V. Savithri	OBC	10-03-1959	09-07-1984	07-08-1984	07-08-1984	-
4.	B.A. Nagesh	-	30-10-1956	27-01-1986	27-01-1986	27-01-1986	-
5.	R.R. Jannu	OBC	01-06-1960	27-01-1986	14-03-1986	14-03-1986	-
6.	Meer Anees Ahmed	OBC	25-05-1956	27-01-1986	06-06-1986	06-06-1986	-
7.	V. Shankar	ST	20-06-1959	27-11-1986	29-10-1988	29-10-1988	-
8.	S.A. Jeelani	OBC	15-03-1956	22-12-1986	20-09-1989	20-09-1989	-
9.	V. Yashwanth	OBC	06-04-1960	22-12-1986	31-10-1990	31-10-1990	-
10.	Hemajinaik	SC	09-03-1959	22-12-1986	13-12-1990	13-12-1990	-
11.	H.S. Ashokananda	OBC	15-05-1958	24-10-1990	31-12-1990	31-12-1990	-
12.	Dr Ramegowda	OBC	15-07-1956	24-10-1990	27-11-1991	27-11-1991	-
13.	Panduranga Bommaiah Naik	OBC	22-07-1958	23-05-1991	27-11-1991	27-11-1991	-
14.	Neela S. Manjunath	OBC	21-01-1961	24-10-1990	27-11-1991	27-11-1991	-
15.	N.M. Panali	OBC	09-09-1956	27-01-1986	27-01-1986	27-01-1986	-
16.	Umesh Kusgal	OBC	05-04-1958	24-10-1990	14-12-1991	14-12-1991	-
17.	A.B. Ibrahim	OBC	10-10-1960	24-10-1990	10-01-1992	10-01-1992	-
18.	Shivayogi C. Kalasad	OBC	20-05-1963	17-06-1991	10-01-1992	10-01-1992	-

19.	Mohd. Salauddin	OBC	26-01-1956	17-06-1991	10-01-1992	10-01-1992	-
20.	N. Jayaram	OBC	01-06-1965	17-06-1991	10-01-1992	10-01-1992	-
21.	B.S. Shekharappa	OBC	24-01-1960	17-06-1991	10-01-1992	10-01-1992	-
22.	S.T. Anjan Kumar	SC	12-06-1956	17-06-1991	10-01-1992	10-01-1992	-
23.	P.A. Meghannavar	ST	17-05-1959	17-06-1991	10-01-1992	10-01-1992	-
24.	G. Sathyavathi	OBC	06-06-1965	17-06-1991	10-01-1992	10-01-1992	-
25.	B.M. Vijayashankar	OBC	12-06-1961	10-01-1992	10-01-1992	10-01-1992	-
26.	Jitendra Singh	SC	04-05-1957	12-12-1996	12-12-1996	12-12-1996	-
27.	B.B. Cauvery	OBC	12-05-1970	17-03-1997	17-03-1997	17-03-1997	-
28.	Sushma Godbole	OBC	19-12-1968	17-03-1997	17-03-1997	17-03-1997	-
29.	Nagath Tabsoom Abroo	OBC	23-12-1960	17-03-1997	17-03-1997	17-03-1997	-
30.	Vijaykumar Neelappa Torgal	OBC	07-07-1956	17-03-1997	17-03-1997	17-03-1997	-
31.	T.H.M. Kumar	OBC	16-08-1969	17-03-1997	17-03-1997	17-03-1997	-
32.	Dr H.R. Mahadev	OBC	08-04-1961	17-03-1997	17-03-1997	17-03-1997	-
33.	S. Ziaulla	OBC	25-06-1962	17-03-1997	17-03-1997	17-03-1997	-
34.	M. Shashidar	SC	10-05-1966	17-03-1997	17-03-1997	17-03-1997	-

20. We, therefore, go to the reply of Respondent No.1. Respondent No. 1 basically states that it had acted on the advice given by the State Government but it has raised certain technical objections also which we would now deal with.

21. The first claim of the 1st respondent is that the claim of the applicant is barred by limitation. Therefore, we had examined the files in which the applicant had been clamoring for information relating to

Respondent No. 4 to 8 and, even though some documents were furnished, it was only furnished either in a truncated form or as late as the year 2018. Only based on this documentation could the applicant file the Original Application. Therefore, since the basis of his cause of action is the knowledge about the non-application of mind by the State Government and to an extent by the Union Government also, it arises only in the year 2018 and, therefore, the question of limitation now claimed for by the 1st respondent and also the State Government will not lie under law. But they would say that since the actions pursuant to the 4th to 8th respondent was taken by them in 2014 and therefore the cause of action could have been related back to that date but then it is trite law that it is the knowledge about an infraction so as to prejudice the applicant which will give rise to a cause of action. The knowledge about the infractions in relation to 4th to 8th respondent, even though only in a truncated form, was made available to him only in the year 2018 and even then the full details about it had been withheld from him. Therefore, this ground taken by the respondents will not lie under law. Therefore there is no question of any delay. But for technical purposes, in the circumstances, this delay is hereby condoned.

22. The 1st respondent claims that if the applicant's claim is accepted at this juncture it would unsettle the settled matter of seniority/year of allotment of the officers senior to him. But then the Hon'ble Apex Court in

several cases have held, as we have pointed out earlier, that fraud will defeat everything. It will, without any doubt, obliterate a benefit granted by the authority in favour of a person as held by the Hon'ble Apex Court in the case of P.J. Thomas. Therefore, if a degree of fraud had visited the application of mind in terms of 4th to 8th respondent the sit back rule will not apply in respect of the applicant for the very simple reason that if the benefit granted to the Respondent No. 4 to 8 could not have been granted it consequentially grants the benefit to the applicant without him even asking for it. Therefore, fraud cannot settle anything. We quote from the P.J. Thomas judgment of the Hon'ble Apex Court:

"J U D G M E N T

S. H. KAPADIA, CJI

Introduction

1. The two writ petitions filed in this Court under Article 32 of the Constitution of India give rise to a substantial question of law and of public importance as to the legality of the appointment of Shri P.J. Thomas (respondent No. 2 in W.P.(C) No. 348 of 2010) as Central Vigilance Commissioner underSection 4(1) of the Central Vigilance Commission Act, 2003 ("2003 Act" for short).

2. Government is not accountable to the courts in respect of policy decisions. However, they are accountable for the legality of such decisions. While deciding this case, we must keep in mind the difference between legality and merit as also between judicial review and merit review. On 3rd September, 2010, the High Powered Committee ("HPC" for short), duly constituted under the proviso to Section 4(1) of the 2003 Act, had recommended the name of Shri P.J. Thomas for appointment to the post of Central Vigilance Commissioner. The validity of this recommendation falls for judicial scrutiny in this case. If a duty is cast under the proviso to Section 4(1) on the HPC to recommend to the President the name of the selected candidate, the integrity of that decision making process is got to ensure that the powers are exercised for the purposes and in the manner envisaged by the said Act,

otherwise such recommendation will have no existence in the eye of law.

Clarification

3. At the very outset we wish to clarify that in this case our judgment is strictly confined to the legality of the recommendation dated 3rd September, 2010 and the appointment based thereon. As of date, Shri P.J. Thomas is Accused No. 8 in criminal case CC 6 of 2003 pending in the Court of Special Judge, Thiruvananthapuram with respect to the offences under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and under Section 120B of the Indian Penal Code ("IPC" for short) [hereinafter referred to as the "Palmolein case"]. According to the petitioners herein, Shri P.J. Thomas allegedly has played a big part in the cover-up of the 2G spectrum allocation which matter is subjudice. Therefore, we make it clear that we do not wish to comment in this case on the pending cases and our judgment herein should be strictly understood to be under judicial review on the legality of the appointment of respondent No. 2 and any reference in our judgment to the Palmolein case should not be understood as our observations on merits of that case.

Facts

4. Shri P.J. Thomas was appointed to the Indian Administrative Service (Kerala Cadre) 1973 batch where he served in different capacities with the State Government including as Secretary, Department of Food and Civil Supplies, State of Kerala in the year 1991. During that period itself, the State of Kerala decided to import 30,000 MT of palmolein. The Chief Minister of Kerala, on 5th October, 1991, wrote a letter to the Prime Minister stating that the State was intending to import Palmolein oil and that necessary permission should be given by the concerned Ministries. On 6th November, 1991, the Government of India issued a scheme for direct import of edible oil for Public Distribution System (PDS) on the condition that an ESCROW account be opened and import clearance be granted as per the rules. Respondent No. 2 wrote letters to the Secretary, Government of India stating that against its earlier demand for import of 30,000 MT of Palmolein oil, the present minimum need was 15,000 MT and the same was to meet the heavy ensuing demand during the festivals of Christmas and Sankranti, in the middle of January, 1992, therefore, the State was proposing to immediately import the said quantity of Palmolein on obtaining requisite permission.

The price for the same was fixed on 24th January, 1992, i.e., 56 days after the execution of the agreement. The Kerala State Civil

Supplies Corporation Ltd. was to act as an agent of the State Government for import of Palmolein. The value of the Palmolein was to be paid to the suppliers only in Indian rupees. Further, the terms governing the ESCROW account were to be as approved by the Ministry of Finance. This letter contained various other stipulations as well. This was responded to by the Joint Secretary, Government of India, Ministry of Civil Supplies and Public Distribution, New Delhi vide letter dated 26th November, 1991 wherein it was stated that it had been decided to permit the State to import 15,000 MT of Palmolein on the terms and conditions stipulated in the Ministry's circular of even number dated 6th November, 1991.

It was specifically stated that the service charges up to a maximum of 15% in Indian rupees may be paid. After some further correspondence, the order of the State of Kerala is stated to have been approved by the Cabinet on 27th November, 1991, and the State of Kerala actually imported Palmolein by opening an ESCROW account and getting the import clearance at the rate of US $ 405 per MT in January, 1992.

5. The Comptroller and Auditor General (`CAG'), in its report dated 2nd February, 1994 for the year ended 31st March, 1993 took exception to the procedure adopted for import of Palmolein by the State Government. While mentioning some alleged irregularities, the CAG observed, "therefore, the agreement entered into did not contain adequate safeguards to ensure that imported product would satisfy all the standards laid down in Prevention of Food Adulteration Rules, 1956".
This report of the CAG was placed before the Public Undertaking Committee of the Kerala Assembly. The 38th Report of the Kerala Legislative Assembly - Committee on Public Undertakings dated 19th March, 1996, inter alia, referred to the alleged following irregularities:-

a. That the service fee of 15% to meet the fluctuation in exchange rate was not negotiated and hence was excessive. Even the price of the import product ought not to have been settled in US Dollars.

b. That the concerned department of the State of Kerala had not invited tenders and had appointed M/s. Mala Export Corporation, an associate company of M/s. Power and Energy Pvt. Ltd., the company upon which the import order was placed as handling agent for the import.

c. That the delay in opening of ESCROW accounts and in fixation of price, which were not in conformity with the circular issued by the Central Government had incurred a loss of more than Rupees 4 crores to the Exchequer.

6. The Committee also alleged that under the pretext of plea of urgency, the deal was conducted without inviting global tenders and if the material was procured by providing ample time by inviting global tenders, other competitors would have emerged with lesser rates for the import of the item, which in turn, would have been more beneficial.

7. The Chief Editor of the Gulf India Times even filed a writ petition being O.P. No. 3813 of 1994 in the Kerala High Court praying that directions be issued to the State to register an FIR on the ground that import of Palmolein was made in violation of the Government of India Guidelines. However, it came to be dismissed by the learned Single Judge of the Kerala High Court on 4th April, 1994. Still another writ petition came to be filed by one Shri M. Vijay Kumar, who was MLA of the Opposition in the Kerala Assembly praying for somewhat similar relief. This writ petition was dismissed by a learned Single Judge of the Kerala High Court and even appeal against that order was also dismissed by the Division Bench of that Court vide order dated 27th September, 1994.

8. Elections were held in the State of Kerala on 20th May, 1996 and the Left Democratic Front formed the government.
An FIR was registered against Shri Karunakaran, former Chief Minister and six others in relation to an offence under Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988 and Section 120B of the IPC. The State of Kerala accorded its sanction to prosecute the then Chief Minister Shri Karunakaran and various officers in the State hierarchy, who were involved in the import of Palmolein, including respondent No. 2 on 30th November, 1999.

9. Shri Karunakaran, the then Chief Minister filed a petition before the High Court being Criminal Miscellaneous No.1353/1997 praying for quashing of the said FIR registered against him and the other officers. Shri P.J. Thomas herein was not a party in that petition. However, the High Court dismissed the said writ petition declining to quash the FIR registered against the said persons. In the meanwhile, a challan (report under Section 173 of the Code of Criminal Procedure) had also been filed before the Court of Special Judge, Thiruvananthapuram and in this background the

State of Kerala, vide its letter dated 31st December, 1999 wrote to the Department of Personnel and Training (DoPT) seeking sanction to prosecute the said person before the Court of competent jurisdiction. Keeping in view the investigation of the case conducted by the agency, two other persons including Shri P.J. Thomas were added as accused Nos. 7 and 8.

10. Shri Karunakaran challenged the order before this Court by filing a Petition for Special Leave to Appeal, being Criminal Appeal No. 86 of 1998, which also came to be dismissed by this Court on 29th March, 2000. This Court held that "after going through the pleadings of the parties and keeping in view the rival submissions made before us, we are of the opinion that the registration of the FIR against the appellants and others cannot be held to be the result of mala fides or actuated by extraneous considerations. The menace of corruption cannot be permitted to be hidden under the carpet of the legal technicalities...". The Government Order granting sanction (Annexure R-I in that petition) was also upheld by this Court and it was further held that "our observations with respect to the legality of the Government Order are not conclusive regarding its constitutionality but are restricted so far as its applicability to the registration of the FIR against the appellant is concerned. We are, therefore, of the opinion that the aforesaid Government Order has not been shown to be in any way illegal or unconstitutional so far as the rights of the appellants are concerned...". Granting liberty to the parties to raise all pleas before the Trial Court, the appeal was dismissed. In the charge-sheet filed before the Trial Court, in paragraph 7, definite role was attributed to Accused No. 8 (respondent No. 2 herein) and allegations were made against him.

11. For a period of 5 years, the matter remained pending with the Central Government and vide letter dated 20th December, 2004, the Central Government asked the State Government to send a copy of the report which had been filed before the Court of competent jurisdiction. After receiving the request of the State Government, it appears that the file was processed by various authorities and as early as on 18th January, 2001, a note was put up by the concerned Under Secretary that a regular departmental enquiry should be held against Shri P.J. Thomas and Shri Jiji Thomson for imposing a major penalty. According to this note, it was felt that because of lack of evidence, the prosecution may not succeed against Shri P.J. Thomas but sanction should be accorded for prosecution of Shri Jiji Thomson. On 18th February,

2003, the DoPT had made a reference to the Central Vigilance Commission ("CVC" for short) on the cited subject, which was responded to by the CVC vide their letter dated 3rd June, 2003 and it conveyed its opinion as follows: -

> *"Department of Personnel & Training may refer to their DO letter No.107/1 /2000-AVD.I dated 18.02.2003 on the subject cited above.*
>
> *2. Keeping in view the facts and circumstances of the case, the Commission would advise the Department of Personnel & Training to initiate major penalty proceedings against Shri P.J. Thomas, IAS (KL:73) and Shri Jiji Thomson, IAS (KL:80) and completion of proceedings thereof by appointing departmental IO.*
>
> *3. Receipt of the Commission's advice may be acknowledged."*

12. Despite receipt of the above opinion of CVC, the matter was still kept pending, though a note was again put up on 24th February, 2004 on similar lines as that of 18th January, 2001. In the meanwhile, the State of Kerala, vide its letter dated 24th January, 2005 wrote to the DoPT that for reasons recorded in the letter, they wish to withdraw their request for according the sanction for prosecution of the officers, including respondent No. 2, as made vide their letter dated 31st December, 1999. The matter which was pending for all this period attained a quietus in view of the letter of the State of Kerala and the PMO had been informed accordingly.

13. In its letter dated 4th November, 2005, the State took the position that the allegations made by the Investigating Agency were invalid and the cases and request for sanction against Shri P.J. Thomas should be withdrawn.

14. On 18th May, 2006 again, the Left Democratic Front formed the Government in the State of Kerala with Mr. Achuthanandan as the Chief Minister. This time the Government of Kerala filed an affidavit in this Court disassociating itself from the contents of the earlier affidavit.

15. Vide letter dated 10th October, 2006, the Chief Secretary to the Government of Kerala again wrote a letter to the Government of

India informing them that the State Government had decided to continue the prosecution launched by it and as such it sought to withdraw its above letter dated 24th January, 2005. In other words, it reiterated its request for grant of sanction by the Central Government.

Vide letter dated 25th November, 2006, the Additional Secretary to the DoPT wrote to the State of Kerala asking them for the reasons for change in stand, in response to the letter of the State of Kerala dated 10th October, 2006. This action of the State Government reviving its sanction and continuing prosecution against Shri Karunakaran and others, including Respondent No. 2, was challenged by Shri Karunakaran by filing Criminal Revision Petition No. 430 of 2001 in the High Court of Kerala on the ground that the Government Order was liable to be set aside on the ground of mala fide and arbitrariness. This petition was dismissed by the High Court.

In its judgment, the High Court referred to the alleged role of Shri P.J. Thomas in the Palmolein case. The action of the State Government or pendency of proceedings before the Special Judge at Thiruvananthapuram was never challenged by Shri P.J. Thomas before any court of competent jurisdiction. The request of the State Government for sanction by the Central Government was considered by different persons in the Ministry and vide its noting dated 10th May, 2007, a query was raised upon the CVC as to whether pendency of a reply to Ministry's letter, from State Government in power, on a matter already settled by the previous State Government should come in the way of empanelment of these officers for appointment to higher post in the Government. Rather than rendering the advice asked for, the CVC vide its letter dated 25th June, 2007 informed the Ministry as follows :

> *"Department of Personnel & Training may refer to their note dated 17.05.2007, in file No.107/1/2000-AVD-I, on the above subject.*
>
> *2. The case has been re-examined and Commission has observed that no case is made out against S/Shri P.J. Thomas and Jiji Thomson in connection with alleged conspiracy with other public servants and private persons in the matter of import of Palmolein through a private firm. The abovesaid officers acted in accordance with a legitimately taken Cabinet decision and no loss has been caused to the State Government and most important, no case is made out that they had derived any benefit from the transaction. (emphasis supplied)*

3. In view of the above, Commission advises that the case against S/Shri P.J. Thomas and Jiji Thomson may be dropped and matter be referred once again thereafter to the Commission so that Vigilance Clearance as sought for now can be recorded.

4. DOPT's file No.107/1/2000-AVD-I along with the records of the case, is returned herewith. Its receipt may be acknowledged. Action taken in pursuance of Commission's advice may be intimated to the Commission early."

16. It may be noticed that neither in the above reply nor on the file any reasons are available as to why CVC had changed its earlier opinion/stand as conveyed to the Ministry vide its letter dated 3rd June, 2003. After receiving the above advice of CVC, the Ministry on 6th July, 2007 had recorded a note in the file that as far as CVC's advice regarding dropping all proceedings is concerned, the Ministry should await the action to be taken by the Government of Kerala and the relevant courts.

17. The legality and correctness of the order of the Kerala High Court dated 19th February, 2003 was questioned by Shri Karunakaran by filing a petition before this Court on which leave was granted and it came to be registered as Criminal Appeal No. 801 of 2003. This appeal was also dismissed by this Court vide its order dated 6th December, 2006. However, the parties were given liberty to raise the plea of mala fides before the High Court. Even on reconsideration, the High Court dismissed the petition filed by Shri Karunakaran raising the plea of mala fides vide its order dated 6th July, 2007. The High Court had, thus, declined to accept that action of the State Government in prosecuting the persons stated therein was actuated by mala fides. The order of the High Court was again challenged by Shri Karunakaran by preferring a Petition for Special Leave to Appeal before this Court. This Court had stayed further proceedings before the Trial Court. This appeal remained pending till 23rd December, 2010 when it abated because of unfortunate demise of Shri Karunakaran.

18. Vide order dated 18th September, 2007, the Government of Kerala appointed Shri P.J. Thomas as the Chief Secretary. Thereafter, on 6th October, 2008 CVC accorded vigilance clearance to all officers except Smt. Parminder M. Singh. We have perused the files submitted by the learned Attorney General for

India. From the said files we find that there are at least six notings of DoPT between 26th June, 2000 and 2nd November, 2004 which has recommended initiation of penalty proceedings against Shri P.J. Thomas and yet in the clearance given by CVC on 6th October, 2008 and in the Brief prepared by DoPT dated 1st September, 2010 and placed before HPC there is no reference to the earlier notings of the then DoPT and nor any reason has been given as to why CVC had changed its views while granting vigilance clearance on 6th October, 2008. On 23rd January, 2009, Shri P.J.Thomas was appointed as Secretary, Parliamentary Affairs to the Government of India.

19. The DoPT empanelled three officers vide its note dated 1st September, 2010. Vide the same note along with the Brief the matter was put up to the HPC for selecting one candidate out of the empanelled officers for the post of Central Vigilance Commissioner. The meeting of the HPC consisting of the Prime Minister, the Home Minister and the Leader of the Opposition was held on 3rd September, 2010. In the meeting, disagreement was recorded by the Leader of the Opposition, despite which, name of Shri P.J. Thomas was recommended for appointment to the post of Central Vigilance Commissioner by majority. A note was thereafter put up with the recommendation of the HPC and placed before the Prime Minister which was approved on the same day. On 4th September, 2010, the same note was submitted to the President who also approved it on the same day.

Consequently, Shri P.J. Thomas was appointed as Central Vigilance Commissioner and he took oath of his office.

Setting-up of CVC

20. Vigilance is an integral part of all government institutions. Anti-corruption measures are the responsibility of the Central Government. Towards this end the Government set up the following departments :

(i) CBI

(ii) Administrative Vigilance Division in DoPT

(iii) Domestic Vigilance Units in the Ministries/ Departments, Government companies, Government Corporations, nationalized banks and PSUs

(iv) CVC

21. Thus, CVC as an integrity institution was set up by the Government of India in 1964 vide Government Resolution pursuant to the recommendations of Santhanam Committee.
However, it was not a statutory body at that time. According to the recommendations of the Santhanam Committee, CVC, in its functions, was supposed to be independent of the executive. The sole purpose behind setting up of the CVC was to improve the vigilance administration of the country.

22. In September, 1997, the Government of India established the Independent Review Committee to monitor the functioning of CVC and to examine the working of CBI and the Enforcement Directorate. Independent Review Committee vide its report of December, 1997 suggested that CVC be given a statutory status. It also recommended that the selection of Central Vigilance Commissioner shall be made by a High Powered Committee comprising of the Prime Minister, the Home Minister and the Leader of Opposition in Lok Sabha. It also recommended that the appointment shall be made by the President of India on the specific recommendations made by the HPC. That, the CVC shall be responsible for the efficient functioning of CBI; CBI shall report to CVC about cases taken up for investigations; the appointment of CBI Director shall be by a Committee headed by the Central Vigilance Commissioner; the Central Vigilance Commissioner shall have a minimum fixed tenure and that a Committee headed by the Central Vigilance Commissioner shall prepare a panel for appointment of Director of Enforcement.

23. On 18th December, 1997 the judgment in the case of Vineet Narain v. Union of India [(1998) 1 SCC 226] came to be delivered. Exercising authority under Article 32 read with Article 142, this Court in order to implement an important constitutional principle of the rule of law ordered that CVC shall be given a statutory status as recommended by Independent Review Committee. All the above recommendations of Independent Review Committee were ordered to be given a statutory status.
24. The judgment in Vineet Narain's case (supra) was followed by the 1999 Ordinance under which CVC became a multi-member Commission headed by Central Vigilance Commissioner. The 1999

Ordinance conferred statutory status on CVC. The said Ordinance incorporated the directions given by this Court in Vineet Narain's case. Suffice it to state, that, the 1999 Ordinance stood promulgated to improve the vigilance administration and to create a culture of integrity as far as government administration is concerned.

25. The said 1999 Ordinance was ultimately replaced by the enactment of the 2003 Act which came into force with effect from 11th September, 2003.

Analysis of the 2003 Act

26. The 2003 Act has been enacted to provide for the constitution of a Central Vigilance Commission as an institution to inquire or cause inquiries to be conducted into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants of the Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government and for matters connected therewith or incidental thereto (see Preamble). By way of an aside, we may point out that in Australia, US, UK and Canada there exists a concept of integrity institutions. In Hongkong we have an Independent Commission against corruption. In Western Australia there exists a statutory Corruption Commission. In Queensland, we have Misconduct Commission. In New South Wales there is Police Integrity Commission. All these come within the category of integrity institutions. In our opinion, CVC is an integrity institution. This is clear from the scope and ambit (including the functions of the Central Vigilance Commissioner) of the 2003 Act. It is an Institution which is statutorily created under the Act. It is to supervise vigilance administration. The 2003 Act provides for a mechanism by which the CVC retains control over CBI. That is the reason why it is given autonomy and insulation from external influences under the 2003 Act.

27. For the purposes of deciding this case, we need to quote the relevant provisions of the 2003 Act.

3. Constitution of Central Vigilance Commission.-

(2) The Commission shall consist of--

(a) a Central Vigilance Commissioner --

Chairperson;

(b) not more than two Vigilance Commissioners

-Members.

(3) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed from amongst persons—

(a) *who have been or are in an All-India Service or in any civil service of the Union or in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration;*

4. Appointment of Central Vigilance Commissioner and Vigilance Commissioners.-

(1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of--
(a) the Prime Minister -- Chairperson;

(b) the Minister of Home Affairs -- Member;

(c) the Leader of the Opposition in the

House of the People --Member.

Explanation.--For the purposes of this sub-section, "the Leader of the Opposition in the House of the People" shall, when no such Leader has been so recognized, include the Leader of the single largest group in opposition of the Government in the House of the People.

(2) No appointment of a Central Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the Committee.

5. Terms and other conditions of service of Central Vigilance Commissioner. –

(1) Subject to the provisions of sub-sections (3) and (4), the Central Vigilance Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier. The Central Vigilance Commissioner, on ceasing to hold the office, shall be ineligible for reappointment in the Commission.

(3) The Central Vigilance Commissioner or a Vigilance Commissioner shall, before he enters upon his office, make and subscribe before the President, or some other person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in Schedule to this Act.

(6) On ceasing to hold office, the Central Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for—

(a) any diplomatic assignment, appointment as administrator of a Union territory and such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal.
(b) further employment to any office of profit under the Government of India or the Government of a State.

6. Removal of Central Vigilance Commissioner and Vigilance Commissioner.- (1) Subject to the provisions of sub-section (3), the Central Vigilance Commissioner or any Vigilance Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Vigilance Commissioner or any Vigilance Commissioner, as the case may be, ought on such ground be removed.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Central Vigilance Commissioner or any Vigilance Commissioner if the Central

Vigilance Commissioner or such Vigilance Commissioner, as the case may be,--

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Central Vigilance Commissioner or a Vigilance Commissioner.

8. Functions and powers of Central Vigilance Commission-

(1) The functions and powers of the Commission shall be to—

(a) exercise superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 or an offence with which a public servant specified in sub-section (2) may, underthe Code of Criminal Procedure, 1973, be charged at the same trial;

(b) give directions to the Delhi Special Police Establishment for the purpose of discharging the responsibility entrusted to it under sub-section (1) of section 4 of the Delhi Special Police Establishment Act, 1946:

(d) inquire or cause an inquiry or investigation to be made into any complaint against any official belonging to such category of officials specified in sub-section (2) wherein it is alleged that he has committed an offence under the Prevention of Corruption Act, 1988 and an offence with which a public servant specified in subsection (2) may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

(e) review the progress of investigations conducted by the Delhi Special Police Establishment into offences alleged to have been committed under the Prevention of

Corruption Act, 1988 or the public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial;

(f) review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988;

(h) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government:

(2) The persons referred to in clause (d) of sub-section (1) are as follows:--

(a) members of All-India Services serving in connection with the affairs of the Union and Group `A' officers of the Central Government;

(b) such level of officers of the corporations established by or under any Central Act, Government companies, societies and other local authorities, owned or controlled by the Central Government, as that Government may, by notification in the Official Gazette, specify in this behalf:

Provided that till such time a notification is issued under this clause, all officers of the said corporations, companies, societies and local authorities shall be deemed to be the persons referred to in clause (d) of sub-section (1).

11. Power relating to inquiries. - The Commission shall, while conducting any inquiry referred to in clauses (c) and (d) of sub-section (1) of section 8, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and in particular, in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
(b) requiring the discovery and production of any document;
(c) receiving evidence on affidavits;
(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commissions for the examination of witnesses or other documents; And
(f) any other matter which may be prescribed.

THE SCHEDULE [See section 5(3)] Form of oath or affirmation to be made by the Central Vigilance Commissioner or Vigilance Commissioner:--

"I, A. B., having been appointed Central Vigilance Commissioner (or Vigilance Commissioner) of the Central Vigilance Commission do swear in the name of god/ solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the constitution and the laws.".

28. On analysis of the 2003 Act, the following are the salient features. CVC is given a statutory status. It stands established as an Institution. CVC stands established to inquire into offences alleged to have been committed under the Prevention of Corruption Act, 1988 by certain categories of public servants enumerated above. Under Section 3(3)(a) the Central Vigilance Commissioner and the Vigilance Commissioners are to be appointed from amongst persons who have been or are in All India Service or in any civil service of the Union or who are in a civil post under the Union having knowledge and experience in the matters relating to vigilance, policy making and administration including police administration. The underlined words "who have been or who are" in Section 3(3)(a) refer to the person holding office of a civil servant or who has held such office. These underlined words came up for consideration by this Court in the case of N. Kannadasan v. Ajoy Khose and Others [(2009) 7 SCC 1] in which it has been held that the said words indicate the eligibility criteria and further they indicate that such past or present eligible persons should be without any blemish whatsoever and that they should not be appointed merely because they are eligible to be considered for the post. One more aspect needs to be highlighted. The constitution of CVC as a statutory body under Section 3 shows that CVC is an Institution. The key word is Institution. We are emphasizing the key word for the simple reason that in the present case the recommending authority (High Powered Committee) has

gone by personal integrity of the officers empanelled and not by institutional integrity.

29. Section 4 refers to appointment of Central Vigilance Commissioner and Vigilance Commissioners. Under Section 4(1) they are to be appointed by the President by warrant under her hand and seal. Section 4(1) indicates the importance of the post. Section 4(1) has a proviso. Every appointment under Section 4(1) is to be made after obtaining the recommendation of a committee consisting of-

(a) The Prime Minister - Chairperson;

(b) The Minister of Home Affairs - Member;

(c) The Leader of the Opposition in the House of the People - Member.

30. For the sake of brevity, we may refer to the Selection Committee as High Powered Committee. The key word in the proviso is the word "recommendation". While making the recommendation, the HPC performs a statutory duty. The impugned recommendation dated 3rd September, 2010 is in exercise of the statutory power vested in the HPC under the proviso to Section 4(1). The post of Central Vigilance Commissioner is a statutory post. The Commissioner performs statutory functions as enumerated in Section 8. The word `recommendation' in the proviso stands for an informed decision to be taken by the HPC on the basis of a consideration of relevant material keeping in mind the purpose, object and policy of the 2003 Act. As stated, the object and purpose of the 2003 Act is to have an integrity Institution like CVC which is in charge of vigilance administration and which constitutes an anti-corruption mechanism. In its functions, the CVC is similar to Election Commission, Comptroller and Auditor General, Parliamentary Committees etc. Thus, while making the recommendations, the service conditions of the candidate being a public servant or civil servant in the past is not the sole criteria. The HPC must also take into consideration the question of institutional competency into account. If the selection adversely affects institutional competency and functioning then it shall be the duty of the HPC not to recommend such a candidate. Thus, the institutional integrity is the

primary consideration which the HPC is required to consider while making recommendation under Section 4 for appointment of Central Vigilance Commissioner. In the present case, this vital aspect has not been taken into account by the HPC while recommending the name of Shri P.J. Thomas for appointment as Central Vigilance Commissioner. We do not wish to discount personal integrity of the candidate. What we are emphasizing is that institutional integrity of an institution like CVC has got to be kept in mind while recommending the name of the candidate.

Whether the incumbent would or would not be able to function? Whether the working of the Institution would suffer? If so, would it not be the duty of the HPC not to recommend the person. In this connection the HPC has also to keep in mind the object and the policy behind enactment of the 2003 Act. Under Section 5(1) the Central Vigilance Commissioner shall hold the office for a term of 4 years.

Under Section 5(3) the Central Vigilance Commissioner shall, before he enters upon his office, makes and subscribes before the President an oath or affirmation according to the form set out in the Schedule to the Act. Under Section 6(1) the Central Vigilance Commissioner shall be removed from his office only by order of the President and that too on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has on inquiry reported that the Central Vigilance Commissioner be removed. These provisions indicate that the office of the Central Vigilance Commissioner is not only given independence and insulation from external influences, it also indicates that such protections are given in order to enable the Institution of CVC to work in a free and fair environment. The prescribed form of oath under Section 5(3) requires Central Vigilance Commissioner to uphold the sovereignty and integrity of the country and to perform his duties without fear or favour. All these provisions indicate that CVC is an integrity institution.

The HPC has, therefore, to take into consideration the values independence and impartiality of the Institution. The said Committee has to consider the institutional competence. It has to take an informed decision keeping in mind the abovementioned vital aspects indicated by the purpose and policy of the 2003 Act.

31. Chapter III refers to functions and powers of the Central Vigilance Commission. CVC exercises superintendence over the

functioning of the Delhi Special Police Establishment insofar as it relates to investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988, or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973 be charged with at the trial. Thus, CVC is empowered to exercise superintendence over the functioning of CBI. It is also empowered to give directions to CBI. It is also empowered to review the progress of investigations conducted by CBI into offences alleged to have been committed under the Prevention of Corruption Act, 1988 or under the Code of Criminal Procedure by a public servant. CVC is also empowered to exercise superintendence over the vigilance administration of various ministries of the Central Government, PSUs, Government companies etc. The powers and functions discharged by CVC is the sole reason for giving the institution the administrative autonomy, independence and insulation from external influences.

Validity of the recommendation dated 3 rd September, 2010

32. One of the main contentions advanced on behalf of Union of India and Shri P.J. Thomas before us was that once the CVC clearance had been granted on 6th October, 2008 and once the candidate stood empanelled for appointment at the Centre and in fact stood appointed as Secretary, Parliamentary Affairs and, thereafter, Secretary Telecom, it was legitimate for the HPC to proceed on the basis that there was no impediment in the way of appointment of respondent No. 2 on the basis of the pending case which had been found to be without any substance.

33. We find no merit in the above submissions. Judicial review seeks to ensure that the statutory duty of the HPC to recommend under the proviso to Section 4(1) is performed keeping in mind the policy and the purpose of the 2003 Act.

We are not sitting in appeal over the opinion of the HPC. What we have to see is whether relevant material and vital aspects having nexus to the object of the 2003 Act were taken into account when the decision to recommend took place on 3rd September, 2010. Appointment to the post of the Central Vigilance Commissioner must satisfy not only the eligibility criteria of the candidate but also the decision making process of the recommendation [see para 88 of N. Kannadasan (supra)]. The decision to recommend has got to be an informed decision keeping in mind the fact that CVC as an institution has to perform an important function of vigilance

administration. If a statutory body like HPC, for any reason whatsoever, fails to look into the relevant material having nexus to the object and purpose of the 2003 Act or takes into account irrelevant circumstances then its decision would stand vitiated on the ground of official arbitrariness [see State of Andhra Pradesh v. Nalla Raja Reddy (1967) 3 SCR 28].
Under the proviso to Section 4(1), the HPC had to take into consideration what is good for the institution and not what is good for the candidate [see para 93 of N. Kannadasan (supra)].

When institutional integrity is in question, the touchstone should be "public interest" which has got to be taken into consideration by the HPC and in such cases the HPC may not insist upon proof [see para 103 of N. Kannadasan (supra)].

We should not be understood to mean that the personal integrity is not relevant. It certainly has a co-relationship with institutional integrity. The point to be noted is that in the present case the entire emphasis has been placed by the CVC, the DoPT and the HPC only on the bio-data of the empanelled candidates. None of these authorities have looked at the matter from the larger perspective of institutional integrity including institutional competence and functioning of CVC. Moreover, we are surprised to find that between 2000 and 2004 the notings of DoPT dated 26th June, 2000, 18th January, 2001, 20th June, 2003, 24th February, 2004, 18th October, 2004 and 2nd November, 2004 have all observed that penalty proceedings may be initiated against Shri P.J.Thomas. Whether State should initiate such proceedings or the Centre should initiate such proceedings was not relevant.

What is relevant is that such notings were not considered in juxtaposition with the clearance of CVC granted on 6th October, 2008. Even in the Brief submitted to the HPC by DoPT, there is no reference to the said notings between the years 2000 and 2004. Even in the C.V. of Shri P.J. Thomas, there is no reference to the earlier notings of DoPT recommending initiation of penalty proceedings against Shri P.J. Thomas. Therefore, even on personal integrity, the HPC has not considered the relevant material. The learned Attorney General, in his usual fairness, stated at the Bar that only the Curriculum Vitae of each of the empanelled candidates stood annexed to the agenda for the meeting of the HPC. The fact remains that the HPC, for whatsoever reason, has failed to

consider the relevant material keeping in mind the purpose and policy of the 2003 Act. The system governance established by the Constitution is based on distribution of powers and functions amongst the three organs of the State, one of them being the Executive whose duty is to enforce the laws made by the Parliament and administer the country through various statutory bodies like CVC which is empowered to perform the function of vigilance administration.

Thus, we are concerned with the institution and its integrity including institutional competence and functioning and not the desirability of the candidate alone who is going to be the Central Vigilance Commissioner, though personal integrity is an important quality. It is the independence and impartiality of the institution like CVC which has to be maintained and preserved in larger interest of the rule of law [see Vineet Narain (supra)]. While making recommendations, the HPC performs a statutory duty. Its duty is to recommend. While making recommendations, the criteria of the candidate being a public servant or a civil servant in the past is not the sole consideration. The HPC has to look at the record and take into consideration whether the candidate would or would not be able to function as a Central Vigilance Commissioner.

Whether the institutional competency would be adversely affected by pending proceedings and if by that touchstone the candidate stands disqualified then it shall be the duty of the HPC not to recommend such a candidate. In the present case apart from the pending criminal proceedings, as stated above, between the period 2000 and 2004 various notings of DoPT recommended disciplinary proceedings against Shri P.J. Thomas in respect of Palmolein case. Those notings have not been considered by the HPC. As stated above, the 2003 Act confers autonomy and independence to the institution of CVC. Autonomy has been conferred so that the Central Vigilance Commissioner could act without fear or favour. We may reiterate that institution is more important than an individual. This is the test laid down in para 93 of N. Kannadasan's case (supra). In the present case, the HPC has failed to take this test into consideration. The recommendation dated 3rd September, 2010 of HPC is entirely premised on the blanket clearance given by CVC on 6th October, 2008 and on the fact of respondent No. 2 being appointed as Chief Secretary of

Kerala on 18th September, 2007; his appointment as Secretary of Parliamentary Affairs and his subsequent appointment as Secretary, Telecom. In the process, the HPC, for whatever reasons, has failed to take into consideration the pendency of Palmolein case before the Special Judge, Thiruvananthapuram being case CC 6 of 2003;

the sanction accorded by the Government of Kerala on 30th November, 1999 under Section 197Cr.P.C. for prosecuting inter alia Shri P.J. Thomas for having committed alleged offence under Section 120-B IPC read with Section 13(1)(d) of the Prevention of Corruption Act; the judgment of the Supreme Court dated 29th March, 2000 in the case of K. Karunakaran v. State of Kerala and Anotherin which this Court observed that, "the registration of the FIR against Shri Karunakaran and others cannot be held to be the result of malafides or actuated by extraneous considerations. The menace of corruption cannot be permitted to be hidden under the carpet of legal technicalities and in such cases probes conducted are required to be determined on facts and in accordance with law". Further, even the judgment of the Kerala High Court in Criminal Revision Petition No. 430 of 2001 has not been considered. It may be noted that the clearance of CVC dated 6th October, 2008 was not binding on the HPC. However, the aforestated judgment of the Supreme Court dated 29th March, 2000 in the case ofK. Karunakaran vs. State of Kerala and Another in Criminal Appeal No. 86 of 1998 was certainly binding on the HPC and, in any event, required due weightage to be given while making recommendation, particularly when the said judgment had emphasized the importance of probity in high offices. This is what we have repeatedly emphasized in our judgment - institution is more important than individual(s). For the above reasons, it is declared that the recommendation made by the HPC on 3rd September, 2010 is non-est in law.

Is Writ of Quo Warranto invocable ?

34. Shri K.K. Venugopal, learned senior counsel appearing on behalf of respondent No. 2, submitted that the present case is neither a case of infringement of the statutory provisions of the 2003 Act nor of the appointment being contrary to any procedure or rules. According to the learned counsel, it is well settled that a writ of quo warranto applies in a case when a

person usurps an office and the allegation is that he has no title to it or a legal authority to hold it. According to the learned counsel for a writ of quo warranto to be issued there must be a clear infringement of the law. That, in the instant case there has been no infringement of any law in the matter of appointment of respondent No. 2.

35. The procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions. Before a citizen can claim a writ of quo warranto he must satisfy the court inter-alia that the office in question is a public office and it is held by a person without legal authority and that leads to the inquiry as to whether the appointment of the said person has been in accordance with law or not. A writ of quo warranto is issued to prevent a continued exercise of unlawful authority.

36. One more aspect needs to be mentioned. In the present petition, as rightly pointed by Shri Prashant Bhushan, learned counsel appearing on behalf of the petitioner, a declaratory relief is also sought besides seeking a writ of quo warranto.

37. At the outset it may be stated that in the main writ petition the petitioner has prayed for issuance of any other writ, direction or order which this Court may deem fit and proper in the facts and circumstances of this Case. Thus, nothing prevents this Court, if so satisfied, from issuing a writ of declaration. Further, as held hereinabove, recommendation of the HPC and, consequently, the appointment of Shri P.J. Thomas was in contravention of the provisions of the 2003 Act, hence, we find no merit in the submissions advanced on behalf of respondent No. 2 on non-maintainability of the writ petition. If public duties are to be enforced and rights and interests are to be protected, then the court may, in furtherance of public interest, consider it necessary to inquire into the state of affairs of the subject matter of litigation in the interest of justice [see Ashok Lanka v. Rishi Dixit (2005) 5 SCC 598].

38. Keeping in mind the above parameters, we may now consider some of the judgments on which reliance has been placed by the learned counsel for respondent No. 2.

39. In Ashok Kumar Yadav v. State of Haryana [(1985) 4 SCC 417], the Division Bench of the Punjab and Haryana High Court had quashed and set aside selections made by the Haryana Public Service Commission to the Haryana Civil Service and other Allied Services.

40. In that case some candidates who had obtained very high marks at the written examination failed to qualify as they had obtained poor marks in the viva voce test. Consequently, they were not selected. They were aggrieved by the selections made by Haryana Public Service Commission. Accordingly, Civil Writ Petition 2495 of 1983 was filed in the High Court challenging the validity of the selections and seeking a writ for quashing and setting aside the same. There were several grounds on which the validity of the selection made by the Commission was assailed. A declaration was also sought that they were entitled to be selected. A collateral attack was launched. It was alleged that the Chairperson and members of Public Service Commission were not men of high integrity, calibre and qualification and they were appointed solely as a matter of political patronage and hence the selections made by them were invalid. This ground of challenge was sought to be repelled on behalf of the State of Haryana who contended that not only was it not competent to the Court on the existing set of pleadings to examine whether the Chairman and members of the Commission were men of high integrity, calibre and qualification but also there was no material at all on the basis of which the Court could come to the conclusion that they were men lacking in integrity, calibre or qualification.

41. The writ petition came to be heard by a Division Bench of the High Court of Punjab and Haryana. The Division Bench held that the Chairperson and members of the Commission had been appointed purely on the basis of political considerations and that they did not satisfy the test of high integrity, calibre and qualification. The Division Bench went to the length of alleging corruption against the Chairperson and members of the Commission and observed that they were not competent to validly wield the golden scale of viva voce test for entrance into the public service. This Court vide para 9 observed that it was difficult to see how the Division Bench of the High Court could have possibly undertaken an inquiry into the question whether Chairman and members of the Commission were men of integrity, calibre and qualification;

that such an inquiry was totally irrelevant inquiry because even if they were men lacking in integrity, calibre and qualification, it would not make their appointments invalid so long as the constitutional and legal requirement in regard to appointment are fulfilled. It was held that none of the constitutional provisions, namely, Article 316 and 319 stood violated in making appointments of the Chairperson and members of the Commission nor was any legal provision breached. Therefore, the appointments of the Chairperson and members of the Commission were made in conformity with the constitutional and legal requirements, and if that be so, it was beyond the jurisdiction of the High Court to hold that such appointments were invalid on the ground that the Chairman and the members of the Commission lacked integrity, calibre and qualification. The Supreme Court observed that it passes their comprehension as to how the appointments of the Chairman and members of the Commission could be regarded as suffering from infirmity merely on the ground that in the opinion of the Division Bench of the High Court the Chairperson and the members of the Commission were not men of integrity or calibre. In the present case, as stated hereinabove, there is a breach/ violation of the proviso to Section 4(1) of the 2003 Act, hence, writ was maintainable.

42. In R.K. Jain v. Union of India [(1993) 4 SCC 119] Shri Harish Chandra was a Senior Vice-President when the question of filling up the vacancy of the President came up for consideration. He was qualified for the post under the Rules.

No challenge was made on that account. Under Rule 10(1) the Central Government was conferred the power to appoint one of the members to be the President. The validity of the Rule was not questioned. Thus, the Central Government was entitled to appoint Shri Harish Chandra as the President. It was stated that the track record of Shri Harish Chandra was poor. He was hardly fit to hold the post of the President. It was averred that Shri Harish Chandra has been in the past proposed for appointment as a Judge of the Delhi High Court.

His appointment, however, did not materialize due to certain adverse reports. It was held by this Court that judicial review is concerned with whether the incumbent possessed requisite qualification for appointment and the manner in

which the appointment came to be made or the procedure adopted was fair, just and reasonable. When a candidate was found qualified and eligible and is accordingly appointed by the executive to hold an office as a Member or Vice President or President of a Tribunal, in judicial review the Court cannot sit over the choice of the selection. It is for the executive to select the personnel as per law or procedure. Shri Harish Chandra was the Senior Vice President at the relevant time. The question of comparative merit which was the key contention of the petitioner could not be gone into in a PIL; that the writ petition was not a writ of quo warranto and in the circumstances the writ petition came to be dismissed. It was held that even assuming for the sake of arguments that the allegations made by the petitioner were factually accurate, still, this Court cannot sit in judgment over the choice of the person made by the Central Government for appointment as a President of CEGAT so long as the person chosen possesses the prescribed qualification and is otherwise eligible for appointment. It was held that this Court cannot interfere with the appointment of Shri Harish Chandra as the President of CEGAT on the ground that his track record was poor or because of adverse reports on which account his appointment as a High Court Judge had not materialized.

43. In the case of Hari Bansh Lal v. Sahodar Prasad Mahto [(2010) 9 SCC 655], the appointment of Shri Hari Bansh Lal as Chairman, Jharkhand State Electricity Board stood challenged on the ground that the board had been constituted in an arbitrary manner; that Shri Hari Bansh Lal was a person of doubtful integrity; that he was appointed as a Chairman without following the rules and procedure and in the circumstances the appointment stood challenged. On the question of maintainability, the Division Bench of this Court held that a writ of quo warranto lies only when the appointment is contrary to a statutory provision. It was further held that "suitability" of a candidate for appointment to a post is to be judged by the appointing authority and not by the court unless the appointment is contrary to the statutory rules/provisions. It is important to note that this Court went into the merits of the case and came to the conclusion that there was no adequate material to doubt the integrity of Shri Hari Bansh Lal who was appointed as the Chairperson of Jharkhand State Electricity Board. This Court further observed that in the writ petition there was no averment

saying that the appointment was contrary to statutory provisions.

44. As stated above, we need to keep in mind the difference between judicial review and merit review. As stated above, in this case the judicial determination is confined to the integrity of the decision making process undertaken by the HPC in terms of the proviso to Section 4(1) of the 2003 Act. If one carefully examines the judgment of this Court in Ashok Kumar Yadav's case (supra) the facts indicate that the High Court had sat in appeal over the personal integrity of the Chairman and Members of the Haryana Public Service Commission in support of the collateral attack on the selections made by the State Public Service Commission. In that case, the High Court had failed to keep in mind the difference between judicial and merit review. Further, this Court found that the appointments of the Chairperson and Members of Haryana Public Service Commission was in accordance with the provisions of the Constitution. In that case, there was no issue as to the legality of the decision-
making process. On the contrary the last sentence of para 9 supports our above reasoning when it says that it is always open to the Court to set aside the decision (selection) of the Haryana Public Service Commission if such decision is vitiated by the influence of extraneous considerations or if such selection is made in breach of the statute or the rules.

45. Even in R.K. Jain's case (supra), this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether procedure adopted was fair, just and reasonable. We reiterate that Government is not accountable to the courts for the choice made but Government is accountable to the courts in respect of the lawfulness/legality of its decisions when impugned under the judicial review jurisdiction. We do not wish to multiply the authorities on this point.

Appointment of Central Vigilance Commissioner at the President's discretion

46. On behalf of respondent No. 2 it was submitted that though under Section 4(1) of the 2003 Act, the appointment of Central Vigilance Commissioner is made on the basis of the

recommendation of a High Powered Committee, the President of India is not to act on the advice of the Council of Ministers as is provided in Article 74 of the Constitution. In this connection, it was submitted that the exercise of powers by the President in appointing respondent No. 2 has not been put in issue in the PIL, nor is there any pleading in regard to the exercise of powers by the President and in the circumstances it is not open to the petitioner to urge that the appointment is invalid.

47. Shri G.E. Vahanvati, learned Attorney General appearing on behalf of Union of India, however, submitted that the proposal sent after obtaining and accepting the recommendations of the High Powered Committee under Section 4(1) was binding on the President. Learned counsel submitted that under Article 74 of the Constitution the President acts in exercise of her function on the aid and advice of the Council of Ministers headed by the Prime Minister which advice is binding on the President subject to the proviso to Article 74. According to the learned counsel Article 77 of the Constitution inter alia provides for conduct of Government Business. Under Article 77(3), the President makes rules for transaction of Government Business and for allocation of business among the Ministers. On facts, learned Attorney General submitted that under Government of India (Transaction of Business) Rules, 1961 the Prime Minister had taken a decision on 3rd September, 2010 to propose the name of respondent No. 2 for appointment as Central Vigilance Commissioner after the recommendation of the High Powered Committee. It was accordingly submitted on behalf of Union of India that this advice of the Prime Minister under Article 77(3), read with Article 74 of the Constitution is binding on the President. That, although the recommendation of the High Powered Committee under Section 4(1) of the 2003 Act may not be binding on the President proprio vigore, however, if such recommendation has been accepted by the Prime Minister, who is the concerned authority under Article 77(3), and if such recommendation is then forwarded to the President under Article 74, then the President is bound to act in accordance with the advice tendered. That, the intention behind Article 77(3) is that it is physically impossible that every decision is taken by the Council of Ministers. The Constitution does not use the term "Cabinet". Rules have

been framed for convenient transaction and allocation of such business.

Under the Rules of Business, the concerned authority is the Prime Minister. The advice tendered to the President by the Prime Minister regarding the appointment of the Central Vigilance Commissioner would be thus binding on the President. Lastly, it was submitted that unless the Constitution expressly permits the exercise of discretion by the President, every decision of the President has to be on the aid and advice of Council of Ministers.

48. Shri Venugopal, learned counsel appearing on behalf of respondent No. 2 submitted that though the President has an area of discretion in regard to exercise of certain powers under the Constitution the Constitution is silent about the exercise of powers by the President/Governor where a Statute confers such powers. In this connection learned counsel placed reliance on the judgment of this Court in Bhuri Nath v. State of J & K [(1997) 2 SCC 745]. In that case, the appellants-Baridars challenged the constitutionality of Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1988 which was enacted to provide for better management, administration and governance of Shri Mata Vaishno Devi Shrine and its endowments including the land and buildings attached to the Shrine. By operation of that Act the administration, management and governance of the Shrine and its Funds stood vested in the Board. Consequently, all rights of Baridars stood extinguished from the date of the commencement of the Act by operation of Section 19(1) of the Act. One of the questions which came up for consideration in that case was that when the Governor discharges the functions under the Act, is it with the aid and advice of the Council of Ministers or whether he discharges those functions in his official capacity as the Governor. This question arose because by an order dated 16th January, 1995, this Court had directed the Board to frame a scheme for rehabilitation of persons engaged in the performance of Pooja at Shri Mata Vaishno Devi Shrine. When that matter came up for hearing on 20th March, 1995, the Baridars stated that they did not want rehabilitation. Instead, they preferred to receive compensation to be determined under Section 20 of the impugned Act 1988. This Court noticed that in the absence of guidelines for determination of the compensation by the Tribunal to be appointed

under Section 20 it was not possible to award compensation to the Baridars.

Consequently, the Supreme Court ordered that the issue of compensation be left to the Governor to make appropriate guidelines to determine the compensation. Pursuant thereto, guidelines were framed by the Governor which were published in the State Gazette and placed on record on 8th May, 1995. It is in this context that the question arose that when the legislature entrusted the powers under the Act to the Governor whether the Governor discharges the functions under the Act with the aid and advice of the Council of Ministers or whether he acts in his official capacity as a Governor under the Act.

After examining the Scheme of the 1988 Act the Division Bench of this Court held that the legislature of Jammu & Kashmir, while making the Act was aware that similar provisions in the Endowments Act, 1966 gives power of the State Government to dissolve the Board of Trustees of Tirupati Devasthanams and the Board of Trustees of other institutions.

Thus, it is clear that the legislature entrusted the powers under the Act to the Governor in his official capacity. On examination of the 1988 Act this Court found that the Governor is to preside over the meetings of the Board and in his absence his nominee, a qualified Hindu, shall preside over the functions. That, under the 1988 Act no distinction was made between the Governor and the Executive Government.

That, under the scheme of the 1988 Act there was nothing to indicate that the power was given to the Council of Ministers and the Governor was to act on its advice as executive head of the State. It is in these circumstances that this Court held that while discharging the functions under the 1988 Act the Governor acts in his official capacity. In the same judgment this Court has also referred to the judgment of the Full Bench of the Punjab and Haryana High Court in Hardwari Lal v. G.D. Tapase [AIR 1982 P&H 439] in which a similar question arose as to whether the Governor in his capacity as the Chancellor of Maharshi Dayanand University acts under the 1975 Act in his official capacity as Chancellor or with the aid and advice of the Council of Ministers. The Full Bench of the High Court,

after elaborate consideration of the provisions of the Act, observed that under the Maharshi Dayanand University Act 1975, the State Government would not interfere in the affairs of the University. Under that Act, the State Government is an Authority different and distinct from the authority of the Chancellor. Under that Act the State Government was not authorized to advise the Chancellor to act in a particular manner. Under that Act the University was a statutory body, autonomous in character and it had been given powers exercisable by the Chancellor in his absolute discretion. In the circumstances, under the scheme of that Act it was held that while discharging the functions as a Chancellor, the Governor does everything in his discretion as a Chancellor and he does not act on the aid and advice of his Council of Ministers. This judgment has no application to the scheme of the 2003 Act. As stated hereinabove, the CVC is constituted under Section 3(1) of the 2003 Act. The Central Vigilance Commissioner is appointed under Section 4(1) of the 2003 Act by the President by warrant under her hand and seal after obtaining the recommendation of a Committee consisting of the Prime Minister as the Chairperson and two other Members. As submitted by the learned Attorney General although under the 2003 Act the Central Vigilance Commissioner is appointed after obtaining the recommendation of the High Powered Committee, such recommendation has got to be accepted by the Prime Minister, who is the concerned authority under Article 77(3), and if such recommendation is forwarded to the President under Article 74, then the President is bound to act in accordance with the advice tendered. Further under the Rules of Business the concerned authority is the Prime Minister. Therefore, the advice tendered to the President by the Prime Minister regarding appointment of the Central Vigilance Commissioner will be binding on the President. It may be noted that the above submissions of the Attorney General find support even in the judgment of the Division Bench of this Court in Bhuri Nath's case (supra) which in turn has placed reliance on the judgment of this Court in Samsher Singh v. State of Punjab [(1974) 2 SCC 831] in which a Bench of 7 Judges of this Court held that under the Cabinet system of Government, as embodied in our Constitution, the Governor is the formal Head of the State. He exercises all his powers and functions conferred on him by or under the Constitution with the aid and advice of his Council of Ministers. That, the real executive power is vested in the

Council of Ministers of the Cabinet. The same view is reiterated in R.K. Jain's case (supra). However, in Bhuri Nath's case (supra) it has been clarified that the Governor being the constitutional head of the State, unless he is required to perform the function under the Constitution in his individual discretion, the performance of the executive power, which is coextensive with the legislative power, is with the aid and advice of the Council of Ministers headed by the Chief Minister. Thus, we conclude that the judgment in Bhuri Nath's case has no application as the scheme of the Jammu and Kashmir Shri Mata Vaishno Devi Shrine Act, 1988 as well as the scheme of Maharshi Dayanand University Act, 1975 as well as the scheme of the various Endowment Acts is quite different from the scheme of the 2003 Act. Hence, there is no merit in the contention advanced on behalf of respondent No. 2 that in the matter of appointment of Central Vigilance Commissioner under Section 4(1) of the 2003 Act the President is not to act on the advice of the Council of Ministers as is provided in Article 74 of the Constitution.

Unanimity or consensus under Section 4(2) of the 2003 Act

49. One of the arguments advanced on behalf of the petitioner before us was that the recommendation of the High Powered Committee under the proviso to Section 4(1) has to be unanimous. It was submitted that CVC was set up under the Resolution dated 11th February, 1964. Under that Resolution the appointment of Central Vigilance Commissioner was to be initiated by the Cabinet Secretary and approved by the Prime Minister. However, the provision made in Section 4 of the 2003 Act was with a purpose, namely, to introduce an element of bipartisanship and political neutrality in the process of appointment of the head of the CVC. The provision made in Section 4 for including the Leader of Opposition in the High Powered Committee made a significant change from the procedure obtaining before the enactment of the said Act. It was further submitted that if unanimity is ruled out then the very purpose of inducting the Leader of Opposition in the process of selection will stand defeated because if the recommendation of the Committee were to be arrived at by majority it would always exclude the Leader of Opposition since the Prime Minister and the Home Minister will always be ad idem. It was submitted that one must give a purposive interpretation to the scheme of the Act. It was submitted that under Section 9 it has been inter alia stated that all business of the Commission shall, as

far as possible, be transacted unanimously. It was submitted that since in Vineet Narain's case (supra) this Court had observed that CVC would be selected by a three member Committee, including the Leader of the Opposition it was patently obvious that the said Committee would decide by unanimity or consensus. That, it was no where stated that the Committee would decide by majority.

50. We find no merit in these submissions. To accept the contentions advanced on behalf of the petitioners would mean conferment of a "veto right" on one of the members of the HPC. To confer such a power on one of the members would amount to judicial legislation. Under the proviso to Section 4(1) Parliament has put its faith in the High Powered Committee consisting of the Prime Minister, the minister for Home Affairs and the Leader of the Opposition in the House of the People. It is presumed that such High Powered Committee entrusted with wide discretion to make a choice will exercise its powers in accordance with the 2003 Act, objectively and in a fair and reasonable manner. It is well settled that mere conferment of wide discretionary powers per se will not violate the doctrine of reasonableness or equality. The 2003 Act is enacted with the intention that such High Powered Committee will act in a bipartisan manner and shall perform its statutory duties keeping in view the larger national interest. Each of the Members is presumed by the legislature to act in public interest. On the other hand, if veto power is given to one of the three Members, the working of the Act would become unworkable. One more aspect needs to be mentioned. Under Section 4(2) of the 2003 Act it has been stipulated that the vacancy in the Committee shall not invalidate the appointment. This provision militates against the argument of the petitioner that the recommendation under Section 4 has to be unanimous. Before concluding, we would like to quote the observations from the judgment in Grindley and Another v. Barker, 1 Bos. & Pul. 229, which reads as under :

> *"I think it is now pretty well established, that where a number of persons are entrusted with the powers not of mere private confidence, but in some respects of a general nature and all of them are regularly assembled, the majority will conclude the minority, and their act will be the act of the whole."*

51. The Court, while explaining the raison d'etre behind the principle, observed :

"It is impossible that bodies of men should always be brought to think alike. There is often a degree of coercion, and the majority is governed by the minority, and vice versa, according to the strength of opinions, tempers, prejudices, and even interests. We shall not therefore think ourselves bound in this case by the rule which holds in that. I lay no great stress on the clause of the act which appoints a majority to act in certain cases, because that appears to have been done for particular reasons which do not apply to the ultimate trial: it relates only to the assembling the searchers; now there is no doubt that all the six triers must assemble; and the only question, what they must do when assembled? We have no light to direct us in this part, except the argument from the nature of the subject. The leather being subject to seizure in every stage of the manufacture, the tribunal ought to be composed of persons skilful in every branch of the manufacture. And I cannot say there is no weight in the argument, drawn from the necessity of persons concurring in the judgments, who are possessed of different branches of knowledge, but standing alone it is not so conclusive as to oblige us to break through the general rule; besides, it is very much obviated by this consideration when all have assembled and communicated to each other the necessary information, it is fitter that the majority should decide than that all should be pressed to a concurrence. If this be so, then the reasons drawn from the act and which have been supposed to demand, that the whole body should unite in the judgment, have no sufficient avail, and consequently the general rule of law will take place; viz. that the judgment of four out of six being the whole body to which the authority is delegated r egularly assemble and acting, is the judgment of the all."

52. Similarly, we would like to quote Halsbury's Laws of England (4th Ed. Re-issue), on this aspect, which states as under:

"Where a power of a public nature is committed to several persons, in the absence of statutory provision or implication to the contrary the act of the majority is binding upon the minority."

53. In the circumstances, we find no merit in the submission made on behalf of the petitioner on this point that the recommendation/decision dated 3rd September, 2010 stood

vitiated on the ground that it was not unanimous. Guidelines/Directions of this Court

54. The 2003 Act came into force on and from 11th September, 2003. In the present case we find non-compliance of some of the provisions of the 2003 Act. Under Section 3(3), the Central Vigilance Commissioner and the Vigilance Commissioners are to be appointed from amongst persons -

> *(a) who have been or who are in All-India Service or in any civil service of the Union or in a civil post under the Union having requisite knowledge and experience as indicated in Section 3(3)(a); or*
>
> *(b) who have held office or are holding office in a corporation established by or under any Central Act or a Central Government company and persons who have experience in finance including insurance and banking, law, vigilance and investigations.*

55. No reason has been given as to why in the present case the zone of consideration stood restricted only to the civil service. We therefore direct that :

(i) In our judgment we have held that there is no prescription of unanimity or consensus under Section 4(2) of the 2003 Act. However, the question still remains as to what should be done in cases of difference of opinion amongst the Members of the High Powered Committee. As in the present case, if one Member of the Committee dissents that Member should give reasons for the dissent and if the majority disagrees with the dissent, the majority shall give reasons for overruling the dissent.
This will bring about fairness-in-action. Since we have held that legality of the choice or selection is open to judicial review we are of the view that if the above methodology is followed transparency would emerge which would also maintain the integrity of the decision-
making process.

(ii) In future the zone of consideration should be in terms of Section 3(3) of the 2003 Act. It shall not be restricted to civil servants.

(iii) All the civil servants and other persons empanelled shall be outstanding civil servants or persons of impeccable integrity.

(iv) The empanelment shall be carried out on the basis of rational criteria, which is to be reflected by recording of reasons and/or noting akin to reasons by the empanelling authority.

(v) The empanelment shall be carried out by a person not below the rank of Secretary to the Government of India in the concerned Ministry.

(vi) The empanelling authority, while forwarding the names of the empanelled officers/persons, shall enclose complete information, material and data of the concerned officer/person, whether favourable or adverse. Nothing relevant or material should be withheld from the Selection Committee. It will not only be useful but would also serve larger public interest and enhance public confidence if the contemporaneous service record and acts of outstanding performance of the officer under consideration, even with adverse remarks is specifically brought to the notice of the Selection Committee.

(vii) The Selection Committee may adopt a fair and transparent process of consideration of the empanelled officers.

Conclusion

56. For the above reasons, it is declared that the recommendation dated 3rd September, 2010 of the High Powered Committee recommending the name of Shri P.J.Thomas as Central Vigilance Commissioner under the proviso to Section 4(1) of the 2003 Act is non-est in law and, consequently, the impugned appointment of Shri P.J. Thomas as Central Vigilance Commissioner is quashed.

57. The writ petitions are accordingly allowed with no order as to costs."

23. The next ground raised by Respondent No. 1 seems to be that applicant had earlier approached the Hon'ble Court in OA No. 556/2018.

Therefore, we hereby quote from the order passed in OA No. 556/2018:

"O R D E R (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J)

Heard. The matter is in a very small compass. An officer claims that his date of promotion must be dated back to accommodate a vacancy along with the senior colleague who was first in the list. Since he claims that, going by the Hon'ble Apex Court ruling given by Hon'ble Justice Altamas Kabir and Justice Raveendran, it is almost a fundamental right of an employee to have a correct placement in the seniority list to enable him to get an appointment or a promotion. This has been preceded by a judgment of Chief Justice Haq of Pakistan Supreme Court which held for the first time in the administrative history that career enhancements can be termed as a fundamental right. This was followed by Justice Barak Aharon of the Supreme Court of Israel which expanded its horizons. Therefore with anxious eyes we examined this matter as to:

1) *What should be the cut off date in accommodating promotion of service officers into All India Service,*
2) *In what way the promotion shall be accommodated so as to correctly align and place all claimants in the list.*

2. The DoPT had filed a detailed reply indicating that for purpose of universal application there have to be one cut off date. Since these promotions are based on vacancies which arose in a particular calendar year, they have put 1st of January of each year as the cut off date and this is a practice in vogue for many decades now. Therefore the legitimate expectation of an aspirant will be satisfied if the cut off date of 1st January of a particular year is taken as the basis for determining the vacancies which have arisen in a preceding year.

3. The cause of the applicant is that applicant is second in the list with Smt Sathyavathi as the first in the list. Since there was only vacancy sufficient enough to accommodate upto Smt Sathyavathi as on the crucial date of accommodation, i.e., 1st of January of the year in relation to the preceding year's vacancy, only Smt Sathyavathi could be accommodated and the second in

line applicant could not be accommodated. The claim of the applicant is that, next year one Shri Puttaswamy retired on 31st of March and therefore since the actual promotion had taken place after 31st of March there was no reason to ignore this newly arisen vacancy also and had it been done then the applicant also would have been placed along with Smt Sathyavathi in the prior list and would have been given a previous year promotion which would have merited him further promotions.

4. But the claim of the DoPT is that, for the purpose of universal application and certainty which must be present in all authoritative procedures, they have to take only the vacancy which have arisen in a particular year to grant promotion. If they have to go more elastic by holding that any further arising vacancies also have to be accommodated or a future arising vacancy also have to be accommodated then the process will be a non-ending one and cannot be concluded at any level. They cite the example of an examination to be held. If an examination is held on a particular date and results announced in relation to it, the claim of the applicant to say that the examination could have been held on an earlier date may not be applicable because that is the date on which the cut off had occurred, therefore, the relevance and juncture so far as time is concerned it is that date which is crucial. If we are to go by the date of arising of vacancies and to grant it a retrospective effect it will defeat the purpose of certainty and uniformity.

5. We have examined this matter with great anxiety as the Hon'ble Supreme Court have held that the career enhancement is also, if not a fundamental right something akin to it. Assume a person is standing just outside the door and another person is standing just inside the door and that door is half an inch thick. Therefore the difference between them is only half an inch but the actual effect is that one person is inside while the other person is outside. The logic of this will apply to this matter also. Smt Sathyavathi and applicant may be first and second in the list but since there was only one vacancy to accommodate, rightly and correctly Smt Sathyavathi was accommodated and the future arising vacancy of Shri Puttaswamy cannot be taken into account as then it will create uncertainty which is against public policies. Therefore we cannot, by no stretch of imagination, deem that the future arising vacancy of Shri Puttaswamy could be held to be retrospectively applicable to the applicant and particularly so as the weightage to be applied is in relation to 1st January. There is no

rule which will support this neither any ruling also as we have found out after serious examination. Therefore the case of the applicant fails.

6. At this point of time the learned counsel makes a submission that the vacancy had arisen earlier prior to the amendment. The amendment, we feel, has no relevance since this is a practice that has been followed and amendment's focus is on other matters. The issue is that the applicant being the second in the list cannot claim parity or equality either in law or in equity with Smt Sathyavathi who is first in the list. Had the applicant been the first he would naturally have got it or had Shri Puttaswamy died on 31st of December of the preceding year then the applicant would have got in but since Shri Puttaswamy demitted office only on 31st of March in the next year Shri Puttaswamy's vacancy has arisen only on 1st of April of that year. There cannot be any retrospective operation of vacancies in such way. By no stretch of imagination can we assume that vacancy has arisen prior to 1st January of that particular year. Therefore no merit in the case.

7. At this point of time one more issue had been raised by the learned counsel now. How to grant weightage according to the new amendment? Weightage is a totally different issue and will have an operation only if the applicant is in the zone of consideration. As on 1st of January of that particular year, the applicant is not in the zone of consideration and he will be in the zone of consideration only on the next January 1st. That being so, the weightage as according to the amended rule will only be applicable to him. The previous year's weightage will go only to the person who was in the list in the preceding year and who was admittedly his senior.

8. Therefore there is no further merit in the matter. The OA is dismissed. No order as to costs.

24. A mere reading of the judgment will indicate that this is in fact a lament of the applicant to reopen the issue of the retirement of Shri Puttaswamy and we have found that had Shri Puttaswamy retired three months earlier the benefit would have been granted to the applicant but as he had retired only later the benefit can be accrued only to Smt

Sathyavathi. **This is an entirely different issue as the issue in the present matter is only with regard to the fraud practiced or the infraction committed in respect of Respondent No. 4 to 8.** The applicant in this matter is not getting a direct benefit but then will be benefitted consequentially by the infraction pointed out in terms of Respondent No. 4 to 8. Therefore, the question of res judicata as relating to OA No. 556/2018 will not be available against the applicant as that is an entirely different matter altogether whereas the present OA is only to grant him benefit from the year 2008 as at that time he was eligible whereas Respondent No. 4 to 8 were not eligible since from the list annexed earlier it had come out that had they not been recommended and selected in that date in relation to the year of 2008 applicant would have been selected and the selection of the applicant had been concluded. The apparent ACRs of 'Outstanding' in relation to the applicant also would, therefore, thus enhance the cause of the applicant.

25. Consideration of Annexure-A8 and A12 now is relevant. We quote:

ANNEXURE-A8

SECRETARY TO GOVERNMENT
WOMEN AND CHILD DEVELOPMENT DEPARTMENT

Fax:22353991
Telephone: Off: 22251011
e-mail:secywc@karnataka.gov.in
Karnataka Govt. Secretariat

M.S. Building, 1st Floor,
Gate-3, Bangalore – 560 001

No: S.G.L.No. WCD.142.SJD.2008 date: 02.04.2008

Sir,

Sri M.V. Vedamurthy, KAS (super time scale), former Director of Department of Welfare of Disabled and Senior citizens, at present Addl. Secretary, DPAR (Janaspandana Cell), has been served with two show cause notices (Annexure-1-4) annexed herewith so as to conduct enquiry against him regarding alleged misappropriations while serving as Director at Department of Welfare of Disabled and Senior Citizens for the period from 26-07-2007 to 13-03-2008. Out of total 11 charges against him 2 charges are pertaining to financial loss to government, due to which government would have faced financial loss of totally Rs. 750.84 lakhs. Due to his delinquencies in discharge of duties in a proper manner totally a sum of Rs. 1643.63 lakhs from totally 5 projects remained unused without expenses and thereby resulted in devastation in implementation of projects due to which the Physically Disabled beneficiaries are deprived from their benefits. Further he is of habitual in nature in showing disrespect, negligence on the part of non-government organizations, subordinate officers and superior officers as well and involves in corruption and hence it is requested to commence departmental enquiry against him as expeditiously.

Thanking you,

Yours faithfully,
Sd/-

Sudhakar Rao, IAS,
Chief Secretary to Government,
Government of Karnataka,
Vidhana Soudha.

Brief Note

Sri M.V. Vedamurthy, KAS (Super Time Scale), former Director, Department of Welfare of Disabled and Senior Citizens and Senior Citizens Welfare Department, at present Addl. Secretary, DPAR (Janaspandana Cell) the misappropriations committed by him during the tenure of serving duties as Director at Department of Welfare of Disabled

and Senior citizens for the period from 26.07.2007 to 13.03.2008 are as under.

1. Additional expense of loss of Rs. 727.56 lakhs caused to government due to recommendations made in favour of M/s. S.T.C.L. Limited, Madikeri which quoted expensive price in purchase of apparatuses and equipment for the year 2007-08.

2. Loss sustained by government for a sum of Rs. 23.28 lakhs for intentionally not opening the financial bid pertaining to M/s. Viking Enterprises, Chennai regarding purchase of apparatuses and equipment for the year 2007-08,

3. Inadequate implementation of 5 number of projects for the year 2007-08 due to worsen financial achievements.

4. a) L1, L2, L3 institutions were neglected during the tender invited for training physically disabled for the year 2007-08 and recommended tender for L4 institution M/s. Vidyaranya Education Society which resulted in non-implementation of project and commitment of delinquency in discharge of duties.

b) Serious allegation for demanding a sum of Rs. 20.00 lakhs for issuing tender to M/s Vidyaranya Education Society.

5. Allegation regarding causing unwanted delay in sanctioning alternative staffs for appointment to vacant posts which arose due to retirement/resignation at Sofia Mentally Retarded Children School, running through Bharath Society.

6. a) Allegation regarding noncompliance of guidelines while identifying Self Service Institutions for the purpose of implementing Socio Welfare Rehabilitation Scheme for the year 2007-08.
b) Allegation regarding commission of omission while identifying self-service institution at 2nd stage of this project.
c) Serious allegation in writing by Sri. M.B. Patil, Bellary for collecting bribe amount from Rs. 50,000/- to Rs. 1,00,000/- while identifying self-service institutions under this programme.

7. Non-cooperation to government regarding revision works of amendment of recruitment notifications of Disabled and Senior Citizens Welfare cadre and recruitment rules.

8. Delinquency in discharge of duties by showing non-cooperation with government for filling up of 7 District Physical Disabled Welfare officers under Rule 32 which were being vacant at Welfare of Disabled and Senior Citizens Department and submission of negligent substantiation for the notice served by government.

9. 71 number of Officers/Staffs of Women and Child Development Department were got transferred to Department of Welfare of Disabled and Senior Citizens on permanent basis and allegation for harassing them while deputing their posts.

10. Allegation for promoting groupies among the staffs of the directorate and providing delinquent administration.

11. Allegation regarding furnishing of irresponsible report regarding the sexual harassment case of Smt. Nirmala Devi, Group-D employee.

Government of Karnataka Secretariat,

Bangalore, Date:

Show Cause Notice

It has been intended to conduct Departmental Enquiry under Rule 11 of Karnataka Civil Services (CCA) Rules, 1957 against Sri M.V. Vedamurthy, KAS (super time scale), former Director of Department of Welfare of Disabled and Senior Citizens, at present Addl. Secretary, DPAR (Jana spandana Cell). The proposed article of charges, statement of charges, list of documents and evidences to substantiate the charges are annexed from Annexure-1 to 4.

You are instructed to submit your written statement of defence within 15 days from the date of receipt of this notice and inform whether you are intending to contest the departmental enquiry. Enquiry will be conducted on the article of charges which are denied by you. Hence, you are instructed to admit or deny each of the article of charge specifically.

If you fail to submit your written defence within the specific period, then it would be deemed that there is nothing to be said from your end and further action will be initiated against you under Karnataka Civil services (Classification, Control and Appeal) Rules which please note.

( )

Under Secretary to Government

To
Sri M.V. Vedamurthy,
Addl. Secretary,
Department of Personnel Administration
And Reforms (Janaspandana Cell), Bangalore

Annexure-1

Charges against Sri M.V. Vedamurthy, KAS (Super Time Scale) former Director of Department of Welfare of Disabled and Senior citizens, at present Addl. Secretary, DPAR (Janaspandana Cell).

Sri M.V. Vedamurthy, KAS (super time scale), Addl. Secretary, DPAR (Janaspandana) had served as Director at the Department of Welfare of Disabled and Senior Citizens for the period from 26-07-2007 to 13-03-2008 and during the tenure:-

1) The government had aided a sum of Rs. 10.00 crores under Account title 2235-02-101-0-52 (project) for the year 2007-08 for purchase of apparatus and equipment to the physical disabled persons. Tender proceedings are initiated under Transparency Act 2009 and Rules 2000 for eth purpose of purchase of such equipment, and during the tender proceedings you have submitted that price list furnished for STCL Company for 31 items had been tallied with the price list of C. Natarajan Cycle Company, Bangalore, V3 Enterprises, Mysore (these are not government approved institutions). Moreover the rate specified by Alimco institution undertaken by Central Government and also DSMS company undertaken by State Government are less than 200% than the rate quoted by S.T.C.L. Company, you had recommended to issue work order to STCL and you have informed that the rates quoted by said company is equal to the rates quoted by other companies and have sought for stabilizing the tender for S.T.C.L. In this regard, the Secretary, Women and Child Development Department has issued show cause notice where you have issued confession letter for the same. Thereafter, the former Minister Sri H.S. Kumaraswamy again mitigated the rates at about 2% and Secretary, Women and Child Development Department after negotiation with STCL Company ahs mitigated the rates upto 15%. As such it could be smelt that you have behaved in a manner so as to assist and benefit the said company and due to your such act it was the situation where government to bear additional or sustain loss of about Rs. 7,27,56,837-00 (Annexure-1 enclosed). This shows your negligence in saving government funds and the welfare of physically disabled, thereby you became responsible in getting delay for granting approval for Rs. 9.00 crores specified by the government. You being in a

responsible position as a tender sanctioning authority and director as well have showed utmost negligence and failed to safeguard the interest of government in this case. Out of 73 items invited you have verified and specified rates only for 31 items and though the Secretary, Women and Child Development Department had issued bulletin on 26.09.2007 to recall tender for purchase of remaining 42 items at an expense of Rs. 6.50 crores, you intently delayed in to publishing re-tender notification in the newspapers. This act of yours is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966.

2. Tenders were invited from eligible companies on tender bulletin dated: 16.11.2007 to purchase 31 various apparatuses and equipment and temporary parts for physically disabled. 5 companies respondent to the same and submitted their tenders quoting rates (STCL ALIMCO DSMS, DEVI MINERALS & VINKING ENG. Enterprises) among them as VIKING ENG Enterprises companies turnover was not Rs. 1.00 Crore and while considering the prohibition of STCL Companies, both the companies were excluded and considered the tenders of Alimco, DSMS, Devi Minerals government granted its approval vide government order no: WCD.PHP 2008 dated: 15.02.2008. The condition imposed during passing of earlier tender bulletin the sentence that "Organization with maximum Annual turnover and investing capacity will be preferred" was cancelled. But yet, while approving the terms imposable at directorate level without bringing the same to the notice of the government, and without permission through the government have modified the tender conditions. The action taken by you on the company in question stating that its turnover is not Rs. 1.00 crores was incorrect and you were instructed to submit proposal to government regarding technical bid of this company vide letter no: WCD 36 PHP 2008 (P), dated: 22.02.2008. But you did not opened up the technical bid of Viking company as per the directions of the government in letter dated: 22.02.2008, and in your office letter dated 29.02.2008 has informed that it would be problematic if the tenderer prefer before court and it would not be possible to substantiate the same and sent the sealed bid cover to Technical Bid level just only because of not modifying the tender conditions without government permission and the same was concealed in your letter dated: 29.02.2008. This resulted in financial loss to government for a sum of Rs. 23,28,350-00 (Annexure-2 enclosed). Moreover though Rs. 10.00 crores was allotted during the budget you have purchased substandard apparatuses and equipment and failed to purchase the same from eligible persons which resulted in incapability to purchase quality equipment from eligible persons. You being a departmental head completely failed to safeguard the interest of government. This act of yours is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966.

3. Financial achievements during the year 2007-08 on the following programmes are at utmost inferior levels.

Financial achievement		*Amount lapsed Rs. In lakhs*
a) *Training allowances to physically disabled*	*-22%*	*234.00*
b) *Disabled Women Hostel*	*-59%*	*81.85*
c) *Spoorthy Self Help Scheme*	*-47%*	*22.78*
d) *Physically disabled apparatus and equipment*	*-13%*	*900.00*
e) *Physically disabled rural development scheme*	*-32%*	*405.00*
Total		*1643.63*

The above statistics shows that you have not at all attempted with sincere efforts in implementing these schemes which are for the benefits of physically disabled. Your negligence caused injustice to the eligible physical disabled beneficiaries. You completely became failed to safeguard the interest of government being a head of department.

4. (a) During the tender invited for training programme for physically disabled in the year 2007-08 you have made your recommendations in favour of L4 Sri Vidyaranya Institution who have quoted higher prices in the tender and adversely to the recommendation of technical verification committee. But you have neglected L1, L2 and L3 institutions. This act of yours if prima facie evident that you have indulged in concealing actual facts while submitting report to government. After issuing a letter that Sri Vidyaranya Institution is eligible to conduct training and subsequently availing undertaking from the said institution that it is not possible to provide training shows that you have identified ineligible institution in the tender proceedings. In result the programme 2007-08 was overall failed to get implemented just only for your due negligence and malafide intentions. Because of this, eligible physically disabled beneficiaries became deprived from getting trained. You have become completely responsible for such delinquencies. Thereby you failed to safeguard the interest of government being in a capacity of Departmental head.

(b) Further, some volunteer service institutions joined together and formed a federation by name "Federation of Organisation for Rehabilitation of Disabled" and submitted tender during the training programme for the year 2007-08 under the name "Vidyaranya Education and Development Society" and in this regard this federation in its letter

dated: 31.03.2008 has alleged that you had demanded Rs. 20.00 lakhs from the said institution after granting of tender. They further informed that it resulted in inability to undertake the training programme efficiently. Your recommendation with a sole reason that this institution has submitted tender at all 27 districts of the state and without examining the whereabouts of the institution and though they had quoted higher price you have recommended tender for this institution would substantiate the allegation. Thereby you failed to safeguard the interest of government being in a capacity of Departmental head. This act of yours is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966.

5. You have caused unwanted and intent delay in process of approving the alternative staffs who were appointed to the vacant posts which arose vacant due to retirement/resignation at Sophia Mentally Retarded Children School running through Bharath Society. In the letter dated: 08.05.2002 your office had sought some information from the said institution regarding no cases under Section 17 (A) and (b) of Karnataka State Aid conduct 1982 and though the said institution furnished such information on 20.09.2007 and 06.12.2007 and the same would have examined at your level itself you have forwarded the same at governmental level which lead the said institution initiating complaint before Lokayuktha. Hon'ble Lokayuktha addressed a letter to Secretary to Government on 08.1.2008 and sought clarification regarding delay in granting permission for appointment to Sophia Mentally Retarded Children School running through Bharth Society and in turn Government wrote a S.G.L. to your office vide No : DWC 17 PHP 2008, dated: 17-014-2008 informing the serious consideration of case by Lokayuktha and to take expedite action and submit report to this office, then only you granted approval to the appointed vacant posts which were arose due to retirement/resignation as written a letter to Secretary Sophia Mentally Retarded Children School vide no: PHD 61 R.Aid/99-2000 dated: 19.02.2008. This is a prima facie case to decide that you have intentionally caused problem to the said institution. Such actions which would have been decided at your level itself was forwarded to governmental level is nothing but to the act of escaping from responsibility but you became negligent in safeguarding the interest of government in this present case. This act of yours is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966.

6. (a) The government had passed guidelines in its order no: WCD 310 PHP 99 Dt: 26.11.1999 for the purpose of implementing communal based rehabilitation programme. Accordingly you were eligible to select efficient and eligible Self-Service Institution at Taluk levels. Due to this orders, you had submitted proposal for implementing Communal Based

Rehabilitation Scheme for the year 2007-08 and proposed for implementing the project at 63 taluks at initial stage seeking for administrative Approval. The government considered your proposal and classified Rs. 3.15 crores from the Physically Disabled Rehabilitation Project and passed orders vide no: DWC.85.PHP 2008, dated: 14.02.2008 for implementing the Communal based Rehabilitation Scheme at 63 taluks. Accordingly, you are to take action as per the guideline initiated in the government orders dated: 14.02.2008. You were capable for preparing selection list of eligible institutions for implementing the project. You were to follow specific guidelines for implementing the scheme. You should have taken action for selecting an institution by receiving applications from the institutions at taluk levels of each district and identify whether such institution is local institution? Whether they have experience and seniority in implementing projects? Whether financial stable? And what achievements are succeeded by such institutions on other activities? And whether the company retains sufficient infrastructural facilities to achieve the implementation of project. But, you did not take into favour of either District Disabled Welfare officer or District Deputy Director and without receiving any report from them and without receiving any proposals from the local self-service institutions to provide benefit from the scheme had shown urgency in submitting proposal to government ex-parte and concealed actual facts to avail government orders. Even after availing orders, without providing proper arrangements for payment of aids to the self-service institutions had withdrawn the cheques at head office level and the cheques were issued to all the self-help institutions within one or two days shows wide corruption committed in the said proceedings. It is very clear that you have failed the active part of District Level officers even at both the stages with malafide intentions. Hence you became failed to safeguard the interest of the government on the capacity of a departmental head.

(b) While identifying 63 taluks for implementing the projects and second stage, you did not invited application from eligible institutions and not furnished any advertisements, and not followed transparency in the same. When tallied the selection list and the list submitted at initial states, the names which were not existed in the first list such as Sri. Guru Friends Club (R), Idagundi, Bijapura, Tungabhadra Vidya Sangha (R), Tarikere, Jnanesh Education Society, (R), Malavalli Taluk, Sri Vinayaka Education Society (R), Davanagere, Sri Hosyala Vidya Santha (R), Davanagere, Sevasharama Trust (R), Hubli, vishwadharma, Mahila mattu Makkala Shishsana Sevashrama Samithi Veerapura, Hubli, Sri Amruthavarshini Rural Development & Education Society (R), Chittur Taluk, Vijayeshwari, Janaseva Trust (R), Bangalore, Sri Varaveera

Chowdeshwari Vidya Samsthe (R), Davanagere, Source for Action Motivation and Empowerment (R), Bangalore, Mahatma Gandhi Vidya Samsthe (R), Davanagere, Arunodaya Education Institution (R), Haveri, Divyajyothi Education Society (R), Haveri, Sri Shatashrunga Vidyasamsthe (R), Bangalore Sangram Education Society (R), Bidar, were selected and included in the selection list which evident through prima-facie being capable to select the beneficiaries as per the existing guideline have not complied with the same and thereby failed to safeguard the interest of government as a departmental head.

(c) Further, Sri M.B. Patil, President No. 112, Kalamma Street, Bellary has addressed a request letter to his excellency Governor alleging that you have recovered a sum of Rs. 50,000/- to Rs. 1.00 lakhs from each self-service institutions for selecting the taluks at initial level and in this letter it has been alleged that your active part exists in this misappropriations and had colluded with Sri. Gopalaiah, section officer, women and child development department to draw government on false path and hence you became failed to safeguard the interest of government. This act of yours is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966.

7. The Director, was requested in the government letter no: WCD. 417 SJD 2004 dated 27.09.2005 to provide information regarding the revfision of modifications to Notification No: DPAR 101 SRD (Part) dated: 01.04.2004 pertaining to cadre and recruitment rules to physically disabled and senior citizens and the same was reminded in the letters dated 12.06.2006, 04.05.2007, 27.11.2007, 29.01.2008 and the Director in the promotion committee meeting held on 04.02.2008 had informed that report will be submitted to government within a week. But have not submitted any information during the tenure of working in the post of director. It could be noticed prima-facie that the same was concealed intentionally. He became failed to safeguard the interest of the government in as a departmental head. Such behavior is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966.

8. About 7 District Physical Welfare Officer posts are remaining vacant at Department of Welfare of Disabled and Senior Citizens and the progress is found to be deprived at some districts. Hence, for the purpose of verifying the eligibility of this post to keep under Independent Charge as per Section 32 of KCSR Rules, it was instructed to the director to send the same to government before 30.01.2008 for verifying the eligible during the departmental promotion meeting held on 18.01.2008, for which the director had informed that the same would be submitted within 10 days. But did not take any action in this regard and without requesting

prior to postpone the meeting had went on tour without prior permission through the secretary to department of women and child development and remained absent for the departmental promotion meeting held on 30.01.2008 and committed misconduct in discharge of duties. In this regard he was served with show cause notice on 2.02.2008 vide no: WCD 281 SJD 2007, and he replied to the same in utmost negligent manner. This resulted in delay in independent charge proceeding and caused inconvenience to independent charge and departmental activates for which would become responsible for the same. He has become failed to safeguard the interest of government as a departmental head. Such behavior is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules, 1966

9. In the Government Order No: WCD 222 SJD 2004, dt: 01-01-2008, totally 71 number of officers/employees who are promoted/recruited to the posts of women and child development department and got deputed to welfare of disabled and senior citizens after getting special education and working at the office of the welfare of disabled and senior citizens, and were working on deputation earlier and now got transferred for administrative reasons and working at Department of Women and Child Development Department was recruited to the equivalent post at department of welfare of disabled and senior citizens on permanent transfer in the interest of general public. Accordingly these officers/employees must be relieved. Passing of movement orders instead of getting reported the said 71 officers/employees who were transferred permanent form women and child development department must have merged to the equivalent post of at department of welfare of disabled and senior citizens and pass suitable deputation orders, the director, vide their semi government letter dated 02.02.2008 had modified the orders dated: 01.01.2008 and caused inconvenience in getting reported to this office. In this regard the aggrieved staffs proposed their grievance in their request letter dated: 06.02.2008 and alleged that there was unwanted delay in deputation. Even though the orders dated: 01.01.2008 was passed with opinion of DPAR, the Director behaved adversely to these proceedings and caused inconvenience. He failed safeguard the interest of government. Such behavior is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966

10. The aggrieved public persons had submitted a request letter to Excellency Governor against the Smt. Yogini G. Shyanbhag and Director of Directorate of Welfare of Disabled and Family Welfare alleging corruption against them for which the director was instructed vide semi government letter dated: 07.01.2008 to make proper explanation within three days and he answered to the same in delay on 04.02.2008 and

denied all the allegations and informed the same as baseless, incongruous, arbitrary and tainted with oblique motive and reported that writing such letters has become habitual. Further the Government vide memorandum No. WCD 15 SJD 2008, dated 30.01.2008, Smt. Yogini G. Shyanbhag, was cancelled from deputation from department of welfare of disabled and senior citizens and instructed to appear for duties at women and child development department. Thereafter, Smt. Yogini G. Shyanbhag in her request letter dated: 08.02.2008 have complained that some of the departmental staffs are causing harassment to her. The copy of the said complaint was sent to the Director on 21.02.2008 and had instructed to conduct enquiry on the officers who have involved in the case and report the same within three days. But, the director failed to initiate investigation and submit report and without handling the officers in a reputed manner has paved way for colonialism among the employees. He failed discharge his responsibility as a director and it is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules, 1966.

11. The Director, Department of welfare of disabled and senior citizens was handed over to conduct enquiry on the complaint made by Smt. Nirmaladevi Group 'D' employee, office of the superintendent, physically disabled and trainers residential hostel (Male), Kengeri Upanagara, Bangalore against Sri. Devaraju, Assistant Director, Department of Welfare of Disabled and senior citizens and Sri. Imtiyaz Ahmed Khan, superintendent, department of welfare of disabled and senior citizens, office of the superintendent, physically disabled and trainers residential hostel (male). But instead of conducting the inquiry in person by noticing the seriousness of the case he had instructed the Manger of his office to conduct enquiry and after receiving the said report, he informed that there is no any water in the allegation made by Smt. Nirmala Devi, Group 'D' employee. But, subsequently as per the complaint made by State Government Fourth Grade Employee Association (R), and women and child development department and Karnataka State Government 'D' Group Employees Central Association (R) to State Government on 20.01.2008 for which conducted enquiry through Karnataka State Women Commission, and submitted report by the Secretary of the Commission on 16.02.2008 where it was held that Sri. Imtiyaz Ahmed Khan, Superintendent used to cause sexual harassment against Smt. Nirmaladevi and the allegation made against Devaraju, was not proved and hence to drop him from the charges. As such the government wrote a letter to Director, Women and Child Development department on 25.02.2008 vide no: WCD 53 SJD 2008, instructing to suspend Sri. Imtiyaz Ahmed Khan, Superintendent, Physically Disabled and Trainers Residential Hostel (Male) and initiate departmental enquiry. Hence, the

Director instead of using his discretion had committed default in discharge of service and hence you being a departmental head failed to safeguard the interest of government. This act of yours is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules, 1966.

Annexure- 2

Statements of charges to substantiate the charges against Sri M.V.Vedamurthy, KAS (Super Time Scale)former Director, Department of Welfare of Disabled and Senior Citizens, at Present Addl. Secretary, DPAR (Jana Spandana Cell).

Sri M.V.Vedamurthy, KAS (Super Time Scale), Addl. Secretary, DPAR (Janaspandana) had served as Director at the Department of Welfare of Disabled and senior Citizens for the period from 26.7.2007 to 13.3.2008 and during the tenure:-

1) The Governmet had aided a sum of Rs.10.00 crores under Account title 2235-02-101-0-52 (project) for the year 2007-08 for purchase of apparatus and equipment to the physical disabled persons. Tender proceedings are intiated under Transparency Act 2009 and Rules 200 for the purpose of purchase of such equipment, and during the tender proceedings you have submitted that price list furnished for STCL Company for 31 items had been tallied with the price list of C.Natarajan Cycle Company, Bangalroe, V3 Enterprises, Mysore (these are not government approved institutions). Moreover the rate specified by Almico institutions undertaken by Central government and also DSMS company undertaken by State Government are less than 200% than the rates quoted by S.T.C.L. Company, you had recommend to issue work order to STCL and you have informed that the rates quoted by said company is equal to the rates quoted by other companies and have sought for stabilizing the tender for S.T.C.L., In this regard, the Secretary, Women and Child Development Department has issued show cause notice where you have issued confession letter for the same. Thereafter, the former Minister Sri.H.S.Kumarswamy again mitigated the rates at about 2% and Secretary, Women and Child Development after negotiating with STCL Company hasmitigatedthe rates upto 15%. As such it could be smelt that you have behaved in a manner so as to assist and benefit the said company and due to your such act it was the situation where government to bear additional or sustain loss of about Rs.7,27,56,837-00 (Annexure- 1 enclosed). This shows your negligence in saving government funds and the welfare of physically disabled, thereby you became responsible in getting delay for granting approval for Rs.9.00 crores specified by the government. You being in a responsible position as a tender sanctioning authority and director as well have showed utmost negligence and failed to safeguard the interest of government in this case. Out of 73 items invited you have verified and

specified rates only for 31 items and though the Secreatary, Women and Child Development Department had issued bulletin on 26.09.2007 to recall tender for purchase of remaining 42 items at an expense of Rs.6.50 crores, you intently delayed in to publishing re-tender notification in the newspapers. This act of yours is adverse to Rule 3(i) (ii) and (iii) for Karnataka Civil Services (Conduct) Rules 1966.

2. Tenders were invited from eligible companies on tender bulletin dated: 16.11.2007 to purchase 31 various apparatuses and equipment and temporary parts for physically disabled. 5 companies respondent to the same and submitted their tenders quoting rates (STCL ALIMCO DSMS, DEVI MINERALS & VIKING ENG. Enterprises) among them as VIKING Enterprises companies turnover was not Rs.1.00 crores and while considering the prohibition of STCL Companies, both the companies were excluded and considered the tenders of Almico, DSMS, Devi Minerals government granted its approval vide government order no. WCD. PHP 2008, dt: 15.2.2008. The condition imposed during passing of earlier tender bulletin the sentence that "Organization with maximum Annual turnover and investing capacity will be preferred" was cancelled. But yet, while approving the terms imposable at directorate level without bringing the same to the notice of the government, and without permission through the government have modified the tender conditions. The action taken by you on the company in question stating that its turnover is not Rs.1.00 crores was incorrect and you were instructed to submit proposal to government regarding technical bid of this company vide letter no.WCD 36 PHP 2008 (P), dated:22.2.2008. But you did not opened up the technical bid of Viking company as per the directions of the government in letter dated: 22..2008, and in your office letter dated: 29.02.2008 has informed that it would be problematic if the tenderer prefer before court and it would not be possible to substantiate the same and sent the sealed bid cover to government. The proposal of Viking company was refused at Technical Bid level just only because of not modifying the tender conditions without government permission and the same was concealed in your letter dated; 29.2.2008. This resulted in financial loss to government for a sum of Rs.23,28,350-00 (Annexure-2 enclosed0. Moreover though Rs.10.00 crores was allotted during the budget you have purchased substandard apparatuses and equipment and failed to purchase the same from eligible persons which resulted in incapability to purchase quality equipment from eligible persons. You being a deparment head completely failed to safeguard the interest of government. This act of yours is adverse to Rule 3(i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966.

3. Financial achievements during the year 2007-08 on the following programmes are at utmost inferior levels.

Financial achievement	*Amount lapsed*

		Rs.in lakhs
a) *Training allowances to physically disabled*	*-22%*	*234.00*
b) *Disabled Women Hostel*	*-59%*	*81.85*
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Total		*1643.63*

The above statistics shows that you have not at all attempted with sincere efforts in implementing these schemes which are for the benefits of physically disabled. Your negligence caused injustice to the eligible physical disabled beneficiaries. You completely became failed to safeguard the interest of government being a head of department.

4. (a) during the tender invited for training programme for physically disabled in the year 2007-08 you have made your recommendations in favour of L4 Sri Vidyaranya Institution who have quoted higher prices in the tender and adversely to the recommendation of technical verification committee. But you have neglected L1, L2, and L3 institutions. This act of yours is prima facie evident that you have indulged in government. After issuing a letter that Sri Vidyaranya Institution is eligible to conduct training and subsequently availing Undertaking from the said institution that it is not possible to provide training shows that you have identified ineligible institution in the tender proceedings. In result the programme 2007-08 was overall failed to get implemented just only for your due negligence and malafide intentions. Because of this, eligible physically disabled beneficiaries became deprived from getting trained. You have become completely responsible for such delinguencies. Thereby you failed to safeguard the interest of government being in a capacity of Departmental head.

(b) Further, some volunteer service institutions joined together and formed a federation by name "Federation of Oraganisation for Rehabilitation of disabled" and submitted tender during the training programme for the year 2007-08 under the name "Vidyaranya Education and Development Society" and in this regard this federation in its letter dated: 31.3.2008 has alleged that you had demanded Rs.20.00 lakhs from the said institution after granting of tender. They further informed that it resulted in inability to undertake the training programme efficiently. Your recommendation with a sole reason that this institution has submitted tender at all 27 districts of the state and without examining the whereabouts of the institution and though they had quoted higher price

you have recommended tender for this institution would substantiate the allegation Thereby you failed to safeguard the interest of government being in a capacity of Departmental head. This act of yours is adverse to Rule 3(i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966.

5. You have caused unwanted and intent delay in process of approving the alternative staffs who were appointed to the vacant posts which arose vacant due to retirement/resignation at Sophia Mentally Retarded Children School running through Bharath Society. In the letter dated: 08.05.2002 your office had sought some information from the said institution regarding no cause under Section 17(A) and (b) of Karnataka State Aid Conduct 1982 and though the said institution furnished such information on 20.09.2007 and 06.12.2007 and the same would have examined at your level itself you have forwarded the same at governmental level which lead the said institution initiating complaint before Lokayuktha. Hon'bleLokayukhta addressed a letter to Secretary to Government on 08.1.2008 and sought clarification regarding delay in granting permission for appointment to Sophia MetallyRetaded Children School running through Bharath Society and in turn Government wrote a S.G.L to your office vide No. DWC 17 PHP 2008, dated: 17-01-2008 informing the serious consideration of case by Lokayuktha and to take expedite action and submit report to this office, then only you granted approval to the appointed vacant posts which were arose due to retirement/resignation as written a letter to Secretary Sophia Mentally Retarded Children School vide no: PHD 61 R.Aid/99-2000 dated: 19.2.2008. this is a prima facie case to decide that you have intentionally caused problem to the said institution. Such actions which would have been decided at your level itself was forwarded to governmental level is nothing but to the act of escaping from responsibility but you became negligent in safeguarding the interest of government in this present case. This act of yours is adverse to Rule 3(i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966.

6.(a) the Government had passed guidelines in its order in its order no: WCD 310 PHP 99 Dt: 26.11.1999 for the purpose of implementing communal based rehabilitation programme. Accordingly you were eligible to select efficient and eligible Self-Service Institution at Taluk levels. Due to this orders, you had submitted proposal for implementing Communal Based Rehabilitation Scheme for the year 2007-08 and proposed for implementing the project at 63 taluks at initial stage seeking for administrative Approval. The government considered your proposal and classified Rs.3.15 crores from the Physically Disabled Rehabilitation Project and passed orders vide no: DWC.85.PHP.2008, dt: 14.02.2008 for implementing the Communal based Rehabilitation Scheme at 63 taluks. Accordingly, you are to take action as per the guidelines initiated in the government orders dated: 14.0.2008. You were capable for

preparing selection list of eligible institutions for implementing the project. You were to follow specific guidelines for implementing the scheme. You should have taken action for selecting an institution by receiving applications from the institutions at taluk levels of each district and identify whether such institution is local institution? Whether they have experience and seniority in implementing projects? Whether financial stable? And what achievements are succeeded by such institutions on their activities? And whether the company retains sufficient infrastructural facilities to achieve the implementation of project. But, you did not take into favour of either District Disabled Welfare officer of District Deputy Director and without receiving any report from them and without receiving any proposals from the local self-service institutions to provide benefit from the scheme had shown urgency in submitting proposal to government ex-parte and concealed actual facts to avail government orders. Even after availing orders, without providing proper arrangements for payment of aids to the self-service institutions had withdrawn the cheques at head office level and the cheques were issued to all the self-help institutions within one or two days shows wide corruption committed in the said proceedings. It is very clear that you have failed the active with malafide intentions. Hence you became failed to safeguard the interest of the government on the capacity of a departmental head.

(b) While identifying 63 taluks for implementing the projects and second stage, you did not invited application from eligible institutions and not furnished any advertisements, and not followed transparency in the same. When tallied the selection list and the list submitted at initial states, the names which were not existed in the first list such as Shri Guru Friends Club (R), Idagundi, Bijapura, Tungabhadra VidhyaSangha®, Tarikere, Jnanesh Education Society, ®, MalavalliTaluk, Sri Vinayaka Education Society (R), Davanagere, Sri HosyalaVidhyaSangha (R), Davanagere, Sevashrama Trust (R), Hubli, Vishwadharma, MahilamattuMakkalaShiskhsanaSevashramaSamithiVeerapura, Hubli, Sri Amruthavarshini Rural Development & Education Society (R), ChitturTaluk, Vijayeshwari, Janaseva Trust(R), Bangalroe, Sri VaraveeraChowdeshwariVidhyaSamste (R), Davanagere, Source for Action Motivation and Empowerment ®, Bangalore, Mahtma Gandhi VidhyaSamsthe (R), Davanagere, Arunodaya Education Institution (R), Haveri, Divyajyothi Education Society (R), Haveri, Sri ShatashrugaVidhyasamsthe ®, BangalroeSangram Education Society ®, Bidar, were slected and included in the selection list which evident through prima-facie examiniation. You being in a responsible post and though being capable to select the beneficiaries as per the existing guidelines have not complied with the same and thereby failed to

safeguard the interest of government as a departmental head.
(c) Further, Sri M.B. Patil, President No. 112, Kalamma Street, Bellary has addressed a request letter to his excellency Governor alleging that you have recovered a sum of Rs. 50,000/- to Rs. 1.00 lakhs from each self-service institutions for selecting the taluks at initial level and in this letter it has been alleged that your active part exists in this misappropriations and had colluded with Sri. Gopalaiah, section officer, women and child development department to draw government on false path and hence you became failed to safeguard the interest of government. This act of yours is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966.

7. The Director, was requested in the government letter no: WCD. 417 SJD 2004 dated 27.09.2005 to provide information regarding the revfision of modifications to Notification No: DPAR 101 SRD (Part) dated: 01.04.2004 pertaining to cadre and recruitment rules to physically disabled and senior citizens and the same was reminded in the letters dated 12.06.2006, 04.05.2007, 27.11.2007, 29.01.2008 and the Director in the promotion committee meeting held on 04.02.2008 had informed that report will be submitted to government within a week. But have not submitted any information during the tenure of working in the post of director. It could be noticed prima-facie that the same was concealed intentionally. He became failed to safeguard the interest of the government in as a departmental head. Such behavior is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966.

8. About 7 District Physical Welfare Officer posts are remaining vacant at Department of Welfare of Disabled and Senior Citizens and the progress is found to be deprived at some districts. Hence, for the purpose of verifying the eligibility of this post to keep under Independent Charge as per Section 32 of KCSR Rules, it was instructed to the director to send the same to government before 30.01.2008 for verifying the eligible during the departmental promotion meeting held on 18.01.2008, for which the director had informed that the same would be submitted within 10 days. But did not take any action in this regard and without requesting prior to postpone the meeting had went on tour without prior permission through the secretary to department of women and child development and remained absent for the departmental promotion meeting held on 30.01.2008 and committed misconduct in discharge of duties. In this regard he was served with show cause notice on 2.02.2008 vide no: WCD 281 SJD 2007, and he replied to the same in utmost negligent manner. This resulted in delay in independent charge proceeding and caused inconvenience to independent charge and departmental activates for which would become responsible for the same. He has

become failed to safeguard the interest of government as a departmental head. Such behavior is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules, 1966

9. In the Government Order No: WCD 222 SJD 2004, dt: 01-01-2008, totally 71 number of officers/employees who are promoted/recruited to the posts of women and child development department and got deputed to welfare of disabled and senior citizens after getting special education and working at the office of the welfare of disabled and senior citizens, and were working on deputation earlier and now got transferred for administrative reasons and working at Department of Women and Child Development Department was recruited to the equivalent post at department of welfare of disabled and senior citizens on permanent transfer in the interest of general public. Accordingly these officers/employees must be relieved. Passing of movement orders instead of getting reported the said 71 officers/employees who were transferred permanent form women and child development department must have merged to the equivalent post of at department of welfare of disabled and senior citizens and pass suitable deputation orders, the director, vide their semi government letter dated 02.02.2008 had modified the orders dated: 01.01.2008 and caused inconvenience in getting reported to this office. In this regard the aggrieved staffs proposed their grievance in their request letter dated: 06.02.2008 and alleged that there was unwanted delay in deputation. Even though the orders dated: 01.01.2008 was passed with opinion of DPAR, the Director behaved adversely to these proceedings and caused inconvenience. He failed safeguard the interest of government. Such behavior is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules 1966

10. The aggrieved public persons had submitted a request letter to Excellency Governor against the Smt. Yogini G. Shyanbhag and Director of Directorate of Welfare of Disabled and Family Welfare alleging corruption against them for which the director was instructed vide semi government letter dated: 07.01.2008 to make proper explanation within three days and he answered to the same in delay on 04.02.2008 and denied all the allegations and informed the same as baseless, incongruous, arbitrary and tainted with oblique motive and reported that writing such letters has become habitual. Further the Government vide memorandum No. WCD 15 SJD 2008, dated 30.01.2008, Smt. Yogini G. Shyanbhag, was cancelled from deputation from department of welfare of disabled and senior citizens and instructed to appear for duties at women and child development department. Thereafter, Smt. Yogini G. Shyanbhag in her request letter dated: 08.02.2008 have complained that some of the departmental staffs are causing harassment to her. The

copy of the said complaint was sent to the Director on 21.02.2008 and had instructed to conduct enquiry on the officers who have involved in the case and report the same within three days. But, the director failed to initiate investigation and submit report and without handling the officers in a reputed manner has paved way for colonialism among the employees. He failed discharge his responsibility as a director and it is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules, 1966.

11. The Director, Department of welfare of disabled and senior citizens was handed over to conduct enquiry on the complaint made by Smt. Nirmaladevi Group 'D' employee, office of the superintendent, physically disabled and trainers residential hostel (Male), Kengeri Upanagara, Bangalore against Sri. Devaraju, Assistant Director, Department of Welfare of Disabled and senior citizens and Sri. Imtiyaz Ahmed Khan, superintendent, department of welfare of disabled and senior citizens, office of the superintendent, physically disabled and trainers residential hostel (male). But instead of conducting the inquiry in person by noticing the seriousness of the case he had instructed the Manger of his office to conduct enquiry and after receiving the said report, he informed that there is no any water in the allegation made by Smt. Nirmala Devi, Group 'D' employee. But, subsequently as per the complaint made by State Government Fourth Grade Employee Association (R), and women and child development department and Karnataka State Government 'D' Group Employees Central Association (R) to State Government on 20.01.2008 for which conducted enquiry through Karnataka State Women Commission, and submitted report by the Secretary of the Commission on 16.02.2008 where it was held that Sri. Imtiyaz Ahmed Khan, Superintendent used to cause sexual harassment against Smt. Nirmaladevi and the allegation made against Devaraju, was not proved and hence to drop him from the charges. As such the government wrote a letter to Director, Women and Child Development department on 25.02.2008 vide no: WCD 53 SJD 2008, instructing to suspend Sri. Imtiyaz Ahmed Khan, Superintendent, Physically Disabled and Trainers Residential Hostel (Male) and initiate departmental enquiry. Hence, the Director instead of using his discretion had committed default in discharge of service and hence you being a departmental head failed to safeguard the interest of government. This act of yours is adverse to Rule 3 (i) (ii) and (iii) of Karnataka Civil Services (Conduct) Rules, 1966.

Annexure-3

List of evidences to substantiate the charges against Sri M.V. Vedamurthy, KAS (Super time scale) former Director Department of welfare of disabled and senior citizens, at present Addl. Secretary, DPAR

(Jana Spandana cell)

1) *Sri Srirama Reddy, KAS (Super Time Scale, former Director, Department of Welfare of Physically Disabled and Senior Citizens, at present Additional Commissioner, Bangalore Mahanagara Palike, Malleshwaram, Bangalore.*
2) *Sri Chittaranja, KAS, Director, Department Of Welfare Of Disabled And Senior Citizens,*
3) *Dr. Ekarup Kour, KAS, Director, Women And Child Development Department, Bangalore.*
4) *Smt. R.M. Chandramma, Under Secretary to Government-2, Women and Child Development Department, Bangalore.*
5) *President Federation of Organization for Rehabilitation of Disabled, Shivajinagar, Bangalore.*
6) *Sri Shivakanth Ellur, Secretary, Karnataka State Physically Disabled Aided Schools Employees Association (R), Belgaum.*
7) *Sri M.B. Patil, No. 112, Kalamma Street, Bellary, vide no: 489/BWSD/2007-08, dated: 14.02.2008*

( )

Under Secretary to Government.

ANNEXURE-A12

Proceeding of Government of Karnataka

Sub: Trap case of Sri. Noor Mohammed Panali, Kas Officer, Former Director, Urdu and other Minorities Language Schools Directorate, Department of Public Instructions, Bangalore- prosecution sanction.

Ref:

1. *Letter of Additional Director General Of Police, Karnataka Lokayukta, Bangalore vide No: LOK/INV(G)/City/Crime. 12/2005, dt 15.09.2005 and 12.01.2006*
2. *Report of InvestigatingOfficer Lo. Cr. No. 12/05, U/s. 7,13 (1) (D) R/W. 13(2) P. C. A 1988, Dt: 02. 08. 2005.*
3. *Filers pertaining to Investigating documents such as complaint, First information Report, Laboratory Report, Statement of Witnesses, demand of bribery.*

Preamble;

In Cr. No. 12/05, 1988 U/s. 7 13 (1) (D) R/w. 13 (2) dt: 21. 04. 05 against Sri Noor Mohammed Panali, Kas Officer, Former Director, Urdu and other Minorities Language Schools Directorate, Department of Public Instructions, Bangalore filed at Deputy Superintendent of Police,

Urban Police Cell, Karnataka Lokayukta, Bangalore the Investigating Officer's final report and Investigating Documents was forwarded to Director General of Police, Police Division, Lokayukta, Bangalore along with the letter under Ref (1) above dated 15.09.05, sought with the Government for approval of prosecuting the accused under section 19 (1) (B) of prohibition of Corruption Act 1988.

Examined the following documents furnished by the Additional Director General of Police, Police Division, Karnataka Lokayukta, Bangalore.

1. *Sri. T. Vasantha, Secretary, Sri Sharana BasaveshwaraEducational Institution(R), near Head Office, Channagiri, Devanagari District, complaint dated 21.04.2005.*
2. *First Information Report of Bangalore City Lokayuktha Police Station Cr. No: Lo. Cr. No. 12/05, 1988 U/s. 7, 13 (1) (D) R/W. 13 (2) dated: 21.04.05.*
3. *Laboratory Inquest dated: 21.04.05.*
4. *Trap inquest dated: 23.04.05.*
5. *Laboratory Analyst report no: PHI/LOK/13/05-06, dt: 30.05.05.*
6. *Spot sketch of place of occurrence.*
7. *Statement of witnesses 1) Sri. S. R. Lokesh, Assistant Engineer, Office of Chief Engineer, National highways, K.R. Circle, Bangalore 2) Sri. H. Nagesh, First Division Assistant, Office of Assistant Director of Land Records, Doddaballapura Sub- Division, K.R. Circle, Bangalore.*
8. *File or Document relied on for demanding bribe being Government order no: ED/TPS/2003, dt: 28.03.2005 and government Order No: ED 202, TPS/04, dt: 08.02.05. Sub: Regarding Disbursal of Aid fund paid through Government to the concerned schools of Physically Disabled Education Programme.*
9. *Statement of following witnesses in the investigating report 1) T. Vasantha 2) Sri. Nagesh 3) Sri. H. R. Lokesh 4) Sri. Nagesh 5) Sri. Satish B.M 6) Sri. B. M. Kanni 7) Sri. H.S. Patil 8) Sri. T. Hanumanthappa 9) Sri. Venkobappa 10) Smt. Sarojamma 111) Sri. M. H. Aiyannanavar 12) Sri. Eeranna 13) Sri. H. S. Swamy 14) Sri. Parashuram 15) Sri. Chandrakanth 16) Sri. Ramesh 17) Sri. Siddanagowda 18) Smt. Yashodha 19) Mohan Chouhan 20) Sri. H. Raghuram Somayaji 21) Sri. Jagadeeshwara 22) Sri. Rajendra Singh 23) Sri. G. R. Basavaraj 24) Sri. C. I. Yogesh 25) Sri. M. Nagaraj.*

The Investigating Officer of the present case Sri. A. M. Rajanna, Deputy Superintendent of Police, Urban Division , Karnataka

Lokayuktha, Bangalore had failed a punishable offense against Sri. Noor Mohammed Panli, KAS Officer, Former Director, Urdu and other Minorities Language Schools Directorate, Department of Public Instructions, Bangalore and failed case before the Karnataka Lokayuktha, Bangalore Urban Division Police Station Cr No. Lo.Cr. 12/05, prohibition of Corruption Act 1988 Sec 7, 13 (1) (D) R/W. 13 (2).

The accused Sri. Noor Mohammed Panali, KAS Officer, Former Director, Urdu and other Minorities Language Schools Directorate Department of Public Instructions, Bangalore had demanded bribe amount of Rs. 10,0000/- from Sri. T. Vasantha, Secretary, Sri Sharana Basaveshwara Educational Institution(R), near Head Office, Channagiri, Devanagere for performing government work. The complainant did not want to bribe money and hence file complaint. As per the said complaint, the Investigating Officer on 23.04.2005 at No.10, 5th Cross, 3rd Main Road, Lal Bahadur Shastri Nagar, Vimanapura Post, Bangalore had planned a trap where it was successful that Sri. Noor Mohammed Panali, KAS Officer, Bangalore was receiving a sum of Rs. 10,000/- being an illegal gain for performing government work. The right and left fingers of the Accused Government employee/ Staff was soaked with the Sodium Carbonate powder and examined with colorless solution pinapthalane where the chemical turned positively and the same is also proven through the chemical analyst. The shadow witness has noticed the demand of bribe amount and transaction between the Accused Government Employee/ Officer With the Complainant and also listened to their conversation. The illegal income of Rs. 10,000/- was seized from Sri. Noor Mohammed Panali at No. 10, 5th Cross, 3rd Main, Lalbahaddor Shastri Nagar, Vimanapura Post, Bangalore in front of the inquest witness.

For the reasons explainedabove the Accused committed punishable offense under section 7, 13 (1) (D) R/W. 13 9 (2) of prohibition of Corruption Act, 1988 is found to be prima facie proven case and hence the Government found it pertinent to prosecute the Accused under section 13(2) and 7, 13 (1) (D) of prohibition of Corruption Act 1988.

The Government will have the right to suspend the Accused employee U/S. 19(1) (B) of Prohibition of Corruption Act 1988 hence, the accused Government Employee/ Officer, Sri. Noor Mohammed Pnali, KAS officer, former Director, Urdu and other Minorities Language Schools Directorate, Department of Public Instructions, Bangalore has been sanctioned for undergoing prosecution U/s. 7, 13, (1) (D), R/W. 13 (2) of Prohibition of Corruption Act 1988 and hence ordered as under .

Government Order No: DPAR 66 Sen 05, Bangalore, dated: 28th April 2007.

For the reasons explained in the proposal above, and for punishable

offense committee by Sri. Noor Mohammed Panali, KAS Officer, Former Director, Urdu and other Minorities language Schools Directorate, Department Of Public Instructions, Bangalore, approval has been granted for undergoing prosecuting against him before the competent Court as per section 19(1) (B) of Prohibition of Corruption Act 1988 and Section 7,13, (D) R/W. 13 (2) of P.C Act.

In the name and orders of Governor
of Karantaka
Sd/-
(Tushar Girinath)
Addl. Secretary to Government of India
(D.P.A.R. Services)

To,

1. *Addl. Director General Of Police, Karnataka Lokayuktha, Dr. B. R. Ambedkar Veedhi, Bangalore-1.*
2. *Principal Secretary To Government, Education Department*
3. *Secretary To Government, Department of Personnel Administration and Reforms.*
4. *Commissioner, Department of Public Instructions, k.R. Circle, Bangalore.*
5. *Director, Directorate of Department Of Urdu and other MinoritiesLanguage Schools, Department of Public Instructions, K. R Circle, Banagalore.*
6. *Sri. Noor Mohammed Panali, KAS, Director, minorities Directorate, 20th Floor, VV Tower, Bangalore-09*
7. *Deputy Superintendent of Police, Urban Division, Karnataka Lokayuktha, Dr. Ambedkar Veedhi, Bangalore-1.*
8. *Personnel Secretary to Hon'ble Principal Secretary to CM.*

9. Personnel Secretary to Chief Secretary to Government.

10. Personnel Assistant of Deputy Secretary to Government,DPAR (Services-2).

11. Under Secretary to DPAR(Services-2).

12. Department of Personnel Administration and Reforms

13. Gazette.

14. Section Copy.

15. Monthly editorial 16. Additional copies."

26. The next ground raised by Respondent No. 1 seems to be that the amended seniority regulations was the cause for assigning the year of 2006 to him but then the Hon'ble Apex Court in many a case has held that the amendment cannot have a retrospective effect and it has only a result of prospective effect. Therefore, in the year 2008, the 2014 amendments will not have any benefit or prejudice as against the applicant as his right has arisen and become concretized in relation to the year 2008.

27. But the Respondent No. 1 says in paragraph 9 of their reply that in respect of seniority/year of allotment of an officer appointed after 18.04.2012 against the vacancies arisen between 01.02.2010 to 18.04.2012 (upto the select list of 2011) may be fixed as per the pre-amended seniority rules throughout the cadres. Apparently, the applicant's claim had concretized in the year 2008 itself and that being so he will squarely come within that ambit of the rules which is now applied by the 1st respondent. They would also say that in relaxation to Rule 3(3) (ii) of IAS (Regulation of Seniority) Regulations, the pre-amended rules were being invoked vide powers conferred under Rule 3 (ii) of All India Services Rules, 1960. But they would say that currently the applicant had been appointed to IAS from the select list of 2012 prepared against the vacancies arisen between 01.01.2012 to 31.12.2012 and accordingly the seniority was determined as per the amended seniority regulations. **This**

cannot obviously be correct as the applicant has now attained a right to be considered in relation to the year 2008 itself as the selection of the Respondent No. 4 to 8 cannot be countenanced as legal, proper and correct under law as we have already found that there is serious lacunae of application of mind on the part of all the respondents even though it may vary in degree from respondent to respondent.

28. The 1st respondent claims under the Hon'ble Apex Court judgment in the case of Union of India Vs. S.S. Uppal and another reported in 1996 (1) SCR 230 and held as under: ***"the seniority of an officer appointed into IAS is determined according to the seniority rules applicable on the date of appointment to the IAS. Weightage of seniority cannot be given retrospective effect unless it was specifically provided in the rule in force at the material time. In the case of Shakarasan Dash Vs. Union of India reported in JT (1991) (2) SC 280 it was pointed out by this Court that the existence of vacancies do not given any legal right to a selected candidate."*** But then the crux of this issue as pointed out by the Hon'ble Apex Court is the word **'material time'**. So, what is the material time in this regard? It can obviously be the year 2008 when the opportunity of being selected visited the applicant and others together and others were to be declared ineligible because at that point of time all of them were under a cloud of

ineligibility but then for reasons not yet disclosed, even though challenged, there was a 3 year delay which the applicant claims is deliberate to protect the interests of Respondent No. 4 to 8. Therefore, there is a meeting of mind between the respondents inter se in trying to defeat the rights of the applicant by protecting of interest which may have to arise in terms of Respondent No. 4 to 8. Therefore, the question of material time as stated by the Hon'ble Apex Court is in relation to the year 2008 and no other time. At this point of time the pre-amended rules survive and exist. **Therefore, the rule which is material and applicable is the pre-amended rule and none other.**

29. ***Nobody can create an unmerited prejudice against another and as a consequence deny benefit to him.***

30. The 1st respondent would say that the applicant had made a representation dated 26.04.2018 when he has received many of the documentation in connection with Respondent No. 4 to 8 and it has been replied vide letter dated 12.07.2018. Therefore, we had examined this reply also and found that it does not canvass any way or means as it places reliance on Uppal’s decision only but then we have already found that even going by this decision the material time can only be the year 2008 and no other year. Therefore, the only defence raised by the 1st respondent seems to be that the application of amended rules or not to be held as material.

31. In connection with this, let us examine the consequential position of the applicant and Respondent No. 4 to 8 in year 2008 – 2012:

Sl No	Year of occurrence	No of vacancies	No. of eligible officers in the ratio of 1:3	Requirement of additional officers for the year	Names sent by State Government to UPSC in the ratio of 1:3	Remarks
1	2008	12	36	08	7 additional names were sent as per Supreme Court orders	Applicant's name shown at Sl. No. 42 (out of 43) in list of eligible candidates sent by State Government to UPSC
2	2009	5	15	12 (vacancies of 2008)		Applicant's name not shown as he did not come within the zone of consideration in the ratio of 1:3
3	2010	9	27	17 (12+5)		Applicant's name shown at Sl. No. 25
4	2011	1				Umesh Kusugal appointed based on upgraded CR
5	2012	8				Applicant's name shown at Sl. No.1

OFFICERS WHO WERE SENIOR TO APPLICANT BUT WERE INELIGIBLE FOR SELECTION YET SELECTED BY INCORRECT MEANS

Candidates who would not have been selected if	**Disability suffered by the candidate**	**Remarks**

UPSC had held the DPC as per schedule		
a) V. Srirama Reddy	D.E.+ Average CR (Ineligible for promotion)	CR upgraded from “Average” to “Very Good” vide G.O. dated 15.07.2011 just before DPC (on 2.11.2011) to enable selection
Vedamurthy	DE	DE got closed just before DPC (on 2.11.2011) to enable selection
N.M. Panali	Lokayukta case	Integrity was initially withheld by CS, GOK due to Lokayukta case. Integrity certificate issued after DPC and name included in the select list of 2010
S.T. Anjan Kumar	Non-initiation of ACRs	In U.O. Note dated **28.6.2011**, CS establishment has forwarded the ACRs of the officer for the years 2003-04, 04-05, 05-06, 06-07, 07-08 & 09-10. CRs were said to have been found after nearly 3-4 years and included in the recommendation to UPSC to enable selection.
Umesh Kusugal	Average CR (Ineligible for promotion)	CR upgraded before DPC to enable selection

32. The 1st respondent has raised one other aspect also that the ‘frame of suit’ will come as an impediment to the applicant. Therefore, what is the frame of suit which is applicable to this case. Even though they have not explained it further, it appears that they are trying to club together OA No. 556/2018 with this case. Needless to say that under Order I Rule (3) (a) the joinder of Respondent No. 4 to 8 with Smt. Sathyavathi will only embarrass and delay the suit as both cases go in different directions.

Then in the interest of justice, even if the applicant had filed the case together it will have to be separated when the case alleging the retirement of Shri Puttaswamy is vastly different from the case alleging non-application of mind in the case of Respondent No. 4 to 8.

33. Under Order II Rule (1) of the CPC ***"every suit shall as far as practicable be framed so as to afford ground for final decision upon the subject in dispute and to prevent further litigation concerning them."*** Shri Puttaswamy's retirement and the Respondent No. 4 to 8's non-application of mind and infractions and the cloud of suspicion hanging over them in the year of 2008 onwards have nothing to do with each other. No issue could be raised which is similar in both these proceedings, therefore, the defence of frame of suit taken by the Respondent No. 1 seems to be totally incorrect. The next ground taken by the respondent is that even if it is assumed that the ACRs of the party respondents could not have been upgraded, the respondents had not clarified this position in para (V) of their reply when they say that he would have been promoted by the previous select list. ***This is not an ACR being upgraded but the creation of new ACR by itself. No rules allow the creation of such an ACR. This would have struck the mind of UPSC and the Union Government at the very first instance.***

34. The Respondent No. 1 does not seem to canvass any other reply.

35. Let us now examine Annexure-A3 and concerned documentation. Shri Srirama Reddy and Shri Vedamurthy find place in it in the list of 2008-A. In 2010 Shri Anjan Kumar finds a place. In a revised list Smt. Sathyavathi, the immediate senior of the applicant, finds a place. We quote:

"No. 14015/2/2010-AIS (I)-B
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

New Delhi, the 14th December , 2011.

NOTIFICATION

In exercise of the powers conferred by Rule 8(1) of the Indian Administrative Service (Recruitment) Rules, 1954 read with Regulation 9(1) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and Rule 3 of the Indian Administrative Service (Probation) Rules. 1954, the President is pleased to appoint the following members of the State Civil Service of Karnataka to the Indian Administrative Service against the vacancies determined by Government of India under Regulation 5(1) of the said Regulations in consultation with the State Government for the Select List 2008A (Against the vacancies of 2008), 2009 (Against the vacancies of 2009), and 2010(Against the vacancies of 2010), on probation until further orders and to allocate them to the Karnataka Cadre, under Rule 5(1) of the Indian Administrative Service (Cadre) Rules, 1954

Select List 2008-A (Against vacancies of 2008)

Sl. No.	*Name of the Officer (S/Shri)*
1	*M.V. Savithri*
2	*M.V. Veerabhadraiah*
3	*N. Prakash*
4	*R.R. Jannu*
5	*Meer Anees Ahmed*
6	*V. Srirama Reddy*

7	*M.V. Vedamurthy*
8	*V. Shankar (ST)*
9	*S.N. Nagaraju*
10	*V. Yashwant*
11	*B. F. Patil*
12	*H. S. Ashokananda*

Select List 2009 (Against vacancies of 2009)

Sl. No.	*Name of the Officer (S/Shri)*
1	*F. R. Jamadar*
2	*K. R. Sundar*
3	*Dr. Ramegowda*
4	*Panduranga Bommaiah Naik*
5	*Shivayogi C. Kalasad*

Select List 2010 (Against vacancies of 2010)

Sl. No.	*Name of the Officer (S/Shri)*
1	*S. A Jeelani*
2	*Hemaji Naik (SC)*
3	*Mohd. Salauddin*
4	*N. Jayaram*
5	*B. S. Shekharappa*
6	*S.T. Anjan Kumar (SC)*
7	*B. A. Meghannavar (ST)*

The Appointment of the above officers in the select lists is subject to the Writ petition No. 1594/2011 in the matter of Shri H.G. Srivara Vs Union of India and others before the Hon'ble High Court of Delhi.

Sd/-
(S.S. Shukla)
Under Secretary to the Government of India

No. 14015/11/2010-AIS (I)-B
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

New Delhi, the 20th January , 2012.

NOTIFICATION

In pursuance of the Hon'ble High Court of Delhi interim order dated 17.1.2012 in the CM No. 701/2012 (of respondent no. 3 i.e. Govt. of Karnataka for modification of order dated 29.11.2011) & CM Nos. 769-770/2012 (of Ms. Sathyavathi for impleadment and modification of order dated 29.11.2011) in the matter of WP (C) No. 1594/2011 filed by Sh. H.G. Srivara Vs. UOI & others and in exercise of the powers conferred by Rule 8(1) of the Indian Administrative Service (Recruitment) Rules, 1954 read with Regulation 9(1) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955 and Rule 3 of the Indian Administrative Service (Probation) Rules. 1954, the President is pleased to appoint the following member of the State Civil Service of Karnataka to the Indian Administrative Service against the vacancies determined by Government of India under Regulation 5(1) of the said Regulations in consultation with the State Government for the Select List 2010 (Against the vacancies of 2010), on probation until further orders and to allocate her to the Karnataka Cadre, under Rule 5(1) of the Indian Administrative Service (Cadre) Rules, 1954

Select List 2010 (Against vacancies of 2010)

Ms. G. Sathyavathi

The Appointment of the above officer is subject to the Writ petition No. 1594/2011 in the matter of Shri H.G. Srivara Vs Union of India and others before the Hon'ble High Court of Delhi.

Sd/-
(S.S. Shukla)
Under Secretary to the Government of India"

36. The State Government - the Respondent No. 3 - had filed a reply. They would say that their Notification No. DPAR 447 SAS 2017 is nothing but a republication of Notification dated 29.08.2017 which has been issued by the 1st respondent. In other words, they claim that it is the 1st respondent that who is responsible for the morass, if at all any. They

would further say that assigning of the year of allotment is of the exclusive domain of the Government of India and the State Government has no further say in the matter. They would say that it is on the recommendation of the concerned department that the departmental proceedings against the 4th respondent was dropped but then **"when was it dropped?"** Can this dropping of proceedings have the effect of predating eligibility? Unless it is stipulated in the order itself nobody can assume or presume such a predation. Even when the integrity certificates were being issued, people were already in jail. It is very surprising to note that even when subordinate officers have pointed out serious lapses on the part of these respondents, an omnibus view is taken that nothing is proven. If money had been siphoned off, it behoves the governmental authorities to find out where it has ended before taking a final decision. When integrity certificates are withheld for years together, is it not proper for the concerned authorities to examine the matter exhaustively? Even when the matter was being taken up by the Hon'ble High Court, the fact that sanction had already been accorded was suppressed from the notice of the Hon'ble High Court. **Does it not constitute a fraud on the Hon'ble High Court of Karnataka?** Even when such persons are convicted, the government does not awake from its slumber.

37. We have examined the reply of the State Government to find out

why and for what reason the Selection Committee meeting was delayed even though the burden of this infraction must be shared by all the respondents together. We have to say that more responsibility lies on the shoulders of the State Government alone. The Hon'ble Apex Court have time and again held that there must be yearly selections so that greater public interest may not suffer.

38. The State Government admits that No Report Certificates were given but then in such a case what is the procedure to be followed. Necessarily the Selection Committee have to look into the previous years certificates which has not been done at all. Therefore, there is clear non-application of mind on the part of the respondents in the case of Respondent No. 4 to 8. Respondent No. 5 has filed a reply canvassing mainly the points taken by the Respondent No. 1 and 2 which we had already answered. He would say that only following due process of law had the integrity certificate been issued. Even when this was being issued in his favour, matters were pending against him as disclosed by the files. But he says that even though he got confirmation of IAS in 2011, he had taken voluntary retirement in the month of December, 2013 and after a lapse of 5 years it is not just to re-determine the matters against him. We would answer this point at a later stage.

39. The Respondent No. 8 also had filed a reply indicating that some others namely Smt Sathyavathi, Shri N. Jayaram, Shri B.S. Shekarappa,

Shri S.D. Anjan Kumar, Shri B.R. Meghannavar and Shri B.S. Patil who were seniors to the present applicant had filed an application before this Tribunal in OA No. 535/2012 to 540/2012 making almost allegations made by the applicant and the same were dismissed by the Hon'ble Tribunal and has reached finality.

40. Maybe Respondent No. 8 wants to say that by this rules of *res judicata* are confirmed. It is not so as those cases were filed by some other persons. However, we have examined this matter and that order is quoted herein:

"O R D E R

HON'BLE DR.P.PRABAKARAN ...MEMBER(A)

These applications are filed under Section 19 of Administrative Tribunals Act, 1985 seeking the following reliefs:

i) Call for records from the Respondents

ii) Issue Writ of order quashing the impugned order bearing No. DPAR/SERAVA 2011 dated 18.1.2012 (Annexure 10) issued by the Respondent No.4, in the interest of justice and equity.

iii) Consequently issue Writ of order quashing the impugned order dated 2.6.2012 bearing G.O.No.DPAR 395 SKM 2011 (Part I & II) (Annexure - A11 to A15) in the interest of justice and equity.

iv) Pass any other appropriate order as this Hon'ble Tribunal deems fit in the facts and circumstances of the case, including the costs of this Application, in the interest of justice and equity.

2. The brief facts of the case: The applicants have been promoted to the cadre of Indian Administrative Service by order dated 4.12.2011 and since then they are working in the said cadre. The Applicants have passed the required competitive examinations and joined Karnataka Administrative Service as Gazetted Probationers. The applicants have satisfactorily completed the probationary period and were confirmed in the Karnataka Administrative Services.

3. The Union Public Service Commission has issued guidelines/procedures for categorization of State Civil Service Officers and preparation of list of suitable officers by the selection committee for promotion to the post of Indian Administrative

Service. The said guidelines make it clear that a person who is having adverse remarks, which is communicated to the officer and even after due consideration of his representation have not been completely expunged, such person's case cannot be considered for promotion. It further makes it clear that overall assessment of officers shall be made and the service records of officers who have maintained outstanding shall be considered as meritorious. As per the said guidelines the State Government shall send the statement pertaining to the adverse remarks of officers concerned. Based on the said statement, the selection committee shall not ignore the adverse entries made in the Confidential Report of an officer and duly communicated to him, if he has not submitted a representation against the said remarks within the stipulated time as per the State Service Rules.

4. The selection committee did not meet for effecting promotion to the post of Indian Administrative Services for the vacancies pertaining to the years 2008, 2009 and 2010. There were totally 26 vacancies for the said period from 2008 to 2010. On 2.11.2011 the selection committee met and considered the case of eligible officers. The selection committee examined the records of the officers and assessed the Annual Confidential Report. The selection committee cleared the names of applicants and forwarded the same to the 4th Respondent.

5. The Annual Confidential Report of the Respondent Nos. 5to9 were not up to the mark. The overall relative assessments were done by the Selection Committee and since the Respondent Nos.5to9 were less meritorious, they were not promoted. Pursuant to the decision of selection committee, the applicants have been promoted to the post of Indian Administrative Services on 14.12.2011 and 21.10.2012.

6. The Respondent Nos.5to9 made a representation to the State requesting for upgradation of their respective Annual Confidential Report, citing various reasons. The Respondent No.4 considered the representations of the Respondent Nos.5 to 9 and the same was rejected by the Respondent No.4 on the ground that there is no provision for seeking up-gradation of grading in the Annual Confidential Reports in the Karnataka Civil Service (Annual Performance Report) Rules, 2000. The applicants further submit that there is no provision under Karnataka Civil Service (Annual Performance Report) Rules, 2000 to upgrade the remarks in the Annual Performance Reports. The Respondent No.4 has also rightly stated that the Annual Confidential Report cannot be upgraded in the guise of appeal. The applicants further submit that there is no provision to constitute a referral Board for reviewing the

Annual Performance Report of a State Civil Service Officer. Though there is no provision and the field is occupied by Rules framed under Karnataka State Civil Services Act, 1978, the Respondent No.4 has issued an Executive Order constituting a Referral Board Review Committee. The order dated 18.1.2012 is opposed to law and the same is liable to be set aside. The applicants submit that based on the impugned order dated 18.1.2012 the referral board met and considered the representation given by the Respondent No.5to9. In the earlier occasion the Respondent No.4 had rejected the representation given by the Respondents-5to9. However, the Annual Performance Report was up-graded by the Review Committee. There is no provision under Karnataka Civil Service (Annual Performance Report) Rules, 2000 to constitute either a Referral Board or a Review Committee for upgradation of Annual Confidential Report. The representations of the private Respondents are considered and the same was rejected. In the guise of review, the same authority cannot consider their case for upgradation. The 4th Respondent has become functus officio and cannot review the remarks.

7. The applicants are all in the cadre of Indian Administrative Services. The private Respondents No.5 to 9 are in the cadre of Karnataka Administrative Services. The private Respondents have also filed Original Application No.502 & 505/2011 and Original Application No.295/2012 before the Hon'ble Court seeking for a mandamus to consider their case for promotion to the post of Indian Administrative Services, in the light of the upgraded remarks in their Annual Review Committee. Those Applications are still pending before this Hon'ble court for final adjudication.

8. The applicants submit that the Respondents No.5 to 9 are seeking for Review of the selection proceedings, based upon the upgradation of the remarks in their Annual Performance Reports, pursuant to the Order passed by the Referred Board / Review Committee and consequently claiming promotion to the cadre of Indian Administrative Services, in respect of 26 vacancies of the years 2008 to 2010, in respect of which the applicants have already been promoted. If the Selection Committee proceedings are reviewed, considering the upgraded Annual Confidential Reports of Respondent Nos.5to9, then it will adversely affect the merit, standing and rankings of these Applicants in the selection and the applicants will also have to be reverted to accommodate the Respondent Nos.5 to 9. There are no additional vacancies and since the entire basis for the Respondent Nos.5to9 for seeking promotion is the Order dated 18.1.2012, based upon which the

remarks in their Annual Confidential Report has been upgraded, the same adversely affects these Applicants. The selection and appointment of these Applicants already having been done, the question of considering the case of the Respondent Nos.5 to 9 for promotion based upon upgraded Annual Confidential Report, in respect of the very same vacancies cannot be permitted. The vested rights of the Applicants cannot be taken away by retrospective operation of the said Order dated 18.1.2012.

9. The applicants since have already been promoted to the cadre of Indian Administrative Service and since this Hon'ble Tribunal has jurisdiction to entertain and adjudicate upon any matter pertaining to the selection and appointment to the Indian Administrative Service, this Hon'ble Tribunal has got jurisdiction to entertain the above application. The applicants without left with any other option have approached this Hon'ble Tribunal, seeking for protection of their vested right to hold the post of Indian Administrative Service. Therefore, the applicants have filed this application. The Tribunal has granted interim stay of operation of impugned order dated 18.1.2012 and all its concurrent proceedings and the stay has been extended from time to time.

10. The Respondents-3&4 filed their detailed reply statement opposing the relief sought by the applicants. It is submitted that under the impugned order dated 18.1.2012, a Committee called "Review Committee" was constituted to consider the representation of Group-A Officials of the State Civil Services for the purpose of reviewing the grading recorded in the Annual Performance Report. The impugned orders came to be passed by the 3rd respondent on the basis for the recommendation made by the said Review Committee (Referral Committee) The applicants have not made out any case which warrants an interference in any of the impugned orders. At the outset, it is submitted that the applicants cannot maintain the application under Section 19 of the Administrative Tribunals Act 1985 before this Hon'ble Tribunal seeking writ of certiorari for quashing the said impugned orders. In other words, it is submitted that this Hon'ble Tribunal has no jurisdiction to entertain the grievance of the applicants and to quash the impugned orders. In this regard, it is submitted that the impugned order dated 18.1.2012 is an order in which a Committee called "Review Committee" was constituted for the purpose of considering the representation of the Group-A Officials of the State Government relating to their performance report. Hence, it is to be noted that the order dated 18.1.2012 is an order concerning service matters of Group-A officials who are appointed to the State Civil Services and working in connection with the affairs of the

State. In other words, it is submitted that for the purpose of entertaining the grievance of the applicants relating to the impugned orders, it requires to be specified that the impugned orders is a service matter concerning:

i. A Member of All India Service.

ii A person appointed to any civil Service of the Union or any civil post under the Union.

iii. A civilian appointed to defence service or post connected with the defence.

This being the position, the orders do not concern any of the three categories, of persons. The impugned orders fall within the exclusive jurisdiction powers of the authority of the State Administrative Tribunal, namely Karnataka Administrative Tribunal and not this Hon'ble Tribunal for the simple reason that the impugned orders do not pertain to any of the persons mentioned under Section 14 of the Administrative Tribunals Act. Hence, the above O.As are liable to be dismissed for want of jurisdiction itself.

11. According to the applicants, this Hon'ble Tribunal has jurisdiction to entertain the above O.As and adjudicate their claim since this Hon'ble Tribunal has jurisdiction upon any matter pertaining to selection and appointment to the Indian Administrative Service. This preposition cannot be disputed. But at the same time, it is to be noted that none of the impugned orders relate to selection and appointment to Indian Administrative Service. As already pointed out, the same pertain to the Performance Report of State Civil Service Officer. Inspite of this, if for any reason, this Hon'ble Tribunal were to come to the conclusion that Performance Report of a State Civil Services has some nexus relating to selection and appointment of the Indian Administrative Services, even then, it is submitted that this Hon'ble Tribunal has no jurisdiction to entertain the grievance, in view of the guidelines/procedure prescribed by the UPSC for preparation of list by the selection committee for promotion to IAS in terms of Regulation 5(4) and 5(5) of the Promotion Regulations. Relevant portion of the same at para 2.3 reads as follows:

2.3.: In accordance with Regulation 5(4) of the Promotion Regulations, the selection committee has to classify the eligible officers as “Outstanding”, “Very Good”, “Good” or “Unfit” as the case may be on an overall relative assessment of their service records (i.e., ACRs and the documents kept therein by the competent authority) for making of an overall relative assessment, the Committee will not depend solely on the grade recorded by the reporting/reviewing/accepting authority but will make its independent assessment or the service records of the eligible

officers as per the procedure indicated below.

The above regulation of UPSC makes it crystal clear that the assessment of respondents No.5 to 9 as per impugned order cannot be the criteria at all for purpose of classification as "Outstanding", "Very Good", "Good" or "Unfit", since the selection committee is required to make its own independent assessment. In view of this position, the contention of the applicants that the matter pertaining to selection and appointment of Indian Administrative Services and this Hon'ble Tribunal has jurisdiction is liable to be rejected.

12. According to the applicants the cause of action for the above applications is that if the selection committee proceedings are reviewed considering the documents, then it will adversely affect the merit and ranking in the selection and they will have to be reverted to accommodate respondents No.5 to 9. With regard to this submission of the applicants, it is submitted that for the purpose of entertaining an application under Section 19 of the Administrative Tribunals Act, 1985, applicant who has approached the Tribunal must not only produce an order, but he must establish that he is aggrieved of that order. This being the settled position, it is to be noted that as of now, no order whatsoever, has been passed based upon the documents. Till such time an order is passed based upon the documents in favour of respondents 5 to 9, the applicants cannot be termed as Aggrieved Person within the meaning of Section 19 of the Administrative Tribunals Act and no application can be entertained in anticipation of an order. Thus, it is clear that the claim of the applicants is not only without cause of action, but also premature one and hence, it is again reiterated that the above applications are liable to be dismissed.

13. It is further submitted that the above OAs are liable to be rejected for want of cause of action. As already stated, under the impugned order dated 18.1.2012, a Review Committee was constituted and impugned orders were passed by the second respondent based on the recommendation made by the Review Committee. The impugned orders are yet to be pressed into action. It is an admitted fact, that the private respondents herein have already approached this Hon'ble Tribunal and are seeking a direction to the respondents No.1 and 2 to review the selection in respect of the vacancies for the year 2008, 2009 and 2010. Thus it is clear that the impugned orders can be acted upon, or not is sub-judice before this Tribunal till such time, the claim of the private respondents in their respective O.As were determined, the applicants have no cause of action to approach this Tribunal and mere apprehension expressed by them does not constitute a

cause of action to maintain the above applications. Hence, on this ground also the above OAs are liable to be rejected. Without prejudice to the above contention, it is submitted that the applicants have not made out any ground which warrants an interference in any of the impugned order.

14. One of the main grounds urged by the applicants in support of their prayer for quashing the impugned order dated 18.1.2012 is that there is no provision under the Karnataka Civil Services (Annual Performance Report) rules 2000 to constitute a Referral Board for reviewing the Annual Performance Report of the State Civil Service Officer. This contention is not tenable either in law or on facts. The applicant s while contending that there is no provision under the said Annual Performance Report Rules 2000, miserably failed to appreciate the fact that Rule 12 of the said Rules is an enabling provision and source of power for issuing the said order dated 18.1.2012. Rule 12 of the said Rules reads as follows:

12.General - (1) The Government may issue such instructions, not inconsistent with the provisions of these rules as it may consider necessary with regard to the writing and the maintenance of the reports and the effect of the Performance Reports on the conditions of service of a Government servant.

(2) if any question arises in relation to the interpretation of these rules, it shall be referred to the Government, whose decision thereon shall be final.

15. A plain reading of the aforesaid rule 12 makes it clear that the above rule, is an enabling provision to take any decision with regard to the writing or maintenance of reports and effect of the Performance Reports on the condition of a Government servant. The only rider relating to the decision that may be taken with regard to the writing and maintenance of the report is provided therein is that such decision shall not be inconsistent with the provisions of these rules. This being the position of the Rule, it is to be noted that none of the provisions contained in the said Rule provides for review of grading which has been already awarded to a Government servant. In view of the fact, constituting a Review Committee for the purpose of reviewing the grading of officials of Government in Group-A service cannot be termed as inconsistent with any of the provisions. Besides, it is to be noted that they have not at all pointed the inconsistence about the constitution of the review committee in the existing provisions of the Rule. In view of these facts, and position of law, the contention of the applicants that there is no provisions under the Karnataka Civil Services, (Annual Performance Report) Rules 2000, to constitute Review

Committee for reviewing the Annual Performance Report of State Civil Service officials is liable to be rejected. It is again reiterated that Rule 12 of the said Rule is the source and enabling provisions for issuing the impugned order dated 18.1.2012.

16. The other contention of the applicants in support of their prayer is that All India Services (Performance Appraisal Report) Rules 2007, provides for constitution of Referral Board, whereas, no such provision exists in the Karnataka Civil Services (Performance Report) Rules, 2000. It is the further contention of the applicants that no executive order can be issued when the field is occupied by a Rule. The preposition that no executive order can be issued when the field is occupied by a Rule is general in nature. In other words, it is submitted that the said preposition has certain exceptions. In this regard, it is submitted that it is a settled position of law, that even in a situation, if a field is occupied by a Rule, executive orders are permissible so long as the same are supplementary in nature and not in the nature of supplanting. By applying this settled principle of law to the facts and circumstances of the case, it is submitted that as already stated, none of the provisions contained in the said K.C.S. (Performance Report) 2000 deals with the situation as to what is required to be done if an official makes a representation seeking review of grading awarded to him in his Annual Performance Report. By taking into account of this fact, and also by taking into account of the fact that the existing Rules 2000 does not provide for communication of any grading/report other than the grade/report which is adverse in nature, and by taking into principles of the Hon'ble Supreme Court in the case of Devadutt Vs Union of India (2008) 8 SCC 725, the impugned order dated 18.1.2012 came to be issued in supplementation of the existing provisions by incorporating the principles of the Hon'ble Supreme Court in the said Devadutt's case. When the above principles laid down by the Hon'ble Supreme Court was noted, it was found that in the existing Rule, there is no provision for a Government servant to have an opportunity of making the representation against the entry, if he feels unjustified and pray for its upgradation and consequently in obedience of the aforesaid dictum/principle laid down by the Hon'ble Supreme Court, under the impugned order dated 18.1.2012, a Review Committee was constituted with a sole view to provide an opportunity to government servants for making a representation against the entry if he feels that it is unjustified and also in view of the principle that State being a model employer must act fairly towards its employees. In view of this fact, and position of law, the contention of the applicants that the impugned

order dated 18.1.2012, is to be quashed on account of the fact that there is no similar provisions under the K.C.S (Performance Report), Rules, 200 is liable to be rejected.

17. In support their prayer for quashing the impugned orders it is contended that the representations of the private respondents were once considered and the same was rejected, but under the guise of review the same authority cannot consider their case for upgradation/review and in support of this contention, they place reliance upon documents. This contention is also not tenable. In this regard, it is submitted that at no point of time, their representations were rejected on the other hand, a reading of the said documents manifestly reveals to review was not considered on account of the fact that there exists no provision in the K.C.S (Annual Performance Report) Rules 2000. In other words, it is submitted that endorsements are not on merits of the claim made by the private respondents, but for want of necessary provisions under the relevant rules. Hence, in view of this fact, the contention of the applicant that the 4th respondent has become functuous officio and cannot review the remarks is liable to be rejected. The contention of the applicants that the 4th respondent has become functus officio and cannot review the grading already given to private respondents were to be accepted the same will result in nullifying the principles/dictum, laid down by the Hon'ble Supreme Court in the said Devadutt's case. The above narrated facts, events circumstances, demonstrate that the applicants are not entitled for any of the prayer as sought by them and hence the above applications are liable to be dismissed.

18. Respondent-5 in the reply statement substantiated his case that the executive order issuing the Referral Committee is in accordance with judicial pronouncements more particularly by the Apex Court order and Article 141 of Constitution of India. He has further argued that impugned order has been issued in accordance with the principles laid down by the Apex Court in Dev Dutt's case. The respondent-5 has further pointed out that he did not have the benefit of review and acceptance of ACRs by reviewing authority and accepting authority as the concerned authorities have demitted office in the meantime.

19. Respondents-6to8 have also placed their arguments on the principles laid down by the Hon'ble Apex Court in Dev Dutt's case. They have also relied on Rule 12 of K.C.S (Performance Report) Rules, 2000 as per which the Government is ultimate interpreter of the Rules therein and competent to issue necessary instructions and clarifications. They have also questioned the arguments that the very premise on which the applicants have

proceeded that the Government was seeking to exercise the quasi-judicial function in considering the representations of these respondents and that for the said reason it had become functus officio being fundamentally erroneous and the same having no foundation in law. They have also opposed the contention in the OA that the applicants' vested rights cannot be taken away by the retrospective operation of the impugned order. They have pointed out that their appointments have been made on probation until further orders and further their appointment have been made subject to the out come of Writ Petition No.1594/2011 pending adjudication before the High Court of Delhi.

20. Respondent-9 in addition to pointing out the legality of the order constituting the referral board has pointed out that he had been given average mark only for the year 2006-07 which according to him is based on personal grudge against him by the reporting officer. Since K.C.S (Performance Reports) Rules, 2000 did not provide for a review, his pleas for upgrading were not successful until a referral board was constituted based on the principles laid down in the Dev Dutt's case.

21. Heard the arguments of the learned Counsel for the applicants and the learned Counsel for all the respondents.

22. Names of the applicants alongwith other names were forwarded to the UPSC Selection Committee and in the Selection Committee meeting held on 2.11.2011, select lists for the years 2008, 2009 and 2010 were approved. Consequently, the applicants in the OA have been promoted to IAS cadre vide orders dated 14.12.2011 and 21.1.2012. The first argument to be considered is regarding the locus of the applicants The respondents have raised the contention that the applicants have not suffered any injury as such and there is no cause of action and accordingly there is no locus to prefer this OA before the Tribunal. The Counsel for the applicants have countered this argument pointing out that any matter which impinges on the promotion to the IAS would come within the purview of this Tribunal. They have also pointed out citations to the effect that a person cannot await an injury to be caused before seeking Court's protection and in such an event Writ Petition cannot be termed as without cause of action and premature [1985 (1) SLR 658]. Further they have pointed out that an officer whose chances of promotion are prejudiced by the Government's action expunging the adverse remarks from the annual report of a co-officer has locus-standi to prefer a writ petition [Lakhi Ram Vs. State of Haryana & others 1981 (2) SCC 674].

23. This Tribunal finds that the matter falls within its

jurisdiction in as much as the Review Committee constituted in the impugned order and all the consequential proceedings based on the decisions of the Review Committee have a direct bearing on promotion of the officers to the Indian Administrative Service. The apprehension of the applicants that their selection and appointment in the IAS cadre may be in jeopardy, cannot be considered to be entirely without basis as such. The applicants have locus-standi in the matter and accordingly the OA has been entertained by this Tribunal.

24. The next major point raised by the respondents relates to whether an executive order can be issued when the field is occupied by a Rule. The impugned order dated 18.1.2013 has been issued in the context of and in accordance with the principles laid down by the Apex Court in Dev Dutt's case. The officers who are respondents in this case belong to Karnataka Civil Service and are governed by the KCS (Performance Reports) Rules, 2000. When the Review Committee was constituted through the impugned order their cases were considered and their remarks in the APAR have been upgraded.

25. The impugned order itself points out that the move to constitute the Review Committee in accordance with Dev Dutt's case will require amendments to K.C.S. (Performance Reports) Rules, 2000. However, since this process would take time, the Review Committee was constituted through executive order. Rule 12 of K.C.S (Performance Reports) Rules gives general powers to the Government to issue instructions and clarifications in accordance with the Rules therein. Under Article 162 of the Constitution of India, the powers the executive branch of the Government extends to all matters with respect to which the legislature has power to make laws.

26. The 3rd Respondent has relied upon the Apex Court's order in Dev Dutt's case. Hon'ble Supreme Court's order in the said case makes it clear that even in the absence of the Rule or when there is a Rule prohibiting upgradation, the opportunity for representing for upgradation has to be considered when the affected officer chooses to represent. In Dev Dutt's case, a new principle of natural justice is being developed by holding that fairness and transparency in public administration require that all entries (whether poor, fair, average, good or very good) in the annual confidential report of a public servant, whether in civil, judicial, police or any other State service (except military), must be communicated to him within a reasonable period so that he can make a representation for its upgradation. This rule prevails even if there may be no rule/G.O, requiring communication of entry, or

even if there is rule/G.O., prohibiting it, because principles of non-arbitrariness in State action as envisaged by Article 14 of the Constitution require such communication. Article 14 overrides all rules of government orders. In the light of the above, this Tribunal finds that the action of the Government in having issued executive order constituting the Review Committee pending amendment to K.C.S (Performance Reports), Rules 2000 is in order. The 3rd and 4th Respondents would presumably be pursuing amendments to K.C.S (Performance Report) 2000 so as to provide for an explicit provision in this regard.

27. The third contention raised by the applicant is that the representation of the respondents for their upgradation of remarks in the APAR had been rejected and their APAR's cannot upgraded in the guise of appeal or review. The 4th respondent has become functus officio and cannot review the remarks. It is clear from the facts presented and in the arguments of the learned Counsel that the earlier representations of the respondents for upgradation were not considered on account of the fact that no provision for review existed in the K.C.S (Performance Reports) Rules, 2000 and it is to remedy the situation that the impugned executive order was issued constituting a full fludged Review Committee to consider such appeals made for review in the performance reports. Hence contention of the applicants that 4th respondent has become functus officio and cannot upgrade the grading already given to the private respondents cannot be accepted.

28. The private respondents in this OA have filed applications before this Tribunal in OA Nos.502/2011 to 505/2011 to agitate their case for promotion for consideration to IAS cadre based on the upgradation in the APARs of the respondents and consequential steps taken by the respondents-1to4 are matters which will fall within the purview of this Tribunal in OA Nos.502/2011 to 505/2011.

29. We find that the impugned order bearing No.DPAR/SERAVA 2011 dated 18.1.2012 constituting the Review committee and consequential impugned order bearing No.DPAR 395 SKM 2011 (Part-I&II) dated 2.6.2011 are legally valid since the impugned order dated 18.1.2012 has the full force of the principles laid down by the Apex Court in the Dev Dutta's case. The other impugned orders dated 2.6.2012 bearing No.DPAR 395 SKM 2011 (Part-I&II) are consequential orders based on the decisions of the Review Committee and as such are legally tenable. Accordingly, the relief sought in the OAs to quash these impugned orders cannot be granted and the OAs are liable to be dismissed. OAs are dismissed, no order as to costs. The interim order dated 30.8.2012

stands vacated."

This judgment goes on the premise that there is an upgradation of an ACR. It is not so. There was no ACR. So a new one seems to be created. Neither does this judgment explain whether there is any ground for such upgradation. Hence it appears that the crucial issues are:

1) ***Can there be an upgradation of an ACR without considering the aspect of defalcation of heavy amounts?***
2) ***Is not application of mind ever present in the face of records?***
3) ***Were the files looked into?***

The answer seems to be negative. Therefore, this judgment has no relevance at all as it had not answered any of the issues arising in it. Further as causes relating to other people, it may not create any obstacle of res judicata.

41. Besides, the Hon'ble Apex Court had held in S.P. Chengalvaraya Naidu and Others Vs. Jagannath and Others that a decree obtained by non disclosure of material facts is a fraud on Court and hence not valid. We quote from this judgment:

“JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.-

"Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

2. Predecessor-in-interest of the respondents-plaintiffs filed application for final decree for partition and separate possession of the plaint-properties and for mesne profits. The appellants-defendants contested the application on the ground that the preliminary decree, which was sought to be made final, was obtained by fraud and, as such, the application was liable to be dismissed. The trial Judge accepted the contention and dismissed the application for grant of final decree. The respondents- plaintiffs went in appeal before the High Court. A Division Bench of the High Court went through plethora of case-law and finally allowed the appeal and set aside the order of the trial court. This appeal is by way of certificate granted by the High Court.

3. One Jagannath was the predecessor-in-interest of the respondents. He was working as a clerk with one Chunilal Sowcar. Jagannath purchased at court auction the properties in dispute which belonged to the appellants. Chunilal Sowcar had obtained a decree and the court sale was made in execution of the said decree. Jagannath had purchased the property in the court auction on behalf of Chunilal Sowcar, the decree-holder. By a registered deed dated November 25, 1945, Jagannath relinquished all his rights in the property in favour of Chunilal Sowcar. Meanwhile, the appellants who were the judgment-debtors had paid the total decretal amount to Chunilal Sowcar. Thereafter, Chunilal Sowcar, having received the decretal amount, was no longer entitled to the property which he had purchased through Jagannath. Without disclosing that he had executed a release deed in favour of Chunilal Sowcar, Jagannath filed a suit for partition of the property and obtained a preliminary decree. During the pendency of the suit, the appellants did not know that Jagannath had no locus standi to file the suit because he had already executed a registered release deed, relinquishing all his rights in respect of the property in dispute, in favour of Chunilal Sowcar. It was only at the hearing of the application for final decree that the appellants came to know

about the release deed and, as such, they challenged the application on the ground that non- disclosure on the part of Jagannath that he was left with no right in the property in dispute, vitiated the proceedings and, as such, the preliminary decree obtained by Jagannath by playing fraud on the court was a nullity. The appellants produced the release deed (Ex. B- 1 5) before the trial court. The relevant part of the release deed is as under:

"Out of your accretions and out of trust vested in me, purchased the schedule mentioned properties benami in my name through court auction and had the said sale confirmed. The said properties are in your possession and enjoyment and the said properties should henceforth be held and enjoyed with all rights by you as had been done:

So far if any civil or criminal proceedings have to be conducted in respect of the said properties or instituted by others in respect of the said properties you shall conduct the said proceedings without reference to me and shall be held liable for the profits or losses you incur thereby. All the records pertaining the aforesaid properties are already remaining with you.

4. The High Court reversed the findings of the trial court on the following reasonings:

"Let us assume for the purpose of argument that this document, Ex. B-15, was of the latter category and the plaintiff, the benamidar, had completely divested himself of all rights of every description. Even so, it cannot be held that his failure to disclose the execution of Ex. B-15 would amount to collateral or extrinsic fraud. The utmost that can be said in favour of the defendants is that a plaintiff who had no title (at the time when the suit was filed) to the properties, has falsely asserted title and one of the questions that would arise either expressly or by necessary implication is whether the plaintiff had a subsisting title to the properties. It was up to the defendants, to plead and establish by gathering all the necessary materials, oral and documentary, that the plaintiff had no title to the suit properties. It is their duty to obtain an encumbrance certificate and find out whether the plaintiff had still a subsisting title at the time of the suit. The plaintiff did not prevent the defendants, did not use any contrivance, nor any trick nor any deceit by which the defendants were prevented from raising proper pleas and adducing the necessary evidence. The parties were fighting at arm's length and it is the duty of each to traverse or question the allegations made by the other and to adduce all available evidence regarding the basis of the plaintiff's claim or the defence of the defendants and the truth or falsehood concerning

the same. A party litigant cannot be indifferent, and negligent in his duty to place the materials in support of his contention and afterwards seek to show that the case of his opponent was false. The position would be entirely different if a party litigant could establish that in a prior litigation his opponent prevented him by an independent, collateral wrongful act such as keeping his witnesses in wrongful or secret confinement, stealing his documents to prevent him from adducing any evidence, conducting his case by tricks and misrepresentation resulting in his misleading of the Court. Here, nothing of the kind had happened and the contesting defendants could have easily produced a certified registration copy of Ex. B-15 and non-suited the plaintiff; and, it is absurd for them to take advantage of or make a point of their own acts of omission or negligence or carelessness in the conduct of their own defence." The High Court further held as under:

"From this decision it follows that except proceedings for probate and other proceedings where a duty is cast upon a party litigant to disclose all the facts, in all other cases, there is no legal duty cast upon the plaintiff to come to Court with a true case and prove it by true evidence. It would cut at the root of the fundamental principle of law of finality of litigation enunciated in the maxim 'interest reipublicae ut sit finis litium' if it should be held that a judgment obtained by a plaintiff in a false case, false to his knowledge, could be set aside on the ground of fraud, in a subsequent litigation." Finally, the High Court held as under:

"The principle of this decision governs the instant case. At the worst the plaintiff is guilty of fraud in having falsely alleged, at the time when he filed the suit for partition, he had subsisting interest in the property though he had already executed Ex. B-15. Even so, that would not amount to extrinsic fraud because that is a matter which could well have been traversed and established to be false by the appellant by adducing the necessary evidence. The preliminary decree in the partition suit necessarily involves an adjudication though impliedly that the plaintiff has a subsisting interest in the property."

5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an

engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants- defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

7. We, therefore, allow the appeal, set aside the impugned judgment of the High Court and restore that of the trial court. The appellants shall be entitled to their costs which we quantify as Rs 11,000."

42. 8th respondent admits that his performance for the year 2008-09 was Good. It is not correct. But the Respondent No. 8 says that to say that the Respondent No. 4 to 8 have used their power for postponing

meeting of the Committee for more than 3 years is denied. He would say that it is the State Government, due to its administrative and various reasons could not constitute the Committee for more than 3 years. But then that is the case of the applicant also. **It is the State Government who delayed the case for more than 3 years so that the cloud on the Respondent No. 4 to 8 could be removed in the interim.** However, he would say that his case has not been considered by the Selection Committee meeting in 2008 for reasons not known to him. He denied that the upgradation of his annual report is contrary to the Karnataka Civil Services Performance Report Rules, 2000. But then it is the case of No Report as the Reporting Authority and the Reviewing Authority had refused to write anything. Therefore, no question of any upgradation arises here. If it is a case of No Report, then the previous years report has to be taken into consideration and the view of the Reporting Officer and the Reviewing Authority ought to have been obtained asking for their reason in not writing the report. Without any doubt, they did not write the report for the simple reason that they did not want to write that the report of this person would be in the negative. That is supported by the cases pending against them during the relevant period. No Reporting Officer or Reviewing Authority can ignore it (Even though the subsequent committee had modulated it, they may be held answerable for this). However, Dev Dutt's case has no application to this matter as Dev Dutt's

case is based on truth and equity. But the respondent is a party to one of these cases whereas applicant is not. Therefore, this defence of the 8th respondent will not stand in the eye of law. It is also to be noted that the Hon'ble High Court of Delhi had acclaimed the claim the Smt. Sathyavathi after examining the details, whereas in OA No. 532/2012 no relevant points seems to be even examined.

43. At this stage, another judgment of the Hon'ble Apex Court is placed before us. We quote from it:

> *"RUKHSANA SHAHEEN KHAN - Appellant*
>
> *Versus*
>
> *UNION OF INDIA & ORS - Respondents*
>
> *Civil Appeal No. 32 of 2013 Decided on 28.8.2018*
>
> ***Annual Confidential Report-Promotion-Singular issue involved in this appeal is whether the uncommunicated Annual Confidential Reports, that were adverse to the appellant, should have been relied upon for the purpose of consideration of the appellant for promotion.***
>
> ***Held**: The court in Sukhdev Singh v. Union of India & Ors., (2013) 9 SCC 566 and Prabhu Dayal Khandelwal v. Chairman, U.P.S.C & Ors., (2009) 16 SCC 146, has held that there cannot be any dispute on the fact that uncommunicated and adverse ACRs cannot be relied upon in the process of promotion.*
>
> ***Result: Appeal allowed.***
>
> *Cases Referred:*
>
> 1. *Sukhdev Singh v. Union of India & Ors., (2013) 9 SCC 566 (Para 2)*
> 2. *Prabhu Dayal Khandelwal v. Chairman, U.P.S.C & Ors., (2009) 16 SCC 146 (Para 4)*
>
> ***IMPORTANT POINTS***
>
> 1. *The Competent Authority must ignore the uncommunicated adverse ACRs and take a fresh decision*

in accordance with law.

2. *The appellant shall be afforded an opportunity of hearing in the process.*

JUDGMENT

Kurian Joseph, J. *- The sole issue involved in this appeal is whether the uncommunicated Annual Confidential Reports (ACRs), which are adverse to the appellant, should have been relied upon for the purpose of consideration of the appellant for promotion.*

2. In view of the decision of this Court in Sukhdev Singh Vs. Union of India & Ors. reported in (2013) 9 SCC 566, there cannot be any dispute on this aspect. This Court has settled the law that uncommunicated and adverse ACRs cannot be relied upon in the process.

3. This appeal is, accordingly, allowed and the impugned Judgment is set aside with the following directions :-

(a) The competent authority is directed to ignore the uncommunicated adverse ACRs and take a fresh decision in accordance with law.

(b) The appellant shall be afforded an opportunity of hearing in the process.

4. It will be open to the appellant to make all available submissions, including the reference to the Judgment of this Court in Prabhu Dayal Khandelwal Vs. Chairman, U.P.S.C & Ors. reported in (2009) 16 SCC 146.

5. The above exercise shall be completed within a period of two months from today.

No costs.

Appeal allowed"

It might be noted that this pertains to consequences of Dev Dutt judgment relating to unconveyed adverse remarks.

44. What is to be done when there are no reports?

45. The government should specifically seek from the Reporting and Reviewing Authority the reason for their failure. Without placing their views on records, no committee can decide on anything as they will be

acting in a vacuum.

46. On a cumulative conspectus, we hold that the applicant has established his case. Therefore, the following orders are issued:

a) It is declared that the applicant is eligible to be considered for promotion in respect to the year 2008, 2009 and 2010 and further declared that all benefits consequential is to follow him just below Smt. Sathyavathi.

b) It is hereby declared that the upgradation of ACR's for the party respondents and the grant of integrity certificates to them seems to be opposed to law and good procedure and issued without application of mind and on extraneous considerations.

c) Therefore, there will be a mandate to the respondent to pass such consequential orders granting the benefit of promotion to the IAS on the pre amended rules with respect to the year 2008 to 2010 within two months next to the applicant just below Smt. Sathyavathi.

d) Since the Respondents No. 4 to 8 are already out of service and in view of their trials and tribulations, it is held that no further consequential actions need be taken against them.

e) There is actually no delay. But in the circumstances, this technical delay is hereby condoned and MA allowed.

47. The OA is allowed. No order as to costs.

(C V SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No.170/00155/2019

Annexure-A1: Copy of the Service (Recruitment) Rules, 1954
Annexure-A2: Copy of the IAS (Appointment by Promotion) Regulations, 1955
Annexure-A3: Copy of the OM dated 10.03.1989
Annexure-A4 (Series): Copy of the draft notice and charge sheet objections raised by Accountant General's office
Annexure-A5: Copy of the communication dated 05.08.2011
Annexure-A6: Copy of the personnel data of the 4th respondent
Annexure-A7: Copy of the upgradation done by the government order dated 15.07.2011
Annexure-A8: Copy of the communication dated 02.04.2008
Annexure-A9: Copy of the communication dated 30.04.2011
Annexure-A10: Copy of the order sheet in Special CC No. 42/2007
Annexure-A11: Copy of the extract of the charge sheet in Form No. 131
Annexure-A12: Copy of the sanction order dated 28.04.2007
Annexure-A13: Copy of the order dated 05.08.2011 in WP No. 3855/2007
Annexure-A14: Copy of the Writ Petition filed by the 6th respondent in WP No. 3855/2007
Annexure-A15: Copy of the statement of objections filed by the respondents in WP No. 3855/2007
Annexure-A16: Copy of the certificate dated 17.07.2010
Annexure-A17: Copy of the certificate dated 16.11.2010
Annexure-A18 (Series): Copy of the No report Certificate
Annexure-A19: Copy of the File Note
Annexure-A20: Copy of the list of eligible candidates covering letter dated 19.08.2011
Annexure-A21: Copy of the covering letter dated 11.11.2009
Annexure-A22: Copy of the unauthorized note by the Under Secretary dated 30.08.2011

Annexure-A23: Copy of the communication dated 17.07.2010
Annexure-A24: Copy of the select list dated 29.08.2017
Annexure-A25: Copy of the Notification dated 04.07.2014
Annexure-A26: Copy of the representation dated 12.12.2017
Annexure-A27: Copy of the communications addressed by the DPAR of the 3rd Respondent dated 03.02.2011
Annexure-A28: Copy of the reply dated 23.06.2011
Annexure-A29: Copy of the certificate dated 12.11.2010 indicating the APR of the 5th Respondent for the year 2008-09

Annexures with reply statement of Respondent No. 1

Annexure-R1: Copy of the DoPT letter dated 11.12.2013
Annexure-R2: Copy of the DoPT letter dated 12.07.2018
Annexure-R3: Copy of the judgment dated 12.11.2018 in OA No. 556/2018

Annexures with reply statement of Respondent No. 8

Annexure-R1: Copy of the acknowledgement for having received APR for the year 2005-06
Annexure-R2: Copy of the acknowledgement for having received APR for the year 2006-07
Annexure-R3: Copy of the acknowledgement for having received APR for the year 2007-08
Annexure-R4: Copy of the acknowledgement for having received APR for the year 2008-09
Annexure-R5: Copy of the acknowledgement for having received APR for the year 2009-10
Annexure-R6: Copy of the acknowledgement for having received APR for the year 2010-11
Annexure-R7: Copy of the representation given by Respondent No. 8 to review his performance report for the year 2006-07
Annexure-R8: Copy of the representation given by Respondent No. 8 to review his performance report for the year 2008-09
Annexure-R9: Copy of the order constituting the Review Committee dated 28.01.2012
Annexure-R10: Copy of the Government Order dated 02.06.2012

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