

(1986) 03 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition No's. 15017 to 15060, 19782 to 19840 and 20349 to 20353 of 1985 and 35 to 71 of 1986

A. Aziz

APPELLANT

Vs

Managing Director, KSRTC

RESPONDENT

Date of Decision : 26-03-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Industrial Disputes Act, 1947 — Section 2 (p), 25 B, 25 F

Citation : (1986) ILR (Kar) 2007

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Advocate : V. Lakshminarayana, for the Appellant; K. Shivashankar Bhat, for the Respondent

Final Decision : Allowed

Judgement

Bopanna, J.—These petitions are disposed of by a common order since a common question arises for consideration in all these petitions.

2. The petitioners are all Ex badli conductors of the 1st respondent/Corporation. Their services were dispensed with by the Corporation on the ground that they were found not suitable for the posts of conductors. Such termination ex-facie was clearly violative of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). However, the Corporation in the year 1978 under a Settlement (also known as truce agreement) within the meaning of Section 2(p) of the Act agreed that these badli and part-time employees who had put in 180 days of "uninterrupted continuous service" and who were in the badli list or in any temporary appointment on the date of signing of the truce, would be absorbed in service subject to the availability of permanent posts. The relevant term in the settlement reads as under :

"4. Badli and part-time employees.

I(a) All the badli and local candidates who have put 180 days of uninterrupted continuous service and who are in the badli list or in temporary appointment on the date of signing of this truce agreement will be absorbed in service subject to the availability of the permanent posts.

Note : The meaning of "continuous service" shall be as defined in Section 25(B) of the Industrial Disputes Act of 1947.

(b) The badli and temporary employees who have put in 180 days of uninterrupted continuous service on the date of signing of this agreement and who cannot be absorbed for want of permanent vacancies, shall be kept in the waiting list for future absorption.

(c) After drawing the list of absorption, the badli candidates not fulfilling the above conditions will be considered as nonexistent.

(d) Badli and local candidates who are going to be regularised in service as per above rules will be put on probation for a period of 6 months from the date of regularisation. This regularisation will not affect in any way the pending default cases against them."

4. On the plain terms of that clause in the settlement, only the badli conductors whose names were on the badli list as maintained by the Corporation as on the date of the settlement were entitled to absorption under that clause. But, by Circular No. 403 dated 23-4-1980 produced as Annexure -C" in Writ Petitions Nos. 19782 to 19840 of 1985, the Corporation issued the following clarification :

"a) Bad lies and temporary employees (local candidates) who have put in 180 days of uninterrupted services on the date of signing of the supplementary memorandum of settlement dated 18-2-1978, and who could or cannot be absorbed for want of permanent vacancies shall be kept in waiting list for future absorptions. As per the said provisions in respect of such of them, who have acquired a right for absorption subject to availability of permanent posts as per Clause 4 of the said Settlement, their antecedents need not be considered as a bar to their absorption as it would not be in conformity with the spirits of the said memorandum of Settlement.

b) Such removal of Bad lies during their utilisation as Bad lies on a day to day basis "after 16-2-1978 but before their absorption will not stand in independent (sic) or bar, for their absorption as per Clause 4 of the said Memorandum of Settlement."

Clause 4(I)(d) and the circular clarifying that clause came up for consideration before me in Writ Petitions Nos. 19570 to 19590 of 1980. S. Narayana and Ors. v. KSRTC : DD. 16-12-1980. This Court observed as under :

"A reading of Clause 4(I)(d) of the settlement and the clarification as contained in Exhibit-D would make it clear that the intention of the Corporation was to regularise, the badli conductors as per the seniority list (produced as Annexure-A

with the Writ Petition) without prejudice to its right to take action against such of those Bad lies against whom default cases are pending. It does not give the Corporation any right to exclude the petitioners completely from absorption into the vacancies that may arise in future. In my view the proper construction to be put on Clause 4(I)(d) of the settlement and the clarification contained in Annexure-D, would be to hold that these petitioners are entitled to be absorbed in regular vacancies as and when they arise in terms of the seniority list produced as Annexure A, subject to the right of the Corporation to take action against them in respect of default cases that may be pending against them at the time of absorption. Hence, the Corporation cannot disown its obligation under Clause 4 of the settlement to absorb the petitioners in regular vacancies of conductors in the order of their seniority list."

The correctness of this Order was challenged in appeal before the Division Bench in Writ Appeals Nos. 426 to 445 of 1981. KSRTC v. S. Narayana and Ors. : DD. 7-9-1983. But it was not examined by the Division Bench in the light of the submission made by the Corporation that it would appoint the 20 petitioners who had succeeded in the Writ Petitions within a period of one month without prejudice to its contentions on the proper interpretation of Clause 4 of the settlement. Accordingly, the Division Bench made the following order :

"2. Learned Counsel appearing for the contesting respondents-petitioners in the Writ Petitions rightly and fairly submitted that in the light of the statement contained in the memo filed by the appellants to appoint the twenty petitioners on probation w.e.f. 15-9-83, there is no need to pursue the remedies in this Court. He, therefore, sought leave of the Court to withdraw Writ Petitions 19570 to 19571 & 19581 to 19590 of 1980 out of which these appeals have arisen."

5. From the above order of the Division Bench two facts emerge : (i) The Corporation reserved its right to challenge the interpretation of Clause 4 of the settlement and the circular letter at Annexure--C, and (ii) The Corporation was agreeable to absorb the 20 petitioners subject to the conditions prescribed under Clause 4(d) and the Circular letter.

6. The interpretation of Clause 4(I)(d) came up for consideration in Writ Petitions Nos. 17721 and 17722 of 1983, M. B. Kulkarni and Ors. v. KSRTC and other connected Writ Petitions disposed of on 10-10-1985 by the Division Bench. Those Writ Petitions originally had come before a learned Single Judge and he referred the same to the Division Bench in view of my earlier Judgment interpreting Clause 4(I)(d) of the Settlement. The Division Bench observed as follows :

"(i) The principal question, therefore, that arises for consideration in these cases is, whether the petitioners are right in contending that they are entitled to be considered for absorption in permanent vacancies, having regard to the fact that their names have been included in the list of Badli Conductors prepared on 16-2-1978 as per Clause 4 of the settlement.

(ii) The principal contention of Sri Garg Learned Counsel for the petitioners is

that, the Corporation which is a State cannot discriminate against one set of employees in preference to other. He submitted that 172 persons in the same list having been absorbed in accordance with Clause 4 of the settlement, cannot now turn round and say that it will not enforce the same in respect of others lower in" the said list. He contended that the action of the Corporation in taking the stand that they are not going to consider the case of the petitioners for absorption as per Clause 4 of the Settlement is violative of Article 14 and therefore, the petitioners are entitled to a Writ of mandamus.

(iii) Sri Chandrasekhar, Learned Counsel appearing for the Corporation, submitted that, these petitioners cannot call upon this Court to execute or enforce the settlement between the parties by means of Writ Petition under Article 226 of the Constitution. The answer to this contention given by Sri Garg, Learned Counsel for the petitioners, is that the prayer is not for executing or enforcing the settlement but the prayer is for issue of a Writ of mandamus directing the Corporation not to discriminate against the petitioners in the matter of absorption as Badli Conductors included in the list prepared in accordance with Clause 4 of the settlement. In support of this contention, Sri Garg relied on a decision of the Supreme Court reported in AIR 1984 S.C. page 1499 (In Sengara Singh and ors. Etc. -v.- The State of Punjab and ors.). That was a case in which a large number of police officials were dismissed from service on the ground that they had involved themselves in some agitation. Thereafter some of those who were dismissed from service were reinstated in service, whereas another set of officials who were similarly situated were not given the benefit of re instatement. It is in this background that the Supreme Court has held that the State was not justified in discriminating against one set of employees as against another set of employees in the absence of good reasons. It therefore follows that it is for Sri Chandrasekhar, Learned Counsel for the respondents-Corporation to demonstrate justification for not absorbing the petitioners in the same manner in which 172 persons in the same list have been absorbed. We do not find any justification put forward for treating the petitioners in a manner different from the one afforded to 172 persons in the list. It is, therefore, clear that the petitioners have made out a case that they have been discriminated in the matter of absorption and are, therefore, entitled to a proper relief at the hands of this Court.

(iv) Sri Chandrasekhar, Learned Counsel for the Corporation, submitted that we should decline to interfere in these cases on the ground of delay and laches on the part of the petitioners in approaching this Court for reliefs. He invited our attention to the fact that the Corporation issued a Circular not to enforce the settlement dated 18-9-1980, whereas these Writ Petitions were filed some time in October, 1983, i.e., nearly three years thereafter. It is difficult to accept persons in the position of poor conductors to come to know about the Circular and about their turn for absorption. Though the Corporation might have absorbed or appointed several persons during this period, the petitioners would not know about it. The Corporation has not placed any material to show on what dates, the turn of the petitioners for absorption according to the list prepared, came. It is

only when the petitioners are not absorbed in their turn that they would have a cause of action for approaching the Court for reliefs. The Corporation not having been placed any material in this behalf, would not be justified in contending that we should not grant any reliefs to the petitioners. We, however, do appreciate the problems of the Corporation as it is likely that they have taken several persons by now as conductors in the Corporation, though such persons' names are not in the list. It would cause great hardship not only to the Corporation, but also to those appointed during this interregnum if their position is in any way altered to their disadvantage. This is undoubtedly a factor which we must take into consideration for the purpose of moulding the reliefs to be granted to the petitioners. In our opinion, this hardship or inconvenience can be avoided if we direct that the persons already absorbed are appointed as Conductors until this date, shall not be disturbed or adversely affected in any manner."

The operative portion of the order of the Division Bench enabled the petitioners in those petitions to claim absorption in the service of the Corporation without disturbing the positions of conductors who had been appointed out-of turn in preference to the claims of the petitioners under the then existing seniority list. Those petitions were disposed of on 10-10-1985.

7. In the meanwhile, on 23-9-1985 Writ Petitions Nos. 15017 to 15060 of 1985 had been filed by the badli conductors employed in the Hassan Division of the Corporation.

8. The second batch of Writ Petitions, namely, Writ Petitions Nos. 19782 to 19840 of 1985 was filed on 17-12-1985. These petitions were filed by Badli Conductors of Bangalore Division.

9. The third batch of Writ Petitions was filed on 30-12-1985 in Writ Petitions Nos. 20349 to 20353 of 1985 by conductors hailing from the Gulbarga Division.

10. The fourth batch of Writ Petitions again from the Bangalore Division was filed on 30-12-1985 in Writ Petitions Nos. 35 to 71 of 1986.

11. All these Writ Petitions are now disposed of by this common order.

12. It should at once be noticed that in these Writ Petitions the prayers of the petitioners are that they should be absorbed in the services of Corporation in accordance with the seniority list prepared by the Corporation as per Annexure "F" and that the Corporation should not discriminate them in the matter of absorption and they should comply with the seniority list as per Clause 4 of the Settlement dated 16-2-1978. They have also prayed for a Writ in the nature of Mandamus declaring that the seniority list is arbitrary, discriminatory and in violation of Article 14 read with Article 16 of the Constitution of India.

13. It could thus be seen that the prayer of these petitioners, in these Writ Petitions is not confined to the reliefs that the Badli conductors obtained from the Division Bench in the Writ Petitions Nos. 17721 and 17722 of 1983. However, it may be noticed that in those Writ Petitions also the workmen who are petitioners

therein had sought for reliefs not only under Article 14 and Article 16 of the Constitution of India but also under the provisions of Industrial Disputes Act and the Settlement of the year 1978. But, in the course of the arguments, before the Division Bench, the learned Counsel for the petitioners gave up all other reliefs claimed in those petitions and confined his argument to only one relief, i.e. a Writ of Mandamus directing the Corporation to absorb the petitioners in accordance with the Seniority list of Badli conductors who had completed the qualifying period of service and who had acquired the right of absorption under Settlement dated 16-2-1978.

14. The Division Bench accepted the contention urged on behalf of the petitioners therein and granted the relief on the ground that the act of the Corporation in refusing to absorb the petitioners as per their turn in the seniority list was violative of Articles 14 and 16 of the Constitution. However, in the course of the arguments, a contention was raised by the learned Counsel for the Corporation that the absorption of the petitioners therein might result in the possibility of many others coming before the Court for similar reliefs. On that contention the Division Bench observed as follows :

"We are conscious of the fact that even for enforcement of fundamental rights, the aggrieved persons must come to the Court for relief within a reasonable time. The petitioners have approached this Court nearly three years after the Circular came to be issued. It would be most unreasonable to entertain similar cases filed hereafter. Such cases cannot be entertained having regard to the inordinate delay and laches. We, therefore, make it clear that this decision which we are rendering, shall not be a precedent for entertaining any further Writ Petitions for enforcing the same list. This, we think, would take care of the problems posed by Sri Chandrasekhar. We therefore, make it clear that as we are interfering in all these cases, after such a long lapse of time, the question of entertaining similar Writ Petitions for similar reliefs would not and should not arise hereafter."

It is not in dispute that the petitioners in the aforesaid Writ Petitions were absorbed by the Corporation pursuant to the declaration made by the Division Bench in those petitions.

15. The Corporation has filed its return in all these cases and has taken the following contentions :

(i) That the settlement on which reliance is placed by the petitioners is a private settlement which was not arrived at in the course of conciliation proceedings and therefore it binds only those employees who are members of any one of the Trade Unions which are members of either Karnataka State Road Transport Corporation Employees Federation, Bangalore, or Mysore State Road Transport Employees Federation, Bangalore. Therefore the petitioners who are not members of the said Trade Unions are not entitled to invoke the benefits of Clause (4) of the Settlement.

(ii) The Settlement is between the Corporation and its employees and under Article 226 of the Constitution of India, the petitioners are not entitled to seek a specific enforcement of the alleged contract between the parties. The proper remedy of the petitioners is to approach the proper authority under the Industrial Disputes Act. In that view of the matter, the Writ Petitions are not maintainable.

(iii) The petitioners who claim absorptions as conductors are directly dealing with the public money and therefore hold a position of absolute Trust. A close scrutiny of these petitioners' records conclusively establish that none of these persons are suitable for absorption as conductors and for that reason, in bona fide exercise of the power vested in the Corporation the Circular No. 403 has been replaced by Circular No. 425 and accordingly the petitioners have been removed from the list of Badli Conductors. That apart, the Corporation having lost faith in the petitioners it is undesirable and unreasonable to employ them as conductors directly dealing with public money. It would be detrimental to the interest of the Corporation to employ these men for any further period since their record of service has established that they are unsuitable for a formal appointment on probation. That the petitioners have no enforceable right much less a right which raises a proper ground to entertain the petitions under Article 226 of the Constitution of India. That case is otherwise untenable, lacks in bona fides and it is highly injurious to the interest of Corporation.

(iv) Dealing with the submission of the petitioners based on the judgment of this Court in Writ Petition No. 19570 of 1980, the Corporation maintained that in Writ Appeals Nos 426 to 445 of 1981 (K.S.R.T.C. -v.- S. Narayana and ors.), the Division Bench has set aside my order and therefore no reliance can be placed by the petitioners on the said Judgment. In view of the memo filed by the Corporation before the Division Bench, the Corporation has absorbed all the 20 persons, who are parties to the proceedings before the Division Bench but such absorption could not be given to these Writ Petitioners to enforce their claims against the Corporation. The Corporation also relied on the observation made by the Division Bench, which I have already excerpted in Para 14 above. On the basis of that observation it was contended that there was a complete embargo to entertain these Petitions and in view of that embargo these Petitions are liable to be dismissed.

(v) That some of the Writ Petitions allowed by this Court challenging the order of termination on the ground of non-compliance of the provisions of Section 25-F of the I.D. Act are pending consideration before the Supreme Court in the SLP filed by the Corporation and therefore any relief that could be granted by this Court would be subject to review if the Supreme Court were to allow the appeal now pending before it ; that the Petitions are not only barred by principles of res judicata but also by the principle of Estoppel by conduct. No equitable or promisory estoppel arise in these cases.

(vi) As regards the case of the petitioners based on Articles 14 and 16 of the Constitution of India, the Corporation contended that though the petitioners

belonged to the same class as those who were in the list prepared and then absorbed, they having failed to approach this Court within a reasonable time their right if any to claim absorption had lapsed in view of the fact that they have approached this after an inordinate delay of about 5 years. The reason given by the petitioners for such inordinate delays namely that they were in financial difficulties and had to make financial arrangement is not such a reason that could be advanced so as to condone the delay.

(vii) The Corporation also maintained that the law laid down by the Supreme Court of India in *I.P. Yadav -v.- Union of India* (1985 (1) SCIR 703) is not applicable to the facts of these cases.

16. It could thus be seen from the return filed by the Corporation that it has resisted the claim of the petitioners mainly on three grounds. Firstly, the petitions could not be entertained by this Court in view of the ruling of the Division Bench of this Court in the earlier batch of Writ Petitions placing an embargo on the filing of further petitions by Badli Conductors whose names are found in the seniority list ; secondly, the petitioners having approached this Court after a delay of nearly 5 years, they are not entitled to any reliefs; and thirdly that the petitioner's claim relate to enforcement of a Settlement between the parties and that Settlement could be the subject matter of adjudication before the proper authority under the Industrial Disputes Act and not before this Court under Article 226 of the Constitution of India.

17. I will first take up the plea raised by the learned Counsel for the Corporation on the question of jurisdiction. No doubt the foundation of the claim of the petitioners is the Settlement of 1978 and more particularly Clause (4) of the Settlement, read with Circular letter produced as Annexure "C". It is common ground that the Settlement is a private Settlement and therefore it binds only the parties to the dispute. The parties to the Settlement are the General Manager of the Corporation and the K.S.R.T.C. Employees Federation and the M.S.R.T. Employees Federation. The petitioners in these petitions claim to be the members of the K.S.R.T.C. Employees Federation. Therefore, they were also parties to the Settlement and they are entitled to claim the benefits of clause (4) of the said Settlement. That apart, the Corporation being admittedly an authority within the meaning of Article 12 of the Constitution, Articles 14 & 16 of the Constitution of India are applicable to the service conditions of the petitioners under the Corporation and Clause 4(I)(c) is one of the conditions of service which came into existence under the Settlement arrived at in the year 1978. Therefore, it is open to the petitioners in a proceeding under Article 226 of the Constitution of India, to enforce their right against Corporation on the ground that refusal to absorb them in service of the Corporation would be violative of Articles 14 and 16 of the Constitution. That was the relief sought for by the petitioners before the Division Bench and that relief had been granted by the Division Bench. Therefore, it is futile for the Corporation to contend that this Court has no jurisdiction to entertain the petition on the ground that the

petitioners have an alternative remedy by raising an Industrial Dispute. As observed by the Division Bench, the petitioners are not enforcing the terms of the settlement but they are seeking a Writ of Mandamus against the Corporation for implementing the seniority list.

18. Sri Shivashankar Bhat has relied on the decision of the Division Bench of this Court in *S. Dasarathy -v.- Mysore Electricity Board* 1973 (1) Mys. L.J. 81. The point that came up for consideration in that case was in respect of the enforcement of an award of the Industrial Tribunal. This Court ruled that, if one of the terms of the award had not been implemented, the remedy is to seek relief u/s 29 of the Act or to move the State Government to make a reference u/s 36A of the Act and therefore an application under Article 226 of the Constitution for enforcement of the award is not maintainable. That case is of no assistance to the Corporation since this Court is dealing with the action of the authority, not an award of the Tribunal. The 2nd decision on the question of jurisdiction is *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, That was an award wherein the applicability of Articles 14 and 16 of the Constitution did not come up for consideration and therefore any observation made by the Supreme Court as to the alternative remedy available to the petitioners therein by raising an Industrial Dispute under the Industrial Disputes Act would not be an authority for the proposition that on the facts of this case, this Court has no jurisdiction to entertain the petition.

19. The second contention of the Corporation regarding delay requires serious consideration. So far as the first batch of Writ Petitions filed on 23-9-1985 which was pending when the Division Bench made the order in the earlier batch of cases, the very same plea was rejected by the Division Bench for the reasons stated in para 6 (iv) above. The same reasoning applies to the petitioners in the first batch of petitions. The petitioners in the other petitions have averred :

"that they are badli conductors and drivers whose names were found in the seniority list and they are without employment and they were under the bona fide impression that their cases will be considered and further they were in financial difficulties. Since the petitioners belong to lower echelons of service and the financial difficulties are the main factors and further no action has been taken by the Corporation in implementing the list either fully or partly, are the main factors which are to be taken into consideration in entertaining the Writ Petitions. Therefore the petitioners submit that absolutely there is no delay on the part of the petitioners in approaching this Hon"ble Court.

It is submitted that the order of the Learned Single Judge is general in nature and therefore the entire list should have been operated by the Corporation. Under these circumstances the petitioner submit that the Corporation must apply its mind on the decision of the Learned Single Judge in implementing the seniority list regarding the matter of absorption of petitioners."

20. It is well settled now in the light of the decision of the Supreme Court in

Inder Pal Yadav and Others Vs. Union of India (UOI) and Others, that the rule of delay must yield to the rule of discrimination. Modifying the scheme prepared by the Railway Ministry for absorption of its casual labour on a temporary basis, the Supreme Court observed :

"The Scheme envisages that it would be applicable to casual Labour on projects who were in service as on January 1, 1984, The choice of this date does not commend to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from fortuitous Court's order. To illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some other were not so fortunate, Those in respect of whom the court granted interim relief by stay/suspension of the order of retrenchment, they would be treated in service on 1st January, 1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the Scheme. There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to Court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to Court which in case of same may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the Court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobsons's choice. Therefore, those who could not come to the Court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court."

In the light of these observations of the Supreme Court it is not open to this Court to deny the reliefs claimed by the petitioners on the ground of delay or laches. There is one more ground which the petitioners could have made out successfully by pleading they did not have legal aid till they approached this Court. They are all Ex Badli conductors and after the settlement was entered into in the year 1978, most of them would have left for their respective villages hoping to be absorbed by the Corporation when their turn came. Therefore, it would have been difficult for them to know the developments in this Court regarding the first batch of the petitions disposed of by the Division Bench.

20(a). However Mr. Shivashankar Bhat relied on the decision of the Supreme Court in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, . The Supreme Court observed thus :

"Utmost expedition is the sine qua non for such claims. The party aggrieved must explain satisfactorily all semblance of delay. No period can be indicated which may be regarded as the ultimate limit of action for that would be taking upon itself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the

matter is one entirely of discretion. In India each case will have to be considered on its own facts. Avoidable delay affecting the merits of the claim, will disentitle a party to invoke the extra-ordinary jurisdiction.

The question is one of discretion for this Court to follow from case to case. This Court need not necessarily give the total time to the litigant to move this Court under Article 42, even though he may be within statutory limitation. Similarly in a suitable case this Court may entertain a Petition even after limitation. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose."

21. These principles are well settled. The remedy under Articles 32 and 226 of the Constitution is a discretionary remedy and it has to be examined on the facts and circumstances of each case. The petitioners have explained the delay in approaching this Court and on similar facts a Division Bench of this Court in an earlier batch of Writ Petitions had condoned the delay and granted the relief to persons who were similarly placed. In the circumstances, there are no fresh grounds for the Corporation in these cases to contend that the petitioners are guilty of laches and, therefore, they are not entitled to any relief under Article 14 of the Constitution. The Supreme Court in *Shri Satya Brata Ghose Vs. Mr. Arif Ali, District Magistrate, Sibasagar, Jorhat and Others*, while dealing with the very contention that is raised in these cases, viz., laches and delay in filing the petitions, has observed as follows :

"We do not think this contention should prevail with us. In the first place, it must be remembered that the rule which say that the Court may not inquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition.

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Here the petitioners were informed by the Commissioner, Aurangabad Division, by his letter dated 18th October, 1960 and also by the then Secretary of the Revenue Department in January 1961 that the rules of recruitment to the posts of Deputy Collector in the reorganised State of Bombay had not yet been unified, and that the petitioners continued to be governed by the rules of Ex-Hyderabad State and the Rules of 30th July, 1959 had no application to them. The petitioners were, therefore, justified in proceeding on the assumption that there were no unified rules of recruitment to the posts of Deputy Collector and the promotions that were being made by the State Government were only provisional to be regularised when unified rules of recruitment were made. It was only when the Petition in Kapoor's case was decided by the Bombay High Court that the petitioners came to know that it was the case of the State Government in that petition - and that case was accepted by the Bombay High Court - that the Rules of 30th July, 1959 were the unified rules of recruitment to the posts of Deputy

Collector applicable throughout the recognised State of Bombay. The petitioners thereafter did not lose any time in filing the present petition. Moreover, what is challenged in the petition is the validity of the procedure for making promotions to the posts of Deputy Collector - whether it is violative of the equal opportunity clause - and since this procedure is not a thing of the past, but is still being followed by the State Government, it is but desirable that its constitutionality should be adjudged when the question has come before the Court at the instance of parties properly aggrieved by it. It may also be noted that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to the others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable expiation for the delay."

In the circumstances it will be unjust to contend that the petitioners are not entitled to the reliefs because they approached this Court nearly after 5 years.

22. That takes me to the last point urged by the Corporation. Sri Shivashankar Bhat contended and in my view justifiably so, upto a certain extent that in view of the observations made by the Division Bench placing an embargo on the filing of the Writ Petitions against Corporation, these Petitions should be placed before the Division Bench so that it would be open to the Corporation to urge this point before Division Bench. He relied on a decision of this Court and the decision of the Supreme Court on the propriety of this Court to deal with these matters in view of the observations of the Division Bench in the earlier batch of cases. In *Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others*, the Supreme Court, while considering the propriety of a Judge of the Division Bench doubting the correctness of the observed view expressed in the Judgment by his colleague, observed as follows:

"Having regard to the substantial nature and general importance of the question and the repercussions that would inevitably be produced by the recognition of the right to demand revaluation in public examinations or every kind conducted by Universities, School Education Boards and even bodies like the Union and State Public Service Commission, it would have been much more appropriate if the Learned Judge (Deshpande, .1.) had independently discussed the question in all its aspects in accordance with his own fight or referred the matter to a larger Bench or to a third Judge as the case may be if he felt that the view propounded in the judgment prepared by his colleague was of doubtful correctness. However that may be, we have already held that the reasons stated by the Division Bench in its Judgment in the first group of cases for holding that Clause (3) of Regn. 104 insofar as it prohibits disclosure and inspection of answer books and treating them as confidential documents is ultra vires on the ground of its being in excess of the regulation-making power of the Board and is also void on the ground of unreasonableness are all incorrect and unsustainable,"

23. It may be seen from the facts of this case that one of the learned Judges

who constituted the Division Bench doubted the correctness of the decision rendered by his colleague and written a separate Judgment expressing his doubt and reservation on the correctness of the conclusions reached by his colleague. But, he preferred to agree with the Judgment prepared by his colleague. Having agreed with the Judgment of his learned colleague the reservations or doubt expressed by him did not form part of the operative portion of the Judgment and in that connection the Supreme Court made the aforesaid observation. In *Shri Bhagwan and Another Vs. Ram Chand and Another*, the Supreme Court observed thus :

"It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a Learned Single Judge hearing a matter is inclined to take the view that the earlier decision of the High Court, whether of a Division Bench or of a Single Judge, need to be re-considered, "he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

In view of these observations, certain norms in the interest of judicial propriety and decorum have to be followed by the High Courts, when a Single Judge is inclined to differ from the earlier view of a Division Bench or of another Single Judge. But, in the case before me, the point for consideration is not whether the observations made by the Division Bench are right or wrong but whether the observations made by the Division Bench would operate as a precedent for not granting reliefs claimed by the petitioners.

24. The petitioners herein were not parties to the proceedings before the Division Bench, But the facts in these cases are similar to the facts in the earlier round of litigation between the Corporation and other badli conductors. One set of petitions filed on 23-9-1985 was pending in this Court when the Division Bench rendered its Judgment on 10-10-1985 in the earlier batch of cases and therefore the observations made by the Division Bench placing an embargo on Writ Petitions by Ex badli conductors were not applicable to the petitioners in Writ Petitions No. 15017 to 15060 of 1985. The other petitions were filed on 17-12-1985 and 30-12-1985, i.e., hardly about 2 months after the Judgment of the Division Bench in the earlier batch of Writ Petitions. On these undisputed facts, could it be said that the observations made by the Division Bench placed an embargo on this Court to consider the petitions on merits. That will necessarily take me to the question "What is a binding precedent in the Judgment of the Supreme Court or of the Division Bench of this Court?" The ratio decidendi in the cases before the Division Bench is applicable to the facts of this case. What the ratio in the decision of the Division Bench has to be ascertained from the facts in that case and the reasons given by the Division Bench for granting the relief to the badli conductors in the earlier batch of Writ Petitions. As

noticed earlier, the petitioners in those Writ Petition"s gave up their claims to other reliefs and confined their case to the issue of Mandamus to the Corporation to absorb them in accordance with the Seniority List of Conductors. Therefore, the other reliefs which those Petitioners had given up in those Writ Petitions were not considered by the Division Bench. However, those reliefs have been claimed by the petitioners in the present batch of petitions before me along with the relief of absorption under Articles 14 and 16 of the Constitution. Therefore, in these cases before me could it be said that the petitioners" claims are identical to the claims by the badli conductors in the earlier Writ Petitions. It is open to this Court to examine the claims of the petitioners with reference to the terms of Clause 4 of the settlement and the circular letter produced as Annexure "D," It is also open to this Court to examine the claim of petitioners u/s 25-F of the Act. Therefore, it cannot be said that the facts in these batches of Writ Petitions are identical to the facts in the earlier batch of Writ Petitions. Consequently the observations made by the Division Bench in the earlier cases would not be *proprio vigore* applicable to the decision to be rendered by this Court on the merits of the claims of these petitioners.

25. In this connection it would be useful to refer to the essay on the Ratio Decidendi of a Case and the Doctrine of Binding Precedent by A.W.B. Simpson published in "Oxford Essays in Jurisprudence" (First Series) edited by A.G. Guest. He has referred to the views of the well known jurist Sri Carleton Allen who had observed in his book "Law in the Making" :

"We say that he (a judge) is bound by the decisions of higher Courts ; and so he undoubtedly is. But the superior Court does not impose fetters upon him ; he places the fetters on his own hands. He has to decide whether the case cited to him is truly apposite to the circumstances in question and whether it accurately embodies the principle which he is seeking."

He has further referred to the observation of Dr. Goodhart, well known editor of Law Quarterly Journal :

"When a vacant space has been closed by a precedent, then no further development is possible". Finally we may note the tendency in some writers to solve the apparent conflict between the growth of the common law and the doctrine of binding precedent by treating the whole doctrine of precedent as "a fiction", a "myth", or a "device" which conceals legal change and the exercise of judicial discretion."

Defining the ratio decidendi of a case, he has observed :

" "In defining the ratio decidendi of a case, then, we must seek for a definition which will serve as an answer to the question "What am I to look for ?" For purely legal purposes we may take it for granted that we should look in cases for a rule or rules of some kind or other. Furthermore the term ratio decidendi is normally used to refer to some binding rule (or rules) which is to be found in decided cases - some rule which a later Court (appropriately placed in the

hierarchy) cannot generally question. Bearing all this in mind, a possible defining technique is to elucidate the judicial power to make binding rules, and to tell our questioner to seek for a rule (or rules) made within the ambit of this power - such a rule (or rules) will constitute the ratio of the case. This method of definition will have an obvious advantage, for it will be closely related to the purpose for which the conception of the ratio decidendi has been developed. For the conception only serves to point the distinction between the rule-making of judges which is intra vires a power to make binding rules, and the rule-making of judges which is ultra vires this power. Furthermore the method suggested closely resembles the normal defining technique adopted to isolate the product of other law-making activities - for example, Acts of Parliament. And finally it leads to a very orthodox and unsnarling result, for it is not in the least a novel technique. What then are the bounds upon the power of rule-making which is vested in judges? The most important limitation is to be found in the principle which denies them the power to make binding rules except when those rules are relevant to the determination of actual litigation before the Court in which they are empowered to sit. Historically this limitation dates from the seventeenth century, when it became recognised that a Court ought not to give official opinions upon hypothetical problems - a convention which has become refined and elaborated since then. As this convention came to be accepted an obvious corollary develops, there must be some principle which has the effect of reducing the importance of enunciations of the law which have in fact been delivered by judges - either accidentally or deliberately - upon hypothetical issues. Thus the conception of obiter dicta grows up; obiter dicta are in some sense ultra vires enunciations of law. The distinction between such dicta and the elusive ratio decidendi is in essence a distinction between relevance and irrelevance, and much of the difficulty in elucidating the conception of the ratio decidendi arises from attempts to give a precise meaning to relevance in this context. Without some criterion of relevance the judicial power of rule-making seems to have no limit, and in a country wedded to the conception of the rule of law there is naturally a desire to state with precision where the limit lies."

26. In the earlier batch of cases, it should be noted that the Division Bench made the observations placing an embargo on further petitions in view of the hypothetical submissions made by the Corporation that the absorption of any more conductors may not be conducive to the proper management of the affairs of the Corporation which is answerable to the public. There was no pleading in the Writ Petitions on this specific issue and the Judgment also does not show that the parties were on issue on this point. In the circumstances, it cannot be said that the observations of the Division Bench in its Judgment would be binding on this Court. The ratio decidendi of that Judgment is found in para 8 of the Judgment excerpted in para 6 above. However, while considering the apprehension of the Corporation regarding the possibility of many more petitions flooding in the High Court, the Division Bench observed in para 9 of the Judgment thus :

"We are conscious of the fact that even for enforcement of fundamental rights, the aggrieved persons must come to the Court for relief within a reasonable time. The petitioners have approached this Court nearly three years after the Circular came to be issued. It would be most unreasonable to entertain similar cases filed hereafter. Such cases cannot be entertained having regard to the inordinate delay and laches. We therefore make it clear that this decision which we are rendering, shall not be a precedent for entertaining any further Writ Petitions for enforcing the same list. This, we think, would take care of the problems posed by Sri Chandrasekhar. We therefore make it clear that as we are interfering in all these cases, after such a long lapse of time, the question of entertaining similar Writ Petitions for similar reliefs would not and should not arise hereafter."

27. I have given my anxious consideration to the plea of the Corporation since a question touching judicial propriety arises in the light of the submission made by its learned Counsel. I am also aware of the observations made by the House of Lords (Lord Scarman), while reversing the Judgment of the Court of Appeal in *Duport Steels Ltd. -v.-Sirs* (1980) I.C.R. 161. The House of Lords dealing with the Judgment of the Court of Appeal which had consistently refused to follow its ruling on the interpretation of the provisions of the Trade Union and Labour Relations Act observed as follows :

"-----My Lords, this appeal raises two specific questions as to the interpretation of a statute, the Trade Union and Labour Relations Act 1974, as amended. But below the surface of the legal argument lurk some profound questions as to the proper relationship in our society between the Courts, the Government, and Parliament. The technical question of law pose (or should pose) no problems. The more fundamental questions are, however, very disturbing ; nevertheless it is upon my answer to them that I would allow the appeal. My basic criticism of all three judgments in the Court of Appeal is that in their desire to do justice the Court failed to do justice according to law. When one is considering law in the hands of the judges, law means the body of rules and guidelines within which society requires its judges to administer justice. Legal systems differ in the width of the discretionary power granted to judges ; but in developed societies limits are invariably set, beyond which the judges may not go. Justice in such societies is not left to the unguided, even if experienced, sage sitting under the spreading oak tree.

In our society the judges have in some aspects of their work a discretionary power to do justice so wide that they may be regarded as law-makers. The common law and equity, both of them in essence systems of private law, are fields where, subject to the increasing intrusion of statute law, society has been content to allow the judges to formulate and develop the law. The judges, even in this, their very own field of creative endeavour, have accepted, in the interests of certainty, the self denying ordinance of "stare decisis", the doctrine of binding precedent ; and no doubt this judicially imposed limitation on judicial law-making

has helped to maintain confidence in the certainty and evenhandedness of the law.

But in the field of statute law the judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes, and unmakes, the law ; the judge's duty is to interpret and to apply the law, not to change it to meet the judge's idea of what justice requires. Interpretation does, of course, imply in the interpreter a power of choice where differing constructions are possible. But our law requires the judge to choose the construction which in his judgment best meets the legislative purpose of the enactment. If the result be unjust but inevitable, the judge may say so and invite Parliament to reconsider its provision. But he must not deny the statute. Unpalatable statute law may not be disregarded or rejected, merely because it is unpalatable. Only if a just result can be achieved without violating the legislative purpose of the statute may the judge select the construction which best suits his idea of what justice requires. Further, in our system the rule "stare decisis" applies as firmly to statute law as it does to the formulation of common law and equitable principles. And the keystone of "stare decisis" is loyalty throughout the system to the decision of the Court of Appeal and this House. The Court of Appeal may not overrule a House of Lords decision : and only in the exceptional circumstances set out in the practice statement of July 1, 1966 (Practice Statement (Judicial Precedent) 1 W.L.R. 1234), will this House refer to follow its own previous decisions.

Within these limits, which cannot be said in a free society possessing elective legislative institutions to be narrow or constrained, judges, as a remarkable judicial career of Lord Denning himself shows, have a genuine creative role. Great judges are in their different ways judicial activists. But the constitution's separation of powers or more accurately functions, must be observed if judicial independence is not to be put at risk. For, if people and Parliament come to think that the judicial power is to be confined by nothing other than the Judge's sense of what is right (or, as Selden put it, by the length of the Chancellor's foot), confidence in the judicial system will be replaced by fear of it becoming uncertain and arbitrary in its application. Society will then be ready for Parliament to cut the power of the judges. Their power to do justice will become more restricted by law than it need be, or is today,"

28. After giving my anxious consideration, I am of the view that no judicial impropriety will be committed by entertaining these petitions notwithstanding the observations of the Division Bench in the earlier batch of Writ Petitions. The Supreme Court very recently had to consider the binding nature of a precedent under Article 141 of the Constitution. Under our Constitution, Article 141 declares that the law made by the Supreme Court is binding on all other Courts and inferior Tribunals. In *Prakash Amichand Shah Vs. State of Gujarat and Others*, the Supreme Court in para 26 has ruled as follows :

"Before embarking upon the examination of these decisions we should bear in

mind that what is under consideration is not a statute or a legislation but a decision of the Court. A decision ordinarily is a decision on the case before the Court while the principle underlying the decision should be binding as a precedent in a case which comes up for decision subsequently. Hence while applying the decision to a later case, the Court which is dealing with it should carefully try to ascertain the true principle laid down by the previous decision. A decision often takes its colour from the questions involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation."

That was a case where the Supreme Court was considering the effect of its earlier decision as a binding precedent. Therefore, it is permissible for this Court to ascertain the ratio of the decision of the Division Bench and to grant relief to the petitioners, notwithstanding, with great respect to the observations made by the Division Bench in Para 9 of its Judgment, since without those observations the Division Bench could have granted the relief in the earlier batch of Writ Petitions.

29. In this view of the matter, I am satisfied that no judicial impropriety will be committed by this Court by not referring these petitions to a Division Bench.

30. On the facts of these cases Sri Shivashankar Bhat submitted that the Corporation is in a vulnerable position and, if this Court were to direct the Corporation to absorb all the Badli employees into service as and when regular vacancies arise, his apprehension is that all these petitioners who were removed from the list of Badli employees on account of their unsatisfactory performance will come back to service but it would be highly unsafe to take them on rolls and entrust them with cash collections. But, Clause 4(I)(d) itself confers a reasonable check on these conductors. That is to say, the work of these employees will be closely checked by a superior authority and if they are not found fit during the probationary period of 6 months, the Corporation can take action against them in accordance with law. The Corporation has also reserved its right to take action against them on the pending default cases if any. That means to say that it is still open to the Corporation as and when it absorbs these petitioners against regular vacancies to examine their personal files and find out whether disciplinary action could be taken against them for default cases pending against them. When these safeguards are there for the Corporation to ensure screening of these conductors, the loss of confidence expressed by the learned Counsel for the Corporation does not appear to be well founded.

31. The Circular (Annexure "C") was issued by the Corporation by way of clarification to the terms of Clause 4 of the 1978 Settlement. By that clarification, even those persons who were not in the list of Badlis would also be considered for absorption keeping in mind the "spirit of agreement". The clarification to the Settlement issued by the Corporation makes it abundantly clear that Badli workers whose names are not in the Badli List as on the date of the Settlement would also be entitled to the benefit of absorption provided they had completed

the minimum requirement of 180 days of continuous service. Therefore, it is open to the Corporation to examine in each case whether the petitioners satisfy the requirement of 180 days of "continuous service" as defined u/s 25-B of the Act and only in such cases the Corporation would be obliged to absorb the petitioners as and when regular vacancies arise.

32. The petitioners having given up their claim for seniority against the persons who had been appointed so far pending disposal of these petitions, it is recorded that the petitioners shall not claim seniority over the conductors who had been already appointed during the pendency of these petitions. Further, if it is found that any of the petitioners had been removed from service after holding a proper enquiry and the decision of the enquiry authority had become final, it is open to the Corporation not to consider those cases for the purpose of absorption. However, it is made clear that, if there are any cases of termination which are violative of Section 25-F of the Act, the Corporation will have to consider their cases on the lines of other badlis who are covered by Clause 4(I)(d) of the settlement.

33. These petitions are accordingly allowed and there shall be a direction to absorb the petitioners as and when permanent vacancies arise in the Corporation subject to my observations in paras 30 to 32 above.

The Corporation shall implement the directions of this Court within 3 months from the date of receipt of this order.