

(1995) 12 AP CK 0029

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 1202 and 1203 of 1995

C. Balaiah and Others

APPELLANT

Vs

Tirumala Tirupati Devasthanams and Others

RESPONDENT

Date of Decision : 07-12-1995

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 226, 227
Tirumala Tirupati Devasthanams Office holders and Servants (other than Hereditary Office Holders) Recruitment Rules — Rule 9

Citation : (1996) 2 ALT 432(1)

Hon'ble Judges : P.S. Mishra, C.J.;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : E. Manohar and Korrapati Subba Rao, for the Appellant; K. Annapurna Devi for Respondent No. 1, Govt. Pleader for Endowments for Respondent No. 2, A. Panduranga Rao, for Respondents 3 to 9 and Ramesh Ranganatham, for the Respondent

Final Decision : Dismissed

Judgement

P.S. Mishra, C.J.—These appeals under Clause 15 of the Letters Patent of the Court have arisen from a common Judgment in Writ Petition Nos. 4967 and 10492 of 1992 being Proceedings under Article 226 of the Constitution of India. Writ Petitioner -appellants (in W.A.No. 1202 of 1995) have sought for a direction to the respondents in the writ petition to appoint them as Assistant Engineers (Electrical) in accordance with Tirumala Tirupathi Devasthanams Service Rules, since they have been working as Line Inspectors and were eligible for such appointment by promotion. Writ petitioner - appellants (in Writ Appeal No. 1203 of 1995) have sought for an appropriate Writ to declare G.O.Ms. No. 375, Revenue (End. III) Department, dated 26-4-1994, as illegal and unconstitutional and accordingly to set aside the consequential order in Roc. No. TLI/38679/92, dated 4-5-1994, issued by the second respondent appointing the third respondent in the writ petition as Assistant Engineer (Electrical).

2. Writ Petitioner-appellants, it is not in dispute, were appointed as NMRs since

1986-87. They fulfilled the requisite qualifications and worked in the work charged establishment. According to them, they possessed/possess the qualifying period of five years of service as Line Inspectors, as ever since their appointment, they have been working as Line Inspectors. They first joined Tirumala Tirupathi Devasthanams" (for short "Devasthanam service as skilled Work Inspectors and rendered service for more than five years. They were, however, treated as casual workmen on the consolidated pay/daily wages by the T.T.D. They were absorbed in the year 1984 as NMRs/casual labour pursuant to G.O.Ms.No. 390, Revenue (End. III) Department, dated 6-5-1991 and absorbed in the regular service with effect from 1-8-1991 in the time scale of pay of Rs. 810 - 1420 in the cadre of Work Inspectors (Elec.) called Line Inspectors because of the nature of their work. Workmen on the civil side, who were similarly appointed, were absorbed and regularised as Work Inspectors (Civil) in the same scale of pay. The regularised Work Inspectors (Civil) possessing LCE/LME qualifications were appointed as Draughtsman Grade-II, the next higher post by Memo dated 27-9-1991 treating their past service as that in regular work charged establishment as per the provision in the Tirumala Tirupathi Devasthanams Employees Service Rules, issued in G.O.Ms.No. 1060, Revenue (End. I) Department, dated 24-10-1989. Devasthanam, however, took no steps to appoint the writ petitioners - appellants as Assistant Engineers (Electrical), though there were several vacancies. They (writ petitioners -appellants) filed Writ Petition No. 15506 of 1991 in this Court for issuing a Writ directing the respondents to extend the benefit of appointment to them. The said writ petition was disposed of with the observation that they (petitioners -appellants) could move the Devasthanam for the grant of the relief which they were seeking in the writ petition. After the disposal of the writ petition, petitioners-appellants made a representation to the Devasthanam on 11-2-1992 to consider their claim for appointment as Assistant Engineers (Electrical). The Devasthanam - first respondent, however, it is alleged, without considering their claim for appointment by promotion, asked them to appear in a written examination to be held on 10-4-1992 for the recruitment to the post of Assistant Engineer (Electrical).

3. It appears a petition to review the order in Writ Petition No. 4697 of 1992 was also made and other applications were filed for one or the other reason. When persons, who were not holding the post of Line Inspectors but were having the qualifications for the post of Assistant Engineer (Electrical) and working from before in other departments of the Devasthanam, were appointed, Writ Petition No. 10492 of 1994 was filed. All applications in respect of the appointment of Assistant Engineers and the claims of the writ petitioner-appellants, however, were heard together and have been disposed of by a common order.

4. Devasthanams" case, as pleaded in the counter affidavit, however, is that writ petitioner-appellants were engaged as skilled workmen on daily wage basis and have been working as such from the dates as noted below against each i.e.,

C. Balaiah 25-1-1986 B. Bhaskarudu 1-4-1986 M.S. Harikumar 7-2-1987 A. Venkata Reddy 7-2-1987 R. Eswar Reddy 7-2-1987 A. Sivasankar 7-2-1987 S.N. Jayakumar 7-2-1987 T. Gurukumar 12-2-1987 D. Parthasarathy 16-2-1987 Besides the above, two more persons, namely, N. Babu and M. Chandrasekhar were also working as NMR Work Inspectors (Electrical) from 2-3-1987 and 26-12-1987 respectively and all these 11 persons were the writ petitioners in Writ Petition No. 15506 of 1991. They all were absorbed as Work Inspectors (Elec.) in pursuance of G.O.Ms.No. 390, Revenue (Endt. III) Department, dated 6-5-1991, with effect from 1-8-1991 along with several hundreds of persons who were working in various departments of T.T.D. on NMR/Casual Labour/consolidated pay /daily wage basis etc., during the period from 1-4-1984 to 31-3-1988. Writ petitioner-appellants, according to the Devasthanam, were absorbed as such with effect from 1-8-1991 in the scale of pay of Rs. 810 -1420. Subsequently, the cases of the Work Inspectors possessing the qualifications of LCE/LME diploma were considered for appointment as Draughtsman Grade II in the scale of pay of Rs. 1010-1800 as per the rules in G.O.Ms.No. 1060, dated 24-10-1989 from work charged establishment. It is asserted, however, on behalf of the Devasthanam that there were only five posts of Assistant Engineers (Electrical) as on 6-9-1991. Three of them were carried forward backlog vacancies in communal rotation. Out of these three, two were reserved for Scheduled Castes and one for Scheduled Tribes and out of the remaining two, as per rotation, one was reserved for Backward Classes and the other for general category. These five posts of Assistant Engineers (Electrical) were notified to the Employment Exchange to sponsor candidates as per the above categories, vide communication dated 6-9-1991. Thereon Writ Petition No. 15506 of 1991 was filed by the writ petitioner - appellants and other two Inspectors, which was disposed of on 3-12-1991. The writ petition was disposed of with the observation that in the absence of a request by the petitioners for promotion similar to those granted to their counter parts on the civil side by order, dated 27-9-1991, they cannot ordinarily approach the Court for the promotion which they sought. If a request for similar promotion was made and the same was unreasonably rejected or unduly delayed, it was observed, it was open for them to move the Court, According to Devasthanam, writ petitioner-appellants made their respective representations. Devasthanam, however, found that they were not originally sponsored by the Employment Exchange in their initial appointment and the posts notified were reserved for the categories of communal rotation and there were several Line Inspectors working in Electrical Department, who were originally sponsored by Employment Exchange and appointed as Line Inspectors in the scale of pay of Rs. 950 -1670 prior to the absorption of the writ petitioners-appellants as Line Inspectors. There were several others who had rendered more than ten years of service in other wings of Devasthanam on regular basis and possessed L.E.D. & L.E.C.E. the requisite qualifications to hold the post of Assistant Engineer (Electrical) and they were also making representations repeatedly to consider their cases for appointment as Assistant Engineers (Electrical) on recruitment by transfer in accordance with

the Government order in G.O.Ms.No. 173, Revenue (End. I) Department, dated 10-2-1992. To complete the case of the Devasthanam however, it is asserted on their behalf, after notifying the five vacancies, seven more posts of Assistant Executive Engineers/Assistant Engineers (Electrical) were created and the Board of T.T.D. resolved to maintain cadre strength of Assistant Executive Engineers/Assistant Engineers at the ratio of 50:50. So, to maintain this cadre strength, six out of the seven posts were to be filled in by Graduate engineers and only one post by a person who had diploma only. On receiving the representation from the writ petitioners - appellants, it is alleged, the Devasthanam considered their eligibility and found that they had not put in five years of regular service and thus they were still not qualified for consideration. Since G.O.Ms.No. 173 aforementioned provided for appointment by transfer and in the category of Line Inspectors the writ petitioners-appellants were not found to have completed the qualifying period of five years service, the respondents (respondents 3 to 10 in Writ Appeal No. 1202 of 1995 and Respondent No. 3 in Writ Appeal No. 1203 of 1995), whose appointments are questioned by the writ petitioner-appellants, were given the appointments. Learned Single Judge has noted that the crucial question in the case is whether the writ petitioners-appellants are qualified for being appointed to the post of Assistant Engineers (Electrical), if they are so qualified, then, they being the available candidates from the feeder category, others who have been appointed to the posts by transfer from other departments, would have to yield their places in their (writ petitioners) favour. He has, however, held as follows:

"The qualification for appointment from Line Inspectors is that they must possess L.E.E. or L.E.C.E. diploma and must have put in not less than five years of service as Line Inspectors. It is not in dispute that the petitioners possess the requisite diploma. The only question is whether they have put in not less than five years of service as Line Inspectors. If they had been appointed as Line Inspectors from the beginning, there should be no difficulty in deciding the matter in favour of the petitioners. But, the post itself was created only on 6-5-1991 and they were regularly appointed to that post on 1-8-1991. The case of the petitioners is that their service as NMRs. prior to their appointment on 1-8-1991, should be regarded as service in the category of Line Inspectors because they were called as Work Inspectors and the Work Inspectors were equated to the Line Inspectors, and such service, though temporary, should also be taken as eligible service. This claim is, however, not clearly made out because even though they called themselves as Work Inspectors there is no document to show that they were appointed as Work Inspectors prior to 1-8-1991. In the affidavit of the 10th respondent it is alleged that they were drawing salary only as skilled labour up to 1989, but in the records of January, 1990, they were shown as Work Inspectors. The petitioners have not filed any reply nor have they produced any records to show how this change occurred. As far as the 10th respondent is concerned, he was appointed after the rule was amended and he was also, admittedly, senior to all the petitioners. It is therefore, not possible to

hold that the 10th respondent should yield his place to the petitioners. With regard to the others, they can be required to yield their places, only if the service of the petitioners prior to the regularisation could be taken into account. Since the question whether they were holding the post of Line Inspector, is doubtful, it is not possible to accept that service as the qualifying service. No doubt, temporary service would also qualify as eligible experience, but such temporary service must be in the same category which feeds the post that is to be filled up. Unless the petitioners establish without any doubt that they were holding the post of line inspector for more than five years, they do not qualify. On the facts of this case, the petitioners are not able to establish this beyond doubt since most of the records indicate that they have been called as only skilled labourers even though they may have called themselves as Work Inspectors. Even in the report of the Executive Officer to the Government, dated 18-2-1993, it is stated that they were first appointed as NMRs/skilled labour and later absorbed as Work Inspectors in the electrical wing w.e.f., 1-8-1991. In the circumstances, I am unable to accept their service as NMR/skilled labour, as equivalent to service as Line Inspectors which was the qualification for being appointed to the post of Assistant Engineer. Since their claim fails, the appointment of others has to be upheld. Writ Petition No. 4697 of 1992 is dismissed. Writ Petition No. 10492 of 1994 filed by the petitioners challenging the appointment of the 10th respondent, is also dismissed. Consequently, writ petition No. 16052 of 1993 filed by the 10th respondent becomes infructuous and is dismissed. Writ Petition No. 8894 of 1992 also gets disposed of".

5. It seems to us that the petitioners-appellants entered the service of the Devasthanam with the qualification that made them eligible for being appointed as Line Inspectors. They, however, were taken into the service of the Devasthanam on a salary/wages that were less than the salary or wages payable to the Line Inspectors. They continued to work in the work charged establishment of Devasthanam and later, were absorbed as Line Inspectors. To satisfy our conscience, however, whether the writ petitioner-appellants held the post of Work Inspector (Line Inspector) and if they so worked, from which date continuously, we asked the Devasthanam to produce before us the service particulars of the writ petitioner-appellants. The service particulars reveal that C. Balaiah, B. Bhaskarudu, M.S. Hari Kumar, A. Venkata Reddy, R. Eswara Reddy, A. Sivasankar, S.N. Jayakumar, T. Guru Kumar and D. Parthasarathy entered into the service of the Devasthanam on 25-1-1986, 1-4-1986, 4-2-1987, 7-2-1987, 7-2-1987, 7-2-1987, 12-2-1987 and 16-2-1987 respectively. At the time of their entry into the service they were designated as NMR Work Inspector (skilled workman). They all possessed the qualification of L.E.E. diploma which qualifies them for appointment by promotion as Assistant Engineers/Assistant Executive Engineers. They were all regularised in their respective posts and given the designation of Line Inspector (Electrical) with effect from 1-8-1991. Service particulars of the respondents in the appeal (W.A.No. 1202 of 1995), namely, M. Rama Rao, B. Mohan Rao, M. Guruswamy Naidu, D. Varma, S. Natarajan, G.

Narayanappa and K. Natarajan, show that they entered into the service of the Devasthanam on 7-7-1964, 6-4-1970, 24-8-1979, 28-4-1980, 11-9-1981, 18-12-1981, 27-1-1982 and 17-3-1982 respectively with S.S.L.C./I.T.I. S.S.L.C./ITI (Elec), Inter/Wireman course, B.A., S.S.C., S.S.C./III (Elec.) and S.S.L.C./D.E.E. qualifications, except B. Mohan Rao who had failed in S.S.L.C. They earned their respective promotions i.e.,

M. Rama Rao became Wireman/Electrician on 7-9-1977 and 9-12-1991 respectively,

B. Mohan Rao became Machineman Gr. I on 1-3-1979,

M. Guruswamy Naidu became Laboratory Mechanic in S.P.W. Polytechnic on 23-11-1991,

D. Varma became Asst. Wireman (Elec.) on 24-3-1983,

D. Gunasekhar became Asst. Wireman (Elec) on 1-7-1983,

S. Nagarajan became Asst. Wireman (Elec.) on 2-5-1986,

G. Narayanappa became Asst. Electrician on 11-2-1986.

K. Natarajan, however, continued to be the Technical Assistant in

S.V. Yoga institute ever since his appointment.

They all, however, acquired the qualification of L.E.E.

M. Rama Rao 1986 | | February, 1986 B.Mohan Rao | M. Guruswamy Naidu in February, 1990 D. Varma in September, 1987 D. Gunasekhar | | in October, 1991 S. Nagarajan | G. Narayanappa in October, 1989 K. Natarajan, however, held besides S.S.L.C. qualification D.E.E., which also qualified him for appointment as Assistant Engineer.

6. It is not in dispute that under the rules there is a requirement of a minimum qualification of diploma in the trade of electricity and a qualifying period of service of five years for appointment on promotion as Assistant Engineer/ Assistant Executive Engineer (Elec). The relevant rules called "Tirumala Tirupathi Devasthanams Office Holders and Servants (other than Hereditary office holders) Recruitment Rules, provide for by direct recruitment or by loan of services from Andhra Pradesh State Electricity Board of persons who possess B.E. (Electrical) of a University in India recognised by the State Government for purpose of appointment under the State Government or an equivalent qualification, by transfer or promotion of persons holding L.M.E. or L.E.E. diploma or a qualification recognised by the State Government as equivalent thereto and five years service as Junior Engineer or Supervisor (Electrical). The rule, however, which has made the above-named respondents eligible for appointment as Assistant Engineers (Elec.) is introduced by an amendment in Rule 9 of the said Rules, after Clause (vii), in a clause in these words:

"Persons acquiring higher qualifications in any field and working in any other sections or departments shall be appointed by transfer as and when vacancies arise within the management of the Tirumala Tirupathi Devasthanams as first priority".

Provided that the above provision will be applicable to the Electrical section, Engineering Service branch, when no other candidate is available in the feeder category with the requisite qualifications/service for the purpose of appointment to the category of Assistant Engineer (Electrical)"

7. It is not in dispute before us that the petitioners-appellants have the requisite diploma and if they have fulfilled the requirement of five years continuous service in the feeder category i.e., the category of Line Inspectors, they are qualified for appointment by promotion. Proviso has made an exception for the eligible candidates in the feeder category in the case of appointment to the post of Assistant Engineer (Electrical) from the general rule that persons acquiring higher qualifications in any field and working in any other sections or departments shall be appointed by transfer as and when vacancies arise within the management of the Tirumala Tirupathi Devasthanams as first priority. Above-named respondents are qualified for the appointment by transfer as first priority, provided however, there is no one in the feeder category with the requisite qualification and qualifying period of service for the purpose of appointment to the category of Assistant Engineer (Electrical).

8. Controversy thus is limited to the question, as learned single Judge has noticed, whether the writ petitioner-appellants are qualified for being appointed to the post of Assistant Engineer (Electrical); if they are so qualified, then learned single Judge has rightly observed they being the candidates from the feeder category, the respondents would have to yield their places to the appellants.

9. Initial defect in the appointment of any person, if he is eligible otherwise for the service and fulfils the requisite qualifications for promotion, may not in all cases affect the prospects of a person who has enjoyed the de facto status even though the de jure status is in dispute or is not fulfilled. Dealing with a similar dispute in the case of appointment as Sherishtadar in the City Civil Court, Madras, in the case of Shamsudeen v. The Principal Judge, City Civil Court, Madras 1991 W.L.R. 471 one of us has observed as follows:

One of the principles which is firmly established is that no person in authority would be allowed to use any alleged infirmity in the initial appointment to exclude any person from the field of consideration when otherwise there is nothing to show that the person concerned is not qualified for consideration..... Rule 6(b) states that appointments to categories 1 to 4 of Class I shall be made from a consolidated seniority list maintained for all City Courts and Office governed by these rules. Where was the option to him to go beyond the seniority list and find out otherwise eligibility of the petitioner? Except for something

oblique no one is expected to go beyond the field of choice and the rules that govern the selection for promotion. I, however, do not propose to make anything adverse to the respondent on this as on two settled principles -

(1) that *factum valet* is a rule already extended by the Courts to a *de facto* situation in relation to a contract of service existing for a period more than one decade; and

(2) that a person holding a post without any valid appointment may be removed from the said post by a competent authority but so long as he holds such post he cannot be said to be ineligible to hold that post for the purpose of consideration of his case for future promotion.

the respondent's order has to be quashed".

10. The above is the view expressed in an earlier judgment of the Madras High Court in the case of *V.P. Thirunavukkarasu Vs. The State of Tamil Nadu*, and is just an echo of the law stated by the Supreme Court in *Narender Chadha and Others Vs. Union of India and Others*, wherein it is stated as follows:

"It is true that the petitioners were not promoted by following the actual procedure prescribed under Rule 8(1) (a) (ii) but the fact remains that they have been working in posts included in Grade IV from the date on which they were appointed to these posts. The appointments are made in the name of the President by the competent authority. They have been continuously holding these posts. They are being paid all long the salary and allowances payable to incumbents of such posts. They have not been asked to go back to the posts from which they were promoted at any time since the dates of their appointment. The orders of promotion issued in some cases show that they are promoted in the direct line of their promotion. It is expressly admitted that the petitioners have been allowed to hold posts included in Grade-IV of the aforesaid services, though on an *ad hoc* basis.....It is, therefore, idle to contend that the petitioners are not holding the posts in Grade IV of the two Services in question. It is significant that neither the Government has issued orders of reversion to their former posts nor has anybody so far questioned the right of the petitioners to continue in the posts which they are now holding. It would be unjust to hold at this distance of time that on the facts and in the circumstances of this case the petitioners are not holding the posts in Grade IV. The above contention is therefore without substance. But, we however, make it clear that it is not our view that whenever a person is appointed in a post without following the Rules prescribed for appointment to that post, he should be treated as a person regularly appointed to that post Such a person may be reverted from that post. But in a case of the kind before us where persons have been allowed to function in higher posts for 15 to 20 years with due deliberation it would be certainly unjust to hold that they have no sort of claim to such posts and could be reverted unceremoniously or treated as persons not belonging to the service at all, particularly where the Government is endowed with the power to relax the

rules to avoid unjust results. In the instant case the Government has also not expressed unwillingness to continue them in the said posts. The other contesting respondents have also not urged that the petitioners should be sent out of the said posts. The only question agitated before us related to the seniority as between the petitioners and the direct recruits and such a question can arise only where there is no dispute regarding the entry of the officers concerned into the same Grade".

11. It is possible on the facts of this case to hold in favour of the writ petitioners-appellants since they have held continuously the posts atleast from the day they were asked to discharge the functions of Line Inspector, although they were placed in the work charged establishment and not from the date on which, it is said, their services have been regularised as Line Inspectors and if quaiifying period of service is reckoned from such continuous officiation, they (appellants) are qualified having completed five years of continuous service in the feeder category. This, however, cannot be inferred merely on the basis of the appellants" doing the work of Line Inspectors, as it is not unknown to the various services that in cases of vacancies and need to officiate or hold charge of a superior office, persons in junior ranks are called upon to officiate or hold the charge. Such fortuitous incidents of service are not taken to give a claim of continuous officiation until it is established beyond doubt that the rank which they held continuously, in fact, had been conferred upon them by virtue of the contract of service. Learned single Judge has not held against the appellants except that he has entertained doubt about their holding the post or rank of Line Inspector before they were given the appointment in the said category under the Government's order aforementioned. It is for the petitioner-appellants to establish that the rank they held before they were given the scale of pay of Line Inspectors, was not below the rank of the Line Inspector and even prior to their absorption in the scale of pay of Line Inspectors, they in fact held the position of a Line Inspector. Whether the establishment in which they worked was a work charged establishment or was a part of the regular establishment, may not be a ground to hold against the appellants. But to establish such continuity, something more than mere entering into the service with the requisite qualification but placed in the work charged establishment in a lower scale of pay or wages alone may not be sufficient for the purpose of showing the qualifying period of service or sufficient seniority for being coming in the field of choice for promotion as Line Inspectors.

12. Employers who do not show regard to the service regulations and the principles which should be followed and give ad hoc or temporary appointments on fixed salary or daily wages and take work from employees so engaged which ordinarily is the work of the employees in the regular establishment, indeed , indulge in unjust and unfair behavior. They do violate the constitutional mandates when they engage for work persons who are fully qualified for regular appointment and keep them for several years on fixed wages or wages lower than the scale of pay which should be given to them. They invariably, however,

resort to such appointments as a favour to the employees for they do not take care to recruit such persons through the process prescribed by law. In the case of the appellants the recruitment, it seems, was made in violation of the rule of inviting names to be sponsored by the Employment Exchange. The violation thereafter, however, was of the right of the appellants who were engaged for work when they were paid wages less than the wages payable for similar work when extracted from the persons in the regular employment. When irregular entry to the service is taken into account with the violations by the Devasthanam of the rule of equal protection of law and equal pay for equal work as enshrined under Article 14 of the Constitution of India, it may not be unfair to deny for the purpose of continuity of service a portion of the period of service rendered by the appellants not to be reckoned for the purposes of seniority. Assuming in favour of the appellants that they have served in the feeder category continuously for a period of five years or more, and thus if proviso is allowed to operate, the respondents have been recruited in violation of the rules, still it is possible and in our opinion, on the facts of the instant case if should be so, to refuse the relief prayed for in the writ petition. The High Court in exercise of its Writ jurisdiction under Articles 226 and 227 of the Constitution of India may refuse to issue any Writ in the event it is found that substantial justice has been done to the parties or in larger interest it could not be prudent to issue such a Writ. Courts do not interfere with an order or action only because it would be lawful to do so. Dealing with the discretion the Supreme Court enjoys under Article 136 of the Constitution of India in the case of Municipal Board, Pratabgarh and Another Vs. Mahendra Singh Chawla and Others, the Supreme Court observed as follows:

"What are the options before us. Obviously, as a logical corollary to our finding we have to interfere with the judgment of the High court, because the view taken by it is not in conformity with the law. It is at this stage that Mr. Sanghi, learned Counsel for the respondent invited us to consider the humanitarian aspect of the matter. The submission is that the jurisdiction of this Court under Article 136 of the Constitution is discretionary and, therefore, this Court is not bound to tilt at every approach found not in consonance or conformity with law but the interference may have a deleterious effect on the parties involved in the dispute. Laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly, rule of law must prevail but as is often said, "rule of law must run akin to rule of life. And life of law is not logic but experience". By pointing out the error which according to us crept into the High Court's judgment the legal position is restored and the rule of law has been ensured its pristine glory. Having performed that duty under Article 136, is it obligatory on this Court to take the matter to its logical end so that while the law will affirm its element of certainty, the equity may stand massacred. There comes in the element of discretion which this Court enjoys in exercise of its extraordinary jurisdiction under Article 136. In approaching the matter this way we are not charting a new course but follow the precedents of repute. In Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another, this Court held

that the order of dismissal made by the appellant in that case in contravention of Section 33(2)(b) of the Industrial Disputes Act did not render the order void and inoperative, yet this Court did not set aside the order of the lower Court directing payment of wages u/s 33-C(2) and affirmed that part of the order while recording this conclusion this Court observed that in exercise of the extraordinary jurisdiction this Court was not bound to set aside every order found not in conformity or in consonance with the law unless the justice of the case so requires. The Court further observed that demands of social justice are paramount while dealing with the industrial disputes and, therefore, even though the lower Court was not right in allowing the application of the respondent, the Court declined to exercise its overriding jurisdiction under Article 136 to set aside the order of the Labour Court directing the appellant to pay certain amount to the workers. Following this trend in *State of Madhya Pradesh Vs. Ram Ratan*, this Court while holding that the High Court was in error in directing reinstatement of the respondent in service, took note of the fact that by passage of time the respondent superannuated. The Court paid him back wages till the day of superannuation in the round sum of Rupees 10,000/-. In other words, while formally setting aside the order of the High Court directing reinstatement, treated the respondent in that case in service and paid him back wages because physical reinstatement on account of passage of time was not possible. From the academic's point of view the later decision is the subject matter of adverse comment but we felt reasonably certain that it stems from narrow constricted view of the jurisdiction of this Court under Article 136. We adhere to our view after meticulously examining the learned comment. Having noted that criticism, we still adhere to the view that legal formulations cannot be enforced divorced from the realities of the fact situation of the case while administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, this Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its extraordinary jurisdiction".

13. In *Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others*, it is stated that Article 226 of the Constitution of India grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the Court, exercising this flexible power, to pass such order as public interest dictates and equity projects and quoted from 27 American Jurisprudence, 2/d Equity page 626, the following:

"Courts of equity may, and frequently do go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations as of public interest".

14. Following the above as stated in *Municipal Board, Pratapgarh v. Mahendra Singh Chawla* (4 supra), a learned single Judge of Ranchi Bench of the Patna

High Court in the case of Jai Bharat Transport Company and Another Vs. Central Coal Fields Limited and Others, has held that under Article 226 of the Constitution of High Court may refuse to exercise its jurisdiction in favour of a party who has not approached the Court with clean hands.

15. Equity and justice appear to be in favour of the respondents who worked for much longer period and served the Devasthanam in various capacities for periods more than double the period of service of the appellants. They are not amongst those who entered into the service of the Devasthanam through a back-door. Appellants have longer period of Service to go than the respondents and if they go over the head of the latter, they will make them stagnate. In our view, a genuine public purpose is indicated in the rule to give to qualified persons working in other departments of the Devasthanam appointments by transfer in higher posts provided they are having basic qualifications. Proviso is intended to protect the interests of the Line Inspectors who may not have any other avenue of promotion but undoubtedly such Line Inspectors who are properly and regularly recruited. This, however, does not mean that in case there are vacancies in the post of Assistant Engineer (Electrical), the Devasthanam can take advantage of the instant Judgment and deny to the appellants their due promotion. The appellants shall be considered for promotion in accordance with law in the existing or future vacancies.

16. For the reasons aforementioned, we are not inclined to interfere with the impugned Judgment. The appeals are dismissed without costs.