

(1999) 04 AP CK 0007

In the Andhra Pradesh High Court

Case No : WA No"s. 2215 and 2216 of 1998 and 63 of 1999

D. Narasimhulu

APPELLANT

Vs

N.V. Nagarajan and another

RESPONDENT

Date of Decision : 19-04-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (1999) 3 ALD 227 : (1999) 3 ALT 90

Hon'ble Judges : N.Y. Hanumanthappa, J;C.V.N. Sastri, J

Bench : Division Bench

Advocate : Mr. B. Adinarayana Rao, Mr. P.V. Sanjay Kumar and Mr. A. Ramalingeswara Rao, for the Appellant;

Judgement

N.Y. Hanumanthappa, J.—Since the question of law and facts in all the three appeals are common, they are clubbed and disposed of by a common order.

2. Writ Appeal No.2215 of 1998 and Writ Appeal No.63 of 1999 are filed challenging the order passed by the learned single Judge in WP No. 19099 of 1998 dated 7-12-1998 and Writ Appeal 2216 of 1998 is filed challenging the order of the learned single Judge passed in WP No.20086 of 1998 dated 7-12-1998. WP No. 19099 of 1998 was filed by N.V. Nagarajan seeking an appropriate writ declaring the action of the Tirumala Tirupati Devasthanam in appointing Mr. D. Narasimhulu as Devasthanam Educational Officer of Tirumala Tirupati Devasthanani, Tirupati in ROC B.6/20004/ 97, dated 3-7-1998 as illegal and further direct the Tirumala Tirupati Devasthanam to consider this candidature for appointment to the post of Devasthanam Educational Officer. WP No.20086 of 1998 was filed by Dr. C. Nirmal seeking an appropriate writ declaring the action of the Tirumala Tirupati Devasthanam in appointing Mr. D. Narasimhulu as Devasthanam Educational Officer of Tirumala Tirupati Devasthanam, Tirupati, in ROC No.B.6/20004/97 as illegal and further direct the Tirumala Tirupati Devasthanam to consider her candidature for appointment to the post of Devasthanani Educational Officer. Both the writ petitions were

clubbed by the learned single Judge and disposed of by a common order on 7-12-1998. In both the writ petitions, Tirumala Tirupati Devasthanam was the 1st respondent and D. Narasimhulu was the 2nd respondent. WA Nos.2215 and 2216 of 1998 are filed by D. Narasimhulu who was the 2nd respondent in both the writ petitions. Whereas WA No.63 of 1999 is filed by N.V. Nagarajan who was petitioner in WP No.19099 of 1998.

3. For purpose of convenience, the rank of the parties is as in the writ petitions.

4. A few facts which are necessary to dispose of these appeals are as follows : Both the writ petitioners were working as Principals in the degree colleges under the management of the Tirumala Tirupati Devasthanam, hereinafter referred to as the "TTD College". The 2nd respondent, D. Narasimhulu was working as Selection Grade Lecturer and Head of the Department of Political Science in Govindaraja Swamy Science and Arts College, Tirupati. In the management of the TTD Educational Institutions, there is one post called Devasthanani Educational Officer which was initially created in the year 1975. During selection, the said post has to be filled up either by direct recruitment or by loan of service (deputation either from A.P. Educational Services or from professors working in the degree colleges of TTD). In the year 1987, the principals of the degree colleges were also included. The old Rules relating to recruitment of Devasthanam Educational Officer (herein after referred to as "DEO") were replaced by G.O. Ms. No.1060 Revenue (Endts.I) Department, dated 24-10-1989. Rule 9 deals with the appointment and method of recruitment both in the educational institutions under the management of TTD as well as general administration, which is extracted herein :

"(1) the method of recruitment for appointment, qualifications and the age prescribed for various posts shall be as specific against each post in Annexure II to these rules.

Provided that in case of teaching staff a Educational Institutions affiliated to any of the University or any Government, the rules of such University or such Government as the case may be, in respect of qualifications age, method of recruitment pay and allowances, vacation leave salary travelling allowance and age of retirement shall apply.

(ii) The Service shall consist of the posts under various branches specified in Annexure I, to these Rules.

(iii) All posts carrying the scale of pay of Assistant Executive Officer or an identical pay scale and above including technical category posts shall be selection posts.

(iv) Promotion to the selection category posts shall be on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal."

Sl. No.9 of Annexure 1 deals with the appointment and recruitment of DEO. The recruitment to the post of DEO is both by way of direct recruitment or loan of service. Earlier, the TTD had not chosen to appoint any officer as DEO by way of direct recruitment. It used to fill up the said post by way of loan of service of those persons who possess the following qualifications :

(i) by loan of service of a Deputy Director/Joint Director of A.P. Educational Service, or

(ii) by loan of service of a Professor/ Principal from the Degree Colleges of TTD."

5. The S.V. University having passed a resolution on 20-12-1972 requested the managements of all the affiliated colleges to change the designation of professor as Senior Lecturer. The said resolution was challenged by G. Satyanarayana and others, who were then working as professors, before this Court in WP No. 7306/75. This Court by its order dated 17-6-1995 declared the said resolution as illegal insofar as it relates to the petitioners therein. The Government of Andhra Pradesh had implemented the UGC scales of pay to all the teaching staff working in the degree colleges by G.O. Ms. No.1072, dated 26-11-1976. As per the said G.O., the post of professor does not exist in degree colleges. On the other hand, the pattern of teaching staff in the degree colleges is lecturer, senior lecturer and selection grade lecturer (Reader). The eligibility for the above post is on completion of 8 years of service a lecturer will be designated as senior lecturer and on completion of 16 years of service he. will be designated as selection grade lecturer on higher scale of pay. The Selection Grade Lecturer possessing Ph.D will be designated as Reader. Regarding the filling up of the post of Principal the same has to be done by considering the candidatures of senior most lecturers and selection grade lecturers. Smt. Kamala Meenon Cochran worked as DEO and on her attaining superannuation of 60 years, she laid down her office on 27-7-1997. As the post DEO fell vacant, the TTD took steps to fill up the same. The TTD by its resolution No.219, dated 29/ 30-6-1998 resolved to appoint D. Narasimhulu, the 2nd respondent, who was a selection grade lecturer in political science as DEO. At the time of said appointment, there were already requests from Dr. G. Suryanarayana Rao, Dr. J. Subrahmanyam and Dr. C. Nirmala to consider their case to the post of DEO. The said resolution was approved by the Vice-Chancellor of the University and accordingly appointment orders were issued. Questioning the said appointment of Narasimhulu as DEO, as mentioned earlier, Smt. Nirmala and N. V. Nagarajan filed two writ petitions. The grounds of attack of the said appointment were that the 1 st respondent committed a mistake in appointing the said Narasimhulu as DEO ignoring the rule position. When good number of professors and principals working in the management are available, appointing a selection grade lecturer, namely the 2nd respondent who is not qualified for the selection, as DEO is quite incorrect and arbitrary. Before this appointment, the Board realised the difficulty in appointing a selection grade lecturer as DEO. As such, the Board proposed an amendment to the Rules to incorporate the selection grade lecturer/ reader in place of professors. However,

before the approval of such amendment by the Government, the Board appointed the 2nd respondent. The professors and principals are the best persons to be appointed for the post of DEO and as such it is proper to fill up the post of DEO either by professor or a principal as the nature of the post of DEO is not only to run the administration of the college but also to evaluate the performance of the teaching staff. When the Board was appointing DEOs selecting the candidates who were either professors or principals, giving a go bye to the same and appointing Mr. Narasimhulu, a selection grade lecturer, is not only illegal but also mala fide one. It is their case that the appointment in question is violative of Article 14 of the Constitution of India.

6. The TTD tried to support its action in appointing Mr. D. Narasimhulu as DEO. According to TTD, filling up the post of DEO was made by way of loan of service which is in the nature of a transfer and as such no employee has any right to demand that he shall be preferred to the said post. At the time of selection and appointment, the cases of the petitioners were also considered. In the absence of cadre of a professor, there was no illegality in considering and appointing the 2nd respondent, a selection grade lecturer, as DEO. The period of appointment of the 2nd respondent is only upto 3-9-1999. As such it is not equitable to disturb his appointment at this stage. To justify the appointment of the 2nd respondent, it was contended that no illegality was committed in appointing him as DEO as he was working as selection grade lecturer with abundant experience. Since the appointment of DEO is by way of loan of service, it requires consent of lending department, borrowing department as well as the officer concerned. In the absence of the consent by any one of the three there cannot be any such appointment. According to the 2nd respondent, (a) the appointee has no right to the post; (b) the tenure is limited to a definite period; (c) the time can be reduced/extended without reference to the employee and (d) the employee continues to retain his lien in the parent department. The filling up of the post by way of loan of service is the discretion given to the department. There were no mala fides in appointing Mr. Narasimhulu. The pay scale of DEO is Rs.2410-4050 whereas the pay scale of the principal is far higher. As such, the principal could not have been appointed.

7. In the light of the rival contentions, the learned single Judge raised the following points for consideration :

(1) Whether the word Professor found in the Rule can be read down as Selection grade lecturer/reader also?

(2) Whether an appointing authority has to follow the process of selection when the post has to be filled by loan of service. In other words whether the appointing authority, more so, an instrumentality of the State can contend that its actions should not be questioned as unreasonable and in its wisdom can it pick and chose persons of its choice?

(3) Whether the appointment of the 2nd respondent as DEO can be sustained ?

8. With regard to Point No.1, the learned single Judge referred to the qualifications that were required for appointment as professor; coming into force of the UGC scales whereby the post of professor was abolished; rule position, i.e., Rule 9 which relates to the appointment of DEO. According to the learned single Judge, by the time the post of DEO had to be filled up, the post of professor was abolished. Thus only the post of principal remained. As such Mr. Cochran was appointed as DEO. As there was representation from different Heads of Department to consider their cases for appointment as DEO particularly from the category of Selection Grade Lecturer/ Readers, an amendment was proposed to the Government by the Board by way of resolution No. 170 dated 29-6-1996 and 1-7-1996 proposing a provision to appoint the Selection Grade Lecturers/Readers as DEO. The Executive Officer of TTD communicated the said resolution to the Government in his letter dated 8-7-1996. This was followed by a preliminary Notification issued by the Government calling for objections. The learned single Judge found that for the reasons best known to the Government the proposals sent by the TTD was not approved. In other words, it was lying in the cold storage. The learned single Judge in order to give correct meaning and proper interpretation to the Rule position placed reliance on some of the authorities which deal with the interpretation of Statutes. They are : the judgments rendered by the Supreme Court in the case of *Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad*, *Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others*, . Taking support from the above decisions, the learned single Judge held that the word "Professor" appearing in the Rule should be read down and understood as Selection Grade Lecturer/Reader, the post that has come into existence after the post of professor was abolished. The learned single Judge also took into consideration the principles laid down by the Supreme Court in the authorities relied upon by the petitioners, namely *Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others*, *N.T. Veluswami Thevar Vs. G. Raja Nainar and Others*, and *British India General Insurance Co. Ltd. Vs. Captain Itbar Singh and Others*, , and found that the principles laid down in the above three decisions are not helpful to the petitioners. Thus observing on Point No. 1, the learned single Judge held that the post of DEO can be filled from two sources namely from selection Grade Lecturer/Reader as well as Principals. The learned single Judge found that since introduction of UGC pay scales, the post of professor disappeared and in its place lecturers, Senior Grade Lecturers and Readers were included. In other words, the Board has discretion to consider the claim of the 2nd respondent who belongs to the first category.

9. With regard to Point No. 2, the learned single Judge posed himself with a question whether the instrumentality of State can contend that its action should not be questioned as unreasonable and in its wisdom can it pick and choose a person of its choice for appointment as DEO. While dealing with this point, the learned single Judge referred to a decision rendered by the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India* and

Others, , wherein it was held as follows:

"Today the Government, in a welfare State is the regulator and dispenser of special services and provider of a large number of benefits including jobs, contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Government and local authorities. Is the position of the Government in this respect the same as that of a private giver ? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largesse formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking discretion in the matter of grant of such largesse. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largesse in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Professor Reich in an especially stimulating article on "The New Property" in 73 YLJ 733", that Government action be based on standards that are not arbitrary or unauthorised". The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position on a private individual."

Thus from the above, the learned single Judge found that the action of the public authority should be based on reasons. It shall be free from arbitrariness. The learned single Judge felt that the appointment of DEO can be by way of loan.

10. Regarding Point No.3, the learned single Judge took into consideration the rule position as to the filling up of the post of DEO. Considering the case of the eligible candidates who possessed the requisite qualifications, the learned single Judge referred to various proceedings including the resolutions passed by the Board. According to the learned single Judge, the post of DEO is a selection post. The loaning department and the loanee department being one and the same the appointee shall possess both the academic distinctions as well as administrative skills. As such the filling up of the said post is only by selecting persons who possess best qualifications. Lastly, the learned single Judge found that the appointment of the 2nd respondent without considering the availability of other candidates and without issuing formal notification inviting applications to fill up

the said post is arbitrary and illegal and violative of Article 14 of the Constitution of India. While setting aside the appointment of the 2nd respondent, the learned single Judge also observed that the 2nd respondent cannot be allowed to continue as DEO. The Board shall make alternative arrangements until a final decision is taken in filling up the post of DEO.

11. As mentioned earlier, aggrieved by the decision of the learned single Judge, D. Narasimhulu filed two writ appeals namely WA Nos.2215 and 2216 of 1998 whereas WA No.63 of 1999 was filed by N. V. Nagarajan. WA No.63 of 1999 is in respect of the findings given by the learned single Judge on the issue relating to interpretation of Rule 9 equating the post of Selection Grade Lecturer/Reader to that of Professor. According to him, the findings of the learned single Judge in equating the professor, in view of the application of UGC Scales, to that of Selection Grade Lecturer/Reader is quite incorrect and that was not warranted. The other two writ appeals filed by D. Narasimhulu are confined to the findings of the learned single Judge as to the irregularity in appointing the 2nd respondent as DEO and consequently the said post should have been filled up by way of calling application by issuing notification.

12. Sri Adinarayana Rao, learned Advocate appearing for Narsimhulu, appellant in WA Nos.2215 of 1998 and 2216 of 1998, tried to attack the order of the learned single Judge on several grounds, the main among them are that holding of the selection of the 2nd respondent as DEO of TTD Educational Institutions as bad, is incorrect. Consequently the finding of the learned single Judge that before filling up the said post there should have been wide publicity by way of direct recruitment or deputation is again incorrect. According to him, by virtue of introduction of UGC scales the post of professor was abolished and it was not in existence. As such there was no illegality in appointing D. Narasimhulu, a Selection Grade Lecturer, as DEO. According to him, the deputation of certain person to some other post on loan basis is not a fresh appointment and, on the other hand, it is the discretion given to the employer to choose a person of his choice on loan. It is something like a form of transfer. As such inviting applications or considering the case of others is not warranted. He also contended that the learned single Judge failed to take into consideration the effect of rule position and its proper interpretation in order to give effect to its real meaning. According to him, the findings of the learned single Judge are contrary to the law laid down by the Supreme Court in the case of Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, , wherein the Supreme Court held as follows :

"It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the Statute."

13. According to Sri Adinarayana Rao, when the facts narrated disclose the harmonious construction of the Rule. There was no reason to interfere with the appointment of the 2nd respondent. To support his contention the learned

Counsel placed reliance on a decision of the Supreme Court rendered in the case of Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh, , wherein it was held as follows :

"While, no doubt, it is not permissible to supply a clear and obvious lacuna in a statute and imply a right of appeal, it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning of application."

14. According to Mr. Adinarayana Rao, learned Advocate, since professor post was not available and the post of Selection Grade Lecturer/Reader is almost equal to that of the professor and the principal is also one among the selection grade lecturer/ reader who is entitled for additional two increments, it should have been understood that the post of Principal includes Selection Grade Lecturer. Thus, if the position is understood in that manner, the appointment of the 2nd respondent would not have been deserved to be declared illegal. To support his contention that always Rule shall be interpreted in such a way that it gives its real meaning, Sri Adinarayana Rao placed reliance on the decision of the Supreme Court rendered in the case of The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, , wherein it was held as follows :

"In the interpretation of statutes the Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. These presumptions will have to be made in the case of rule making authority also."

15. The learned Advocate Sri Adinarayana Rao also placed reliance on a decision of the Supreme Court rendered in the case of State Bank of Travancore Vs. Mohammed Mohammed Khan, , wherein it was held that any interpretation of statute shall stand to reason and shall not give ambiguity. According to the learned Counsel, construction of any rule shall receive full effect and shall not be in obscurity. In other words such interpretation shall render justice and shall not result in causing injustice. For this proposition, he placed reliance on a passage in Craites on Statute Law VII Edition Page 94, which reads as follows :

"If 9 as is often the case) the meaning of an enactment, whether from the phraseology used or otherwise, is obscure, or if the enactment is, as Brett L.J., said in the R.L. Alston, unfortunately expressed in such language that it leaves it quite as much open, with regard to its form of expression, to the one interpretation as to the other, the question arises, "What is to be done? We must try and get at the meaning of what was intended by considering the consequences of either construction. And if it appears that one of these constructions will do injustice, and the other will avoid that injustice, "it is the bounden duty of the Court to adopt the second, and not to adopt the first, of those constructions". However "difficult, not to say impossible", it may be to put a perfectly logical construction upon a statute, a Court of justice" is bound to

construe it, and, as far as it can, to make it available for carrying out the objects of the Legislature, and for doing justice between parties," This rule is not peculiar to English law, and is equally applicable to Scottish and colonial statutes."

16. Lastly, Sri Adinarayana Rao placed reliance on a passage on "Max Wells interpretation" page 231 for the proposition that where a doubt is cast while drafting a particular Statute then it is proper to substitute with appropriate word so as to give full meaning. Thus arguing, he sought the appeal be allowed holding that the appointment of the 2nd respondent as valid.

17. As an answer to the above contentions, Sri D. V. Sitaram Murthy, learned Counsel appearing for Dr. Nirmala R1 in WA No.2216 of 1998 advanced his arguments and Sri P.V. Sanjay learned Counsel appearing for N. V. Nagarajan adopted the arguments of Sri Silarama-murthy. According to Sri Sita Rama Murthy, the learned single Judge having set aside the appointment of the 2nd respondent should have considered the request of Dr. Nirmala for appointment as DEO. The learned single Judge should have seen that equation of post of professor to the post of Selection Grade Lecturer/ Reader and observing that both are one and the same is quite incorrect and the same is not warranted. To support his contention he placed reliance on a decision of the Supreme Court in *Assessing Authority-cum-Excise and Taxation Officer, Gurgaon and another v. M/s. East India Cotton Mfg. Co., Ltd*, (supra), wherein it was held as follows :

"It is well-settled rule of interpretation that no one section should be constructed in isolation but that the statute should be read as a whole with each part throwing light on the meaning of the other. It is also a well settled rule of interpretation that a statute must be construed according to its plain language and neither should anything be added nor substituted unless there are adequate grounds to justify the inference that the Legislature clearly so intended."

18. In order to resolve the controversy involved and how far the findings of the learned single Judge are correct on all the points, it is proper to bear in mind Rule 9 of the Rules which deals with appointment and method of recruitment which is again quoted herein:

"(i) The method of recruitment for appointment, qualifications and the age prescribed for various posts shall be as specified against each post in Annexure II to these rules.

Provided that in case of teaching staff of Educational Institutions affiliated to any of the University or any Government, the rules of such University or such Government as the case may be, in respect of qualifications age, method of recruitment pay and allowances, vacation leave salary travelling allowance and age of retirement shall apply.

(ii) The service shall consist of the posts under various branches specified in Annexure I, to these Rules.

(iii) All posts carrying the scale of pay of Asst. Executive Officer or an Identical

pay scale and above including technical category posts shall be selection posts.

(iv) Promotion to the selection category posts shall be on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal."

19. Sl.9 of Annexure I deals with the recruitment of DEO which is again quoted herein :

"(i) by loan of service of a Deputy Director/Joint Director of A.P. Educational Service, or

(ii) by loan of service of a professor/ principal from the Degree Colleges of TTD."

20. The appointment in question was made from second source namely by way of loaning. The qualifications prescribed for such appointment is that the candidate must be a professor or principal. Even if it is assumed that the post of professor was abolished consequent upon coming into force of the UGC scales, still the post of principal is available. As on the date of the appointment Mr. D. Narasimhulu was not principal whereas the writ petitioners were principals along with two others. Though deputation or loaning is a discretion that is left to the employer, the same cannot be exercised arbitrarily. When there are other candidates who are equally qualified or more qualified available their case has to be considered first. Further when the Rule prescribes the method of selection for appointment even by way of deputation or loaning, the same shall be followed. The Board found it desirable to consider the case of the Selection Grade Lecturer for appointment to the post of DEO and accordingly passed resolution recommending the case of the Selection Grade Lecturer, R2, to be included in the rule and the same was sent to the Government for its approval. But the same does not confer any power on the Board as there was no approval by the Government at the time of the appointment in question because mere resolution or recommendation unless it is approved by the competent authority will not take the place of Rule. Whatever is the good intention, but as long as the Rule exists the same shall not be given a go by. Making a selection or appointment contrary to the Rule renders such selection or appointment as illegal. Further, when there are more than one officer seeking selection or appointment by way of loaning, the comparative qualifications shall be evaluated. Ignoring better qualifications and preferring other person who does not possess the requisite qualifications is again arbitrary and violative of Article 14 of the Constitution of India.

21. The learned single Judge tried to equate the post of Selection Grade Lecturer to that of Professor by adverting himself to the interpretation of the Statute placing reliance on some of the authorities of the Supreme Court referred to above. As far as the said decisions are concerned, as on to-day they are well settled and universally accepted. In the case of Assessing Authority-cum-Excise and Taxation Officer, Gurgaon and another v. M/s. East India Cotton Mfg. Co. Ltd., (supra), the Supreme Court observed that it is a well settled rule of

interpretation that no one section should be construed in isolation but that the statute should be read as a whole with each part throwing light on the meaning of the other. It is also extracted herein the further observation of the Supreme Court which in fact was referred to by the learned Judge:

"Now it is a well settled rule of interpretation that a statute must be construed according to its plain language and neither should anything be added nor subtracted unless there are adequate grounds to justify the inference that the Legislature clearly so intended."

22. Their Lordships relied on the observations made by Lord Hersey in *Thompson v. Goold and Company*, 1910 AC 409 :

"It is a strange thing to read into an Act of Parliament, words which are not there and in the absence of clear necessity, it is a wrong thing to do."

23. Lord Loreborn L.C. also observed in *Vickers, Sons and Maxim Limited v. Evans* 1910 AC 444 :

"We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself."

24. Again it is well settled as held by the Supreme Court in the case of *Siraj-ul-Haq Khan and others v. The Sunnin Central Board of Wakf, U.P. and others*, (supra) as follows :

"It is well settled that in construing the provisions of a statute Courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the Statute."

25. We can also here refer to the principles laid down by the Supreme Court in the decisions relied upon by Sri Adinarayana Rao. From all the decisions relied upon by the learned single Judge and the decisions referred to above and relied on by Sri Adinarayana Rao, it is clear that always while interpreting the Statute the real meaning shall be given to the Statute. In other words if there is a doubt and if construction is capable of two views the Court shall exercise its power to interpret the Statute by applying the principle of harmonious construction. Such an interpretation shall suggest a definiteness but not vagueness. Since the Rule position in the case on hand is quite clear and it does not suffer from any ambiguity, it is different to say such Rule regarding recruitment to the post of DEO by loaning a principal, in any way is hit by the principles laid down by the Supreme Court in the above decisions while interpreting the Statute. Since the said Rule is not yet replaced by approving the amendment suggested by the Board, it still holds good. In addition to these, it is not the concern of the Court to lay down a policy regarding recruitment or promotion or pay scales. Again it is not the concern of the Court to equate the posts as it is within the dominion of the employer. Having thus observed, there is no other go but to hold that the attempt of the learned single Judge to equate the post of Selection Grade

Lecturer to other post is not correct. Though we agree with the findings of the learned single Judge that the appointment of the 2nd respondent as DEO as against the availability of better qualified persons is illegal, we do not agree with the observation of the learned single Judge in equating the post of Selection Grade Lecturer with Principal.

26. So far as the findings of the learned single Judge on Point No.2 that the filling up of the post of DEO should have been by way of issuing a notification calling for the applications etc., again we do not agree with the views of the learned single Judge for the reason loaning or deputation is not a fresh selection. It is the discretion is not a fresh selection. It is the discretion left to the employer concerned. He has to select a suitable person for deputation. In such a process the employer has to find out whether there are other better qualified candidates available. For deputation and loaning if the procedure of calling for the application by issuing notification is adopted, the very purpose of deputation will be frustrated. Normally deputation or loaning will be on the request made by the loanee department due to some urgent necessity. If the procedure as in the case of fresh selection and appointment is extended for deputation or loaning, the loanee department will not be in a position to get the suitable persons within the requisite time. Thus, the need and suitability of a person to be taken on deputation or on loan basis is subject to the discretion of the department so also the willingness on the part of the loanee department and the consent of the individual concerned, of course subject to merits and suitability of other candidates. We also agree with the learned single Judge that any selection or appointment or deputation shall be free from bias and arbitrariness. The action of the public authorities for whom Article 12 is attracted shall be free from prejudice and the same shall stand to reason. Having found the selection of the 2nd respondent as bad, giving due publicity or calling for applications, as observed by the learned single Judge, to fill the post of DEO is not required in view of our observation made above.

27. In view of the foregoing reasons, we hold that there is no merit in the contentions raised on behalf of Mr. D. Narasimhulu in both the appeals. We agree with the contention raised on behalf of Sri N. V. Nagarajan as to the rule position. In view of our observation that the selection and appointment of 2nd respondent as DEO is bad, we direct the 1st respondent to make fresh selection and appointment and while doing so, he shall consider the case of N. V. Nagarajan, Dr. Nirmala if qualified and eligible along with other qualified persons who seek to be appointed as DEO on their comparative merit at an early date.

28. Accordingly, the order of the learned single Judge to the extent of quashing the appointment of the 2nd respondent as DEO is confirmed.

29. With the above observation, all the three appeals are disposed of. There shall be no order as to costs.