
(2011) 04 GAU CK 0071
In the Gauhati High Court
Case No : Writ Appeal No. 8 (AP) of 2010

Dani Belo

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 226, 309

Citation : (2011) 4 GLR 143 : (2011) 2 GLT 686

Hon'ble Judges : P.K. Musahary, J; I.A. Ansari, J

Bench : Division Bench

Advocate : P.K. Tiwari, R.P. Sharma, M.R. Adhikari, K.D. Singha and T. Isom, for the Appellant; G. Deka, Addl. Sr. Govt. Advocate, P.D. Nair, M. Bora and P. Pator, for the Respondent

Final Decision : Allowed

Judgement

I.A. Ansari, J.—We have heard Mr. P.K. Tiwari, learned Counsel, for the Appellant, and Ms. G. Deka, learned Additional Senior Government Advocate, for the Respondent Nos. 1 to 3. We have also heard Mr. P.D. Nair, learned Counsel, for the Respondent No. 4. BACKGROUND FACTS:

2. When the (Group B) General and Central Service (Law Officer-cum-Junior Draftsman Post) Recruitment Rules, 1979, (hereinafter referred to as "the 1979 Rules") were in force, Respondent No. 4 herein, namely, Shri Hajulu Pulu, was, initially, appointed, without holding any selection process, as a Law Officer-cum-Junior Draftsman, in the Department of Law and Judicial, Government of Arunachal Pradesh, on contractual basis, on a consolidated pay of Rs. 9000/-, with effect from 23.05.2001. Thereafter, Respondent No. 4 was appointed as Law Officer on ad hoc basis, with effect from 27.12.2002, against a vacant sanctioned post by order, dated 27.12.2002, issued by the Chief Secretary to the Government of Arunachal Pradesh. This ad hoc appointment too was made without holding any selection process whatsoever.

3. In course of time, the 1979 Rules came to be substituted by the Law Officer-cum-Junior Draftsman Recruitment Rules, 2004, (hereinafter referred to as "the 2004 Rules ") After the 2004 Rules came into force, the Arunachal Pradesh Public Service Commission (in short, "the APPSC") carried out a recruitment process under the 2004 Rules and, having held a regular selection process, recommended the present Appellant, namely, Shri Dani Belo, for appointment as Law Officer-cum-Junior Draftsman leading to his regular appointment to the said post by order, dated 01.10.2005, issued by the Secretary, Law and Judicial, Government of Arunachal Pradesh. At the time, when the said regular recruitment process for appointment to the post of Law Officer-cum-Junior Draftsman was conducted by the APPSC, Respondent No. 4 chose not to participate in the regular selection process and he, thus, remained an ad hoc appointee against the sanctioned post of Law Officer without feeing any regular selection process; whereas the Appellant herein came to be appointed, on the basis of a regular selection process, as a Law Officer-cum-Junior Draftsman.

4. After, however, the direct recruitment of the Appellant as a Law Officer-cum-Junior Draftsman on regular basis, as indicated hereinabove, had taken place, a move was initiated for regularization of the ad hoc service of the Respondent No. 4 and, in this regard, Secretary, Law and Judicial, Government of Arunachal Pradesh, wrote, vide his letter, dated 08.12.2006, to the Secretary, APPSC, for relaxation of the provisions of the 2004 Rules enabling the Government to regularize the service of the Respondent No. 4 to the post of Law Officer-cum-Junior Draftsman by holding a Departmental Promotion Committee (in short, "DPC"). 5. Thus, though appointed on ad hoc basis without any regular selection process against the sanctioned post as a Law Officer, Respondent No. 4's regularization was sought to be done after coming into force of the 2004 Rules by holding a DPC. The request made by the Secretary, Law and Judicial, Government of Arunachal Pradesh, by his letter, dated 08.12.2006, was not accepted or agreed to by the APPSC and this decision of the APPSC was communicated to the Government by letter, dated 17.01.2007, issued by the Secretary, APPSC.

5. However, the State Government went ahead with the constitution of the DPC, which held its meeting, on 27.04.2007, and recommended regularization of the ad hoc appointment of Respondent No. 4 as Law Officer-cum-Junior Draftsman with effect from 27.12.2002, i.e., even before the 2004 Rules had actually come into force.

6. In effect, the service of Respondent No. 4 was regularized, as indicated above, without adhering to the essential provisions of recruitment of the 2004 Rules, though the 2004 Rules had already come into force. In order to meet this incongruent situation, the recommendations of the DPC was to regularize the service of the Respondent No. 4 by invoking the 1979 Rules, which already stood repealed. Thus, on the basis of the recommendations so made by the DPC, which is alien to the scheme of the 2004 Rules, the ad hoc service of Respondent No. 4

was regularized as Law Officer-cum-Junior Draftsman retrospectively, with effect from 27.12.2002, by invoking the repealed 1979 Rules.

7. In short, what was done was that the repealed 1979 Rules were retrospectively applied in order to regularly appoint Respondent No. 4 as Law Officer-cum-Junior Draftsman. By submitting his representation on 03.05.2007, the Appellant registered his objection against the Government's move to appoint Respondent No. 4, on the basis of the recommendation of the DPC, made on 27.04.2007. After the ad hoc appointment of the Respondent No. 4 stood regularized, the Appellant submitted his second representation, dated 16.10.2007, seeking review of the regularization of the ad hoc appointment of the Respondent No. 4 and to treat the Appellant, who had been appointed, on 01.10.2005, following a regular recruitment process, under the 2004 Rules, as senior to the Respondent No. 4.

8. As the representations yielded no result at all, the Appellant filed a writ petition, under Article 226 of the Constitution of India, challenging the regularization of the appointment of Respondent No. 4 with retrospective effect and seeking issuance of appropriate writ(s) setting aside and quashing the said regularization. This writ petition gave rise to WP(C) 458 (AP) of 2007.

9. It was specifically pleaded by the Appellant, in his said writ petition, that the ad hoc appointment of Respondent No. 4 was illegal inasmuch as it was done without following the procedure prescribed by law and, hence, he was a backdoor entrant.

10. In the writ petition, the Respondents as well as the State Government's contention was that Respondent No. 4 was appointed as a Law Officer on ad hoc basis and as Respondent No. 4 was continued, thereafter, without any break for more than four years, his case was considered for regularization under the 1979 Rules, which were in force at the time, when Respondent No. 4 had been appointed on ad hoc basis.

11. By judgment and order, dated 19.06.2008, a learned Single Judge of this Court dismissed the writ petition by holding that since Respondent No. 4 was appointed, in the year 2002, against a vacant sanctioned post, his service conditions were governed by the 1979 Rules, which were then in existence, and not by the subsequently amended 2004 Rules. The learned Single Judge drew support for this conclusion from the decisions in *State of Rajasthan Vs. R. Dayal and Others*, , and *A. Manoharan and Others Vs. Union of India (UOI) and Others*, . The learned Single Judge also took the view that since under the 1979 Rules, there was no provision for making reference to the APPSC, the question of adopting a regular recruitment process by publishing advertisement, inviting applications, holding of regular selection process, etc., could not have arisen at all. The learned Single Judge further took the view that under the 1979 Rules, since the Government was not required to refer the matter of regularization of the appointment of Respondent No. 4 to the APPSC, the DPC was competent to

devise its own method and procedure for assessing the suitability of the Respondent No. 4. In support of the view so taken, the learned Single Judge has placed reliance on *Union of India v. S.K. Goyal*, (2007) 14 SCC 641. The learned Single Judge, therefore, upheld the order, dated 21.05.2007, whereby ad hoc appointment of Respondent No. 4 was regularized in the post of Law Officer-cum-Junior Draftsman retrospectively with effect from 27.12.2002. Aggrieved by the dismissal of his writ petition, the Appellant is, now, before us.

SUBMISSIONS OF BEHALF OF THE APPELLANT:

12. Presenting the case on behalf of the Appellant, Mr. Tiwari, learned Counsel, points out that under the 1979 Rules, the appointment to the sanctioned post of Law Officer-cum-Junior Draftsman was either by direct recruitment or by promotion or by deputation or by transfer and there was no other or fifth mode of recruitment. In fact, the 1979 Rules also made it clear, submits Mr. Tiwari, that in the case of even recruitment by promotion, deputation or transfer to the post of Law Officer-cum-Junior Draftsman, only a person from equivalent post or grade or from Central Civil Services Group B with required qualification and two years experience could be appointed and column 2 of the 1979 Rules provided for composition of the DPC.

13. Thus, according to Mr. Tiwari, the 1979 Rules do not provide for making appointment, in the disguise of direct recruitment, without holding any selection process. As far as the DPC under the 1979 Rules is concerned, the same was, points out Mr. Tiwari, necessary only when recruitment was made by way of promotion, deputation or transfer and not otherwise, i.e., by way of direct recruitment.

14. In the case at hand, further points out Mr. Tiwari, Respondent No. 4 was, admittedly, not recruited by way of promotion, deputation or transfer and, hence, the question of DPC regularizing his service, under the 1979 Rules, did not arise at all. This apart, insists Mr. Tiwari, since Respondent No. 4 was appointed, initially, on contractual basis and, then, on ad hoc basis without holding any selection process at all, his appointment was against the State's constitutional obligation to make public employment by holding regular selection process and by affording all interested eligible persons adequate opportunity to participate in such selection process.

15. Seeking to fortify his argument that regularization of the appointment of the Respondent No. 4 was motivated and not actuated by public interest, Mr. Tiwari also points out that the correspondence on record clearly reveal that the Secretary, Law and Judicial, initially, contemplated regularization of ad hoc service of Respondent No. 4 by dispensing with the rigors of selection process, as envisaged by the 2004 Rules, and the Secretary, Law and Judicial, accordingly, wrote to the APPSC to grant one time relaxation of the conditions of recruitment, as embodied in the 2004 Rules, so as to enable the Government appoint Respondent No. 4 to the post of Law Officer-cum-Junior Draftsman, but

on objection being raised by the APPSC, the Government went on its back foot and resorted to arbitrary process of appointing Respondent No. 4 to the post of Law Officer-cum-Junior Draftsman by holding a DPC purportedly under the 1979 Rules, though the DPC was not appropriate authority to make direct recruitment and even if the DPC was the competent authority to make even direct recruitment, it could not have been done arbitrarily without affording the equality of opportunity to other persons similarly situated as Respondent No. 4.

16. The appointment of Respondent No. 4, according to Mr. Tiwari, was, thus, after coming into force of the 2004 Rules, wholly against the constitutional scheme of public employment Mr. Tiwari further points out that since the ad hoc appointment of Respondent No. 4 was without following any selection procedure, the process of regularization of the service of the Respondent No. 4, under the pretext that it was during the validity period 1979 Rules that Respondent No. 4 had been given ad hoc appointment, is wholly untenable in law inasmuch as the 1979 Rules do not contemplate appointment on contractual basis and/or ad hoc basis without following any recruitment process whatsoever. The learned Single Judge, therefore, submits Mr. Tiwari, erred in taking the view that regularization of the service of Respondent No. 4, under 1979 Rules, was legal.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

17. Resisting the appeal, the arguments advanced by Ms. G Deka, learned Additional Senior Government Advocate, and Mr. PD Nair, learned Counsel, appearing for the Respondent No. 4., are in tune with each other. Their submission is that Respondent No. 4 was appointed as Law Officer-cum-Junior Draftsman on ad hoc basis, due to exigency of public service, against vacant post by order, dated 27.12.2002, and as he had continued to work without any break for more than four years, his service was regularized by constituting a DPC under the 1979 Rules, which were operational at the time, when Respondent No. 4 was appointed on ad hoc basis.

18. To the query, raised by the Court, in this appeal, as to how the service of Respondent No. 4 was regularized, when his initial appointment, on contractual basis as well as ad hoc, had not been followed by any recruitment process whatsoever and was ex facie done by resorting to pick and choose policy, the Respondents had no answer.

19. It was, however, contended, on behalf of the Respondents, that since the 1979 Rules were in force at the time, when Respondent No. 4 was given appointment on ad hoc basis, regularization of his service has also been done under the 1979 Rules. To the query raised by this Court as to whether the 1979 Rules perceived of regularization of an arbitrarily appointed person, the Respondents had, once again, no answer. Mr. Nair, however, sought to justify the regularization of the ad hoc appointment of the Respondent No. 4 by referring to the case of S. Sumnyan and Others Vs. Limi Niri and Others, Mr. Nair also sought to derive support from the cases of State of Rajasthan Vs. R. Dayal and Others,

and A. Manoharan and Others Vs. Union of India (UOI) and Others,

DISCUSSION:

20. While considering the present appeal, what needs to be borne in mind is that the 1979 Rules were framed, when the State of Arunachal Pradesh was a union territory. Under the 1979 Rules, only one post of Law officer-cum- Junior Draftsman was available. This post, under the 1979 Rules, could have been filled up 100% by direct recruitment only and, it was only in the event of failure to make direct recruitment that the 1979 Rules provided for appointment of a person to the said post by promotion, deputation or by transfer. The 1979 Rules, therefore, made it clear that the appointment to the said post could be validly made by direct recruitment or by promotion, deputation or transfer. There was no fifth mode of recruitment envisaged by the 1979 Rules.

21. The case of the Respondent No. 4 was, admittedly, a case of direct recruitment. No direct recruitment could have been made without resorting to a process of selection.

22. Thus, the condition of recruitment was that there must be a selection process and this condition of recruitment was not relaxable and constitution of recruitment could not have been relaxed by resorting to the provisions of relaxation, as embodied in Rule 5 of the 1979 Rules.

23. It is time to recall that the concept of direct appointment, absorption and promotion in service, in relaxation of the relevant recruitment rules, has undergone a prominent development. The present view is that there can be no relaxation of the basic and fundamental rules of recruitment. Thus, the service jurisprudence, now, makes a distinction between conditions of recruitment and conditions of service. While a condition of service may be relaxed, condition of recruitment cannot be relaxed. Subject, however, to the condition that if the recruitment rules, in themselves, provide for relaxation of the condition of recruitment, the condition of recruitment may be relaxed provided that such relaxation does not render the conditions of recruitment, as a whole, nugatory and/or non est in its entirety.

24. Reference, with regard to the above, may be made to Dr. M Laiphlang and Ors. v. State of Meghalaya and Ors. 2004(2) GLR 546 wherein a Division Bench of this Court, relying upon a number of authorities, culled out the parameters of the law of relaxation in the following words:

25. While considering the above aspects of the matter, it needs to be pointed out, at the very outset, that the concept of appointment, absorption and/or promotion in service in relaxation of relevant recruitment rules has undergone a prominent development. The present view is that there can be no relaxation of the basic and fundamental rules of recruitment. Moreover, strict conformity with the recruitment rules is insisted both for direct recruits as well as promotees. (Ref. Suraj Parkash Gupta and Others Vs. State of Jammu & Kashmir Others,

Thus the service jurisprudence, now, clearly draws a distinction between the conditions of recruitment and conditions of service. In other words, in the realm of service jurisprudence, a distinction is, now, drawn between the conditions of recruitment and the conditions of service. While the conditions of service may be relaxed, conditions of recruitment cannot be relaxed. In other words, the provisions for relaxation in general contained in recruitment rules cannot be resorted to for relaxing the conditions of recruitment. The minimum period of qualifying service for promotion, which recruitment rules impose, is really a condition of recruitment and , such a condition not being condition of service cannot generally be relaxed unless the Rules in themselves provide for otherwise J.C. Yadav and others Vs. State of Haryana and others, . A Division Bench of this Court have set the matter at rest in the case of Ananda Ram Borah and Others Vs. State and Assam and Others, by observing and laying down as follows:

... The question, which call for determination by this Court is, whether the power to relax the Rule would go to the extent of relaxing conditions of recruitment also or it can be only to the extent of relaxing the conditions of service? Can a direct recruit for recruitment to the post of LDA avoid competitive examination? Can the Government exercise power of relaxation of Rule of recruitment requiring a direct recruit to appear in the competitive examination and such relaxation of the recruitment Rules is permissible. In Keshab Chandra Joshi v. Union of India 1992 Suppl. SCC 272 . the Apex Court has emphasized the need of strict compliance of the recruitment Rules for both direct recruits and promotees. It is held that there cannot be any relaxation of the basic or fundamental Rules of recruitment. That was a case where the Rule permitting relaxation of conditions of service came for consideration and it was held by a three Judges Bench that the Rule did not permit relaxation of the recruitment Rules. In Syed Khalid Rizvi and Others and Ramesh Prasad Singh and Others Vs. Union of India (UOI) and Others, . the Apex Court observed "The condition precedent, therefore, is that there should be an appointment to the service in accordance with Rules and by operation of the Rules, undue hardship has been caused...it is already held that the condition of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to Rules. The former cannot be relaxed. Thus, according to the Apex Court there is distinction between the conditions of recruitment and conditions of service. Appointment has to be made in accordance with the recruitment Rules and, thereafter, there may a relaxation in the service condition. Similarly, in State of Orissa and others Vs. Smt. Sukanti Mohapatra and others, . it was held that though the power of relaxation stated in the Rule was in regard to "any of the provisions of the Rules", this did not permit relaxation of the Rule of direct recruitment without consulting the Commission and the entire ad-hoc service of a direct recruit could not be treated as regular service. In Dr M.A. Haque and Others Vs. Union of India (UOI) and Others, and in J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., it has been emphatically laid down that the Rule relating to recruitment could not be relaxed. The judgment in the matter of Suraj Prakash Gupta (supra)

has also reiterated the principle laid down by the Apex Court that there cannot be any relaxation of the conditions of recruitment. The conditions of recruitment and conditions of service are distinct. The Government has the power to relax conditions of service, whereas the conditions of recruitment cannot be relaxed even though the Rule intends to do so.

(Emphasis added)

25. Explaining and clarifying its earlier decision, in *Ananda Ram Baruah (supra)*, the Division Bench, in *Dr. M Laiphlang (supra)*, further observed and held, at para 26, as under.

26. We express out complete agreement with the position of law laid down in *Ananda Ram Baruah (supra)* subject to only one clarification that if the recruitment rules, in themselves, provide for relaxation of conditions of recruitment the conditions of recruitment may be relaxed, provided that such relaxation does not make the conditions of recruitment nugatory and that interpretation of such provisions of relaxation contained in the recruitment rules must not be liberal, but very strict.

(Emphasis added)

26. For reaching the above conclusions, the Division Bench of this Court, in *Dr. M. Laiphlang (supra)*, has relied upon, amongst others, the decisions in *J.C. Yadav and others Vs. State of Haryana and others*, *Keshab Chandra Joshi v. Union of India*, 1992 Suppl. SCC 272, *Syed Khalid Rizvi v. Union of India*, 1993 Supp (3) SCC 575, *State of Orissa and others Vs. Smt. Sukanti Mohapatra and others*, , *Dr M.A. Haque and Others Vs. Union of India (UOI) and Others*, , J and K. *Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, and *Suraj Parkash Gupta and Others Vs. State of Jammu & Kashmir Others*, .

27. In the case at hand, it is the 1979 Rules, which make provisions for relaxation. Rule 5 of the Rules states, "Power to relax: Where the administrator of Arunachal Pradesh is of opinion that it is necessary or expedientsq to do, he may, by order, for reasons to be recorded in writing and in consultation with the Arunachal Pradesh Selection Board, relax any of these provisions of these rules with respect to any class or category of persons.

28. In the light of the law laid down in *Dr. M Laiphlang (supra)*, one can safely hold that even if, in the light of the language used in Rule 5 of the 1979 Rules, the conditions of recruitment, contained in the 1979 Rules, may be relaxed, such relaxation cannot be to such an extent that it makes the whole provisions for recruitment imbecile, purposeless and nugatory. In short, Rule 5 does not conceive of recruitment de hors the 1979 Rules.

29. The decisions, referred to by the Division Bench, in *Dr. M Laiphlang (supra)*, make it clear mat even if the recruitment rules, in a given case, contain provisions for relaxation of the rules of recruitment, such relaxation cannot be to such an extent that it makes the whole scheme of recruitment meaningless nor

can the provisions of relaxation be interpreted in such a manner that it enables the Government to throw away the rules of recruitment lock, stock and barrel, make the same non-existent as if the rules, as a whole, do not exist or as if the rules, in their entirety stand suspended. In fact, in *Bibekananda Das v. the State of Assam and Ors.*, 2004(3) GLT 517, one of us, Ansari, J, dealing with the developing concept of relaxation of recruitment rules, observed:

149. From what has been discussed above, it is abundantly clear that though Rule 23 provides for relaxation of any Rule and even if "any" Rule is interpreted to include the Rules of recruitment relaxation cannot be to such an extent that the Rules of recruitment are rendered facile.

(Emphasis added)

30. We express our complete agreement with the above proposition of law. In fact, on this aspect of law, we may refer to *State of Orissa and others Vs. Smt. Sukanti Mohapatra and others*, wherein taking note of its earlier decision in *RN Nanjundappa v. T Thimmaid* (1992) SCC 409, the Supreme Court has, clarified the law, on the subject, as follows:

8. The Rules were made under the proviso to Article 309 for regulating the method of recruitment to the posts of Lower Division Assistants in the offices of the Heads of Departments. *** Counsel for the regular recruits contend that what the Government has done in exercise of power under Rule 14 is to set at naught the entire body of the Rules as if they never existed. The power of relaxation, contend counsel, cannot be so used as to render the Rules non est. In support of this contention strong reliance was placed on the following observations in the of *R.N. Nanjundappa v. T. Thimmiah*: (SCC pp.416-17.para26)

... If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized. Ratification or repolarization is possible of an act which is within the power and province of the authority but there has been some noncompliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules, or it may have the effect of setting at naught the rules.

In the present case also the appointments of the employees whose services are sought to be regularized were dehors the Rules. Rule 14 merely permits relaxation of any of the provisions of the Rules in public interest but not the total shelving of the rules. The orders do not say which rule or rules the Government considered necessary and expedient in public interest to relax. What has been done under the impugned orders is to regularize the illegal entry into service as if the Rules were not in existence. Besides the reason for so doing are not set out nor is it clear how such regularization can subserve public interest. Rule 14 has to be strictly construed and proper foundation must be laid for the exercise of power under that rule. The Rules have a limited role to play, namely, to regulate

the method of recruitment and Rule 14 enables the Government to relax any of the requirements of the Rules pertaining to recruitment. The language of Rule 14 in the context of the objective of the Rules does not permit total suspension of the Rules and recruitment dehors the Rules. In the present case the recruitments had taken place years back in total disregard of the Rules and now what is sought to be done is to regularize the illegal entry in exercise of power under Rule 14. Rule 14, we are afraid, does not confer such a blanket power: its scope is limited to relaxing any rule, e.g. eligibility criteria, or the like, but it cannot be understood to empower Government to throw the Rules overboard. If the rule is so construed it may not stand the rest of Article 14 of the Constitution. The proviso to Rule 13 can come into play in the matter of fixation of seniority between candidates who have successfully cleared the examination and a candidate who cleared the examination after availing of the benefit of relaxation. We are, therefore, of the opinion that the Tribunal committed no error in understanding the purport of Rule 14.

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10. Now even though the Tribunal came to the conclusion that Rule 14 did not permit regularization made under the impugned orders of January 3, 1985 and February 14, 1985, it, having regard to the long service put in by the employees named in the same two orders and on compassionate considerations, has supported the regularization under Article 162 of the Constitution. It has moulded the relief on such considerations. Since that part of the order has not been assailed and since the Appellants cannot be worse off by appealing, we cannot interfere with that part of the order. It will, therefore, be worked out as directed by the Tribunal but we may clarify that it will not have the effect of disturbing the seniority of regular appointees who will rank senior to the irregular appointees under any interim orders contrary to the relief moulded by the Tribunal shall be adjusted and brought in tune with the said relief. The benefit of this relief, to the extent relevant, will be given to irregular appointees covered under both the impugned orders of January 3, 1985 and February 14, 1985.

(Emphasis added)

31. Applying the law laid down in *Sukanti Mahapatra* (supra) to the factual matrix of the present case, one can unhesitatingly hold that the 1979 Rules had been made under the proviso to Article 309 for regulating the method of recruitment to the post of Law Officer-cum-Junior Draftsman and Rule 5 of the Rules provided for relaxation. Even if the power given, under Rule 5, to the Government can be interpreted to empower the Government to relax not only the conditions of service but also the conditions of recruitment, the fact remains that what the Government has done, in the present case, in exercise of powers under Rule 5, is to virtually set at naught the entire body of the 1979 Rules as if the 1979 Rules never existed. The power of relaxation, as the decision in *R. N.*

Nanjundappa (supra) reflects, does not empower appointments in defiance of the rules. As held in R. N. Nanjundappa (supra), if the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularized; ratification or regularization is possible of an act, which is within the power and province of the authority or where there has been some non-compliance with the procedure or the manner, which does not go to the root of the appointment; regularization cannot be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules, for, it may have the effect of setting at naught the rules.

32. In the present case too, if the appointment of the Respondent No. 4 is upheld, it would be tantamount to regularizing his services, though his ad hoc appointment was de hors the 1979 Rules. Rule 5 of the 1979 Rules merely permits relaxation of any of the provisions of the rules, but not the total shelving of the rules. If such relaxation, as in the present case, is permitted to survive for all intents and purposes, it would amount to regularizing the illegal entry of Respondent No. 4 into service as if the 1979 Rules did not exist for making direct recruitment to the post of Law Officer-cum-Junior Draftsman, under the 1979 Rules in terms of the Constitution guaranteed under Article 14 and Article 16. The language of Rule 5, in the context of the objective of the 1979 Rules, does not permit total suspension of the rules and recruitment de hors the Rules. We are afraid that if Rule 5 is allowed to be used by the Respondents in the manner, as has been done in the present case, it would make the rules violative of Article 14 of the Constitution of India. In such circumstances, the Supreme Court observed, in Sukanti Mahapatra (supra),

...does not confer such a blanket power; its scope is limited to relaxing any rule, e.g. eligibility criteria, or the like, but it cannot be understood to empower Government to throw the Rules overboard. If the rule is so- construed, it may not stand the test of Article 14 of the Constitution

33. The direct recruitment of Respondent No. 4 could not have been done, even under the 1979 Rules, by resorting to pick and choose policy or without giving any adequate opportunity whatsoever to eligible interested persons to participate in the selection process. If, the 1979 Rules are, otherwise, interpreted it would render the 1979 Rules ultra vires Article 14 and Article 16 of the Constitution of India, which provide for equality of opportunity to all eligible persons (See Secretary, State of Karnataka and Others Vs. Umadevi and Others,

34. In the case at hand, when Respondent No. 4 was appointed on ad hoc basis, there was, admittedly, no selection process held. As direct recruitment was a condition of recruitment, this condition could not have been relaxed and was not, in fact, relaxed, when Respondent No. 4 was appointed, on 27.12.2002, against the then sole sanctioned post of Law Officer-cum-Junior Draftsman. In fact, Respondent No. 4 has been directly recruited and appointed, on 27.04.2007, to the post of Law Officer-cum-Junior Draftsman, without holding any selection process whatsoever, by invoking 1979 Rules, which, on the date of this direct

recruitment, i.e., on 27.04.2007, already stood repealed.

35. What is, now, important to note is that the contractual appointment followed by ad hoc appointment of Respondent No. 4, to the post of Law Officer-cum-Junior Draftsman, was clearly on pick and choose basis, which was, undoubtedly, against the constitutional scheme of equality of opportunity, which is guaranteed, in public employment, by Articles 14 and 16;. There was no question of direct recruitment of Respondent No. 4, under the 1979 Rules, without following any selection process whatsoever. There was also no question of appointment of Respondent No. 4 by way of promotion, "deputation" or "transfer", because he was, admittedly, not holding any post, which was equivalent post or grade in the substantive capacity as perceived by the 1979 Rules inasmuch as appointment to the post of Law Officer-cum-Junior Draftsman was conceived, under the 1979 Rules, by way of promotion, deputation or transfer in respect of only a person, who was holding, at the relevant point of time, an equivalent post or grade or if he was from Central Civil Service Group-B with required qualification and two years of experience.

36. Thus, the case of Respondent No. 4 did not fall within the purview of appointment by way of promotion, deputation or transfer. His appointment was nothing, but a direct recruitment and a direct recruitment, in the manner in which it was done in the present case, was nothing but arbitrary by throwing to the winds the constitutional scheme of public employment and the recruitment rules in force at the relevant point of time in fact, the 1979 Rules contain no scheme for regularization. Above all even the 1979 Rules did not provide for relaxation of the conditions of recruitment. Otherwise, also, the essential conditions of recruitment, as prescribed by the 1979 Rules, could not have been relaxed to regularize the contractual or ad hoc appointment of Respondent No. 4. Thus, the ad hoc appointment of the Respondent No. 4 way back in the year 2002 and his regularization, in the year 2007, were not only misconceived in law, but wholly arbitrary too.

37. Mr. Tiwari, learned Counsel has great justification, when he points out that the letter dated 08.12.2006, issued by the Secretary, Law and Judicial, Govt of Arunachal Pradesh, shows that the Government had, initially, contemplated regularization of the arbitrarily and illegally made ad hoc appointment of Respondent No. 4 by resorting to one time relaxation of the conditions of recruitment embodied in the 2004 Rules, but when the APPSC did not agree to the Government's proposal for regularization of the appointment of the Respondent No. 4, as can be clearly seen from the letter, dated 17.01.2007, issued by the Secretary, APPSC, the Government went on back foot and, then, purportedly took resort to the 1979 Rules, constituted a DPC and, on the basis of the recommendations made by the DPC, the Government regularized the ad hoc appointment of Respondent No. 4 with retrospective effect.

38. Since the 1979 Rules do not provide for direct recruitment without adhering to regular selection process, the resort to the 1979 Rules, for the purpose of

directly appointing Respondent No. 4, in the year 2007, to the said post, in the disguise of regularization of his ad hoc appointment, was wholly arbitrary and illegal, when not even a semblance of selection process had been followed, in the year 2002, at the time of directly making ad hoc appointment of Respondent No. 4. This apart, the appointment of Respondent No. 4 at the time, when the 1979 Rules were in force, being contrary to the Rules, was wholly illegal and could not have been regularized by taking recourse to the 1979 Rules.

39. At any rate, when there were recruitment-rules governing the field, the power of regularization could not have been exercised by the Government by taking recourse to its executive authority under Artical 162. In fact it is not the case of even the Government that the ad hoc appointment of Respondent No. 4 was regularized by the Government in exercise of its executive power under Article 162 because the State Government claims to have regularized the ad hoc appointment of Respondent No. 4 purportedly under the 1979 Rules, though the Government had no such power.

40. We cannot but hold that the ad hoc appointment of Respondent No. 4 by order, dated 27.12.2002, being arbitrary and without holding any selection process whatsoever, was, and ought to have been treated by the learned Single Judge as, an arbitrary and illegal appointment and, therefore, not sustainable in law inasmuch as when the ad hoc appointment was arbitrary and illegal, the question of regularization of such an appointment did not arise at all.

41. The learned Single Judge's finding to the effect that the Respondent No. 4 had been validly appointed, on ad hoc basis, against a vacant post, during the subsistence of the 1979 Rules, is wholly erroneous. Since the ad hoc appointment of Respondent No. 4 was without following even a semblance of any selection procedure, the ad hoc appointment was nothing but arbitrary. Such an arbitrary ad hoc appointment could not have been regularized purportedly even under the 1979 Rules. This apart, when the 1979 Rules had not remained in existence and the same had been replaced by the 2004 Rules, the question of regularization of the ad hoc appointment of Respondent No. 4, by taking recourse to the 1979 Rules did not arise, particularly, when the ad hoc appointment of Respondent No. 4 was nothing but arbitrary, illegal and void ab initio, did not arise at all. Even if, on the ground that Respondent No. 4 has been in service, one does not interfere with the regularization of his arbitrary ad hoc appointment, his direct appointment by way of regularization, cannot be allowed to survive, with retrospective effect, as has been done in the present case.

42. On the specific contention, which the Appellant had raised in the writ petition, that ad hoc appointment of Respondent No. 4 was made without issuing any advertisement, the learned Single Judge has observed that no such advertisement was required to be issued under the 1979 Rules. The view, so taken, was wholly misconveived and contrary to the settled principle of law that no appointment, in public domain, can be made without following due process of recruitment by conforming to the Constitutional guarantees embodied in Article

14 and 16 of the Constitution.

43. As regards the finding of the learned Single Judge that for regularizing the ad hoc appointment of Respondent No. 4, reference to the APPSC was not necessary, we are constrained to hold that his view was a wholly incorrect view inasmuch as even the ad hoc appointment of the Respondent No. 4, when the 1979 Rules were in existence, had been made throwing to wind, in their entirety, the 1979 Rules and, hence, when the appointment of Respondent No. 4 had been made in the year 2007, i.e., at a time, when the 2004 Rules had already come into force, the resort to the 1979 Rules could not have been validly taken.

44. Though the learned Single Judge has pointed out that the writ Petitioner (i.e., the Appellant herein) has not challenged the ad hoc appointment of Respondent No. 4 or his subsequent officiating promotion to the post of Under Secretary, Law and Judicial, suffice it to point out that the Appellant was appointed in the year 2005 and had the Respondent No. 4 not been made senior to the Appellant by regularizing his service retrospectively, the Appellant might not have even challenged the regularization of the ad hoc appointment of the Respondent No. 4. When the writ Petitioner has raised the question as to whether regularization of the service of the Respondent No. 4 was or was not illegal, the learned Single Judge was required to decide the matter in the light of the relevant rules and constitutional scheme of governance, which abhors any arbitrary action even in the field of public employment. When the writ Petitioner (i.e., the present Appellant) had challenged the legality of the regularization of the ad hoc appointment of Respondent No. 4, what the learned Single Judge was required to decide, in the light of the relevant recruitment Rules and Constitutional scheme of governance in the matter of public employment, was as to whether the ad hoc appointment of Respondent No. 4, when the 1979 Rules were in force, had any semblance of legality. When the ad hoc appointment of Respondent No. 4, as we have already indicated above, was wholly arbitrary, and by completely throwing to the winds the 1979 Rules, his ad hoc appointment could not have been, once again, arbitrarily regularized by purportedly taking resort to the 1979 Rules. Such arbitrariness, in the domain of public employment, is in breach of the Constitutional scheme of governance.

45. The reference made to, and relied upon, by the Respondents, on the decision, in *R Dayal (supra)*, is wholly misplaced, because *R Dayal (supra)* was a case of promotion. The dispute, in the said case, did not pertain to initial entry into the service, but promotion. The facts, in the said case, and the issues, involved therein, were wholly different from the ones that we confront in the present appeal.

46. In *R Dayal (supra)*, the appellate State convened a DPC meeting, on 13-04-1995, under the Rajasthan Service of Engineers (Building and Roads Branch) Rules, 1954, against existing and anticipated vacancies as on 01.04.1995. The DPC recommended 9 candidates in accordance with the eligibility conditions prescribed in the Recruitment Rules then existing. On

24.07.1995, the Recruitment Rules were amended, whereby the eligibility conditions were changed. The amendment came into force with immediate effect. The issue, therefore, was whether selection of two candidates, by way of promotion was valid, when the eligibility conditions stood changed with effect from 24.07.1997 and options were available, in the Rules, to revise the select list. On these facts, it was held by the Supreme Court, in *R Dayal (supra)*, that the post, Which had fallen vacant prior to the amendment of the rules, would be governed by the original rules and not by the amended rules and, as a necessary corollary, it was further held that the vacancies, which had arisen subsequent to the amended rules, are required to be filled up in accordance with the law existing as on the date, when the vacancies had arisen. There is no dispute with this proposition of law. However, in the present case, the order, regularizing the ad hoc appointment of Respondent No. 4, is de hors the Recruitment rules, be it 2004 Rules or the 1979 Rules. Hence, ratio of *R Dayal (supra)* is of no help to Respondent No. 4 in the present case. Moreover, *R Dayal's case (supra)* was not a case of regularization of an arbitrary and illegal ad hoc appointment; rather, *R Dayal's case (supra)* was, as indicated hereinbefore, a case of promotion and not a case of direct recruitment.

47. The facts of *S. Sumnyan (supra)* are, again, different and not similar to the present case. The Appellants, in *S. Sumnyan (supra)*, were appointed, on ad hoc basis, as Assistant Engineers (Civil) by the Government of Arunachal Pradesh, in the Public Works Department, on various dates between the years 1986 and 1988, on the condition that they would be regularized according to the rules on the recommendation of a Selection Board constituted by the Government During the relevant period, when the Appellants were so appointed, the appointments to Group B posts, in the Public Works Department of Arunachal Pradesh, were guided by the Arunachal Pradesh Administration (Public Works Department) Group B post Recruitment Rules, 1983, and the appointments of the Appellants were made as per the said Recruitment Rules in the absence of the Arunachal Pradesh Public Service Commission at the relevant time. When the Arunachal Pradesh was constituted as a separate State on 20-02-1987, the Arunachal Pradesh Public Service Commission was also constituted under the Gazette Notification, dated 29-03-1988. The cases for regularization of the services of Appellants were considered by the Arunachal Pradesh Public Service Commission, which recommended the regularization of the services of Appellants from the date of their initial appointment. In sharp contrast to case of *S. Sumnyan (supra)*, the ad hoc appointment of Respondent No. 4, as Law Officer-cum-Junior Draftsman, did not incorporate any condition that he would be regularized according to the 1979 Rules on the recommendation by the Committee to be constituted by the Government. The said ad hoc appointment of Respondent No. 4, as already pointed out above, was on pick and choose basis, which is in complete violation of Articles 14 and 16 of the Constitution. The regularization of ad hoc period of Respondent No. 4 was also de hors the 1979 Rules and, lastly, the said order of regularization did not have recommendation of the Arunachal

Pradesh Public Service Commission. On the contrary, Arunachal Pradesh Public Service Commission had objected to such regularization of the ad hoc appointment of Respondent No. 4.

48. The case of Manoharan (*supra*) has no relevance to the facts of the present case. The case of Manoharan (*supra*) reiterates the settled proposition of law that vacancies, existing prior to formal amendment to the recruitment rules, are to be filled up according to rules applicable prior to amendment. In the present case, the order, regularizing the ad hoc appointment of Respondent No. 4, is even *dehors* the 1979 Rules inasmuch as this direct recruitment was made without following any selection process whatsoever.

49. Moreover, it has to be borne in mind that ad hoc appointment of Respondent No. 4 was in total disregard of Articles 14 and 16 of the Constitution, because, not even a semblance of selection process was adhered to, while making ad hoc appointment of Respondent No. 4. Hence, the order, regularizing the ad hoc appointment of Respondent No. 4, cannot be justified even under the provisions of 1979 Rules. Since Respondent No. 4 was not appointed, in any substantive capacity, by following any selection procedure during the currency of 1979 Rules, there was no question of subsequent regularization of his arbitrary and illegal ad hoc appointment during the subsistence of 2004 Rules by taking recourse to the repealed 1979 Rules on the specious ground that initial contractual and ad hoc appointment of Respondent No. 4 was against the vacancy created during the 1979 Rules.

50. Because of what have been discussed and pointed out above, we find that the ad hoc appointment of Respondent No. 4, during the period, when the 1979 Rules were in force, was wholly illegal and arbitrary and such an ad hoc appointment could not have been converted into a regular direct recruitment in the guise of regularization of the service of Respondent No. 4. When such regularization was not only alien to, and in denial of, Articles 14 and 16, but also in violation of the scheme of appointment under the 1979 Rules as well as the 2004 Rules, such regularization of the ad hoc appointment of Respondent No. 4 could not have been sustained and is not tenable in law. Even if, therefore, we do not interfere with the regularization of the ad hoc appointment of Respondent No. 4, he cannot be allowed to continue to remain senior to the present Appellant, whose regular appointment was made earlier than the illegal and arbitrary regularization of the ad hoc appointment of Respondent No. 4.

51. In the result and for the reasons discussed above, this appeal succeeds. The judgment and order, under appeal, are hereby set aside and the impugned proceedings of the DPC, held on 27.04.2007, the recommendations made by the DPC, and the order, dated 04.06.2007, regularizing the appointment of Respondent No. 4 with retrospective effect from 27.12.2002, shall stand accordingly set aside to the extent that the said regularization has been made retrospective in nature. The Respondent No. 4 shall, therefore, be treated, for all intents and purposes, as junior to the present Appellant in the cadre of Law

Officer-cum- Junior Draftsman.

52. With the above observations and directions, this writ appeal stands disposed of.

53. No order as to costs.