

(2018) 08 RAJ CK 0053
In the Rajasthan High Court
Case No : Civil Writ No. 9996, 11315 of 2018

Durga Meena @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 09-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226, 275

Citation : (2018) 08 RAJ CK 0053

Hon'ble Judges : DR. PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : Arjun Purohit, Dinesh Ojha, P.R. Singh

Final Decision : Disposed Off

Judgement

1. Counsel for the parties agree that the matter is squarely covered by the judgment rendered by this Court in Manish Kumar Nagda & Ors. Vs. State of Rajasthan & Ors.

(S.B. Civil Writ Petition No.8529/2018), decided on 23.7.2018, which reads as under :-

1. This writ petition under Article 226 of the Constitution of India has been preferred claiming the following reliefs:

It is therefore most humbly and respectfully prayed that by an appropriate writ, order or direction, this writ petition may kindly be allowed and the respondents may kindly be directed to:-

(i) To grant and extend the benefits of the Gazette Notification dated 19.05.2018 (Annexure-4) issued by the Ministry of Law and Justice of Central

Government to the petitioners and it may be directed to respondents to consider the online application form applied by the petitioners as applied in the category of TSP area.

(ii) by an appropriate writ or direction the respondents may be directed to allow

the petitioners to participate in the process of Teacher Grade III, Level

I recruitment, 2018 as against Gazette Notification dated 19.05.2018 and if petitioners come into the merits than appointment may be granted to the

petitioners on the post of Teacher Grade III, Level I after extending the benefits of the Gazette Notification dated 19.05.2018 to the petitioners.

(iii) Any other appropriate order which is deemed just and proper in the facts and circumstances of the case may kindly be also issued in favour of the

petitioners.â??

2. Brief facts of this case, as noticed by this Court, are that the Directorate Primary Education, State of Rajasthan, Bikaner has issued an

advertisement No.01/2018 dated 12.04.2018 for the recruitment of Teacher Grade III Level I Classes I to V under the Rajasthan Panchayati Raj Act,

1994 and the Rajasthan Panchayati Raj Rules, 1996, while inviting applications for the Non Tribal Sub Plan Area.

3. It is pertinent to note that on the same date i.e. 12.04.2018, another advertisement bearing No.02/2018 was issued for the Tribal Sub Plan (TSP)

Area also, for the same recruitment under the same Rules.

4. The present petitioners applied under the advertisement No.01/2018 for Non Tribal Sub Plan Area and filled the application forms in time before the

last date, which was 07.05.2018.

5. After submission of the application forms in pursuance of the advertisement No.01/2018, as above, the area to which the petitioners belonged, was

declared as Tribal Sub Plan Area vide Gazette Notification issued by the Central Government on 19.05.2018, whereby while entering into an exercise

of expanding the Tribal Area, the Central Government, as per its assessment, expanded the Tribal Sub Plan Area, which is a benefit based upon the

territorial population of the tribals.

6. The aforementioned Gazette Notification dated 19.05.2018 reads as under:-

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

NOTIFICATION

New Delhi, the 19th May, 2018

G.S.R.466(E).â?"The following Order made by the President is published for general information:â?"

C.0.270

THE SCHEDULED AREAS (STATE OF RAJASTHAN)

ORDER, 2018

In exercise of the powers conferred by sub-paragraph (2) of paragraph 6 of the Fifth Schedule to the Constitution of India, the President hereby

rescinds the Scheduled Areas (State of Rajasthan) Order, 1981, and in consultation with the Governor of that State, is pleased to make the following

Order, namely: â?

1. (1) This Order may be called the Scheduled Areas (State of Rajasthan) Order, 2018.

(2) It shall come into force at once.

2. The areas specified below are hereby redefined to be the Scheduled Areas within the State of Rajasthan:â?" (1) Banswara district.

(2) Dungarpur district.

(3) Pratapgarh district.

(4) The following in Udaipur district:

(a) Tehsils of Kotra, Jhadol (erstwhile Phalasia), Lasadia, Salumbar, Sarada, Kherwara, Rishabhdeo and Gogunda; (b) the

following in Girwa tehsil:

(i) Girwa block,

(ii) the following villages of the gram panchayats of block Bargaon as mentioned below: â?

(I) Madar, Brahmanon Ki Hunder, Rathoron Ka Gurha, Bandarwara, Ghodan Kalan, Ghoran Khurd and Kaylon Ka Gurha villages of Madar gram

panchayat,

(II) Kailashpuri, Raya, Karawari, Mathatha, Nagda, Jhalon Ka Gurha and Munwas villages of Kailashpuri gram panchayat,

(III) Cheerwa, Mohanpura, Shivpuri, Karelton Ka Gurha and Sare villages of Cheerwa gram panchayat,

(IV) Amberi, Bheelon Ka Bedla, Oton Ka Gurha and Pratappura villages of Amberi gram panchayat,

(V) Dheekli and Bada villages of Dheekli gram panchayat,

(VI) Kavita, Barodiya, Ghasiyar and Dangiyan Ka Hunder villages of Kavita

grampanchayat,

(VII) Gehlton Ka Was, Beeyal, Kundal Ubeshwarji, Dhar, Badanga and Banadiya villages of Dhar gram panchayat;

(c) the Nauwa, Khadra, Raiji Ka Gurha and Maruwas villages of the Nauwa gram panchayat of Mavli tehsil;

(d) the following villages of the gram panchayats of Vallabhnagar tehsil as mentioned below:â

(I) Mal Ki Toos, Gowala, Phalet, Tank and Brahmanon Ka Roba villages of Mal Ki Toos gram panchayat,

(II) Dhawariya, Kheraphala, Nagaliya, Rani Doongla and Raniya villages of Dhawariya gram panchayat,

(III) Bhopa Khera, Beripura, Hamerpura, Phoosariya and Rayla villages of Bhopa Khera gram panchayat,

(IV) Kundai, Bhamela, Gotipa, Kankariyon Ka Khera, Naharpura alias Narpura, Padma Khera and Sangrampur villages of Kundai gram panchayat.

(5) The following in Rajsamand district:

(a) the following villages of the gram panchayats of Kumbhalgarh tehsil as mentioned below:

(i) Antri, Sandookon Ka Gurha and Baran villages of Antri gram panchayat,

(ii) Kucholi, Keshar and Bawada villages of Kucholi gram panchayat,

(iii) Ora, Dowas and Kodar villages of Ora gram panchayat, (iv) Pecpana, Jetaran and Delwariya villages of Peepana gram panchayat,

(v) Bardara, Udawar, Kalthana and Kotra villages of Bardara gram panchayat;

(b)â the following villages of Kaliwas gram panchayat of Nathdwara tehsil, namely, Kaliwas,â Barwa,â Barwaliya,â Reran,â Kamliâ Ka

Gurha,â Gamethon Ka Nohara, Damawari, Kolar, Munjela, Leelera, Rainiya, Shyamji Ka Gurha, Siyol, Songariya and Tantela.

(6)â The following villages of the gram panchayats of Ban Sadri tehsil in Chittorgarh district as mentioned below:

(a) Afrom Ka Talab, Linkoda, Sultanpura, Borkhera, Semal Khera, Rughnathpura, Keetkhera, Rati Talai, Rati Chandji Ka Khera, Chandpura, Sabalpura

and Gundal Pur villages of Rati Chandji Ka Khera gram panchayat,

(b) Ameerama, Manpura, Parbati, Roop Pura and Maraodiya villages of Ameerama gram panchayat,

(c) Kewalpura (A), Kewalpura Jageer, Rawatpura, Shiv Pura, Tegariyo Ka Phala, Naya Khera, Rani Malya, Kali Bheet, Lachhmipura, Haripura,

Shyampura, Jooni Barwal, Kalyanpura and Kewalpura (B) villages of Kewalpura gram panchayat,

(d) Moonjwa, Jaisinghpura, Eldinghpura, Matamagari, Dheekriya Kheri, Pujan Ka Phalian, Payri, Kesharpura, Khankhariya Kheri, Lalpura, Kala Khet

and Deepon Ka Talab villages of Moonjwa gram panchayat,

(e) Parsoli, Borundi, Garh Borundi, Sangrampura, Rathoron Ka Khera, Kheri Kalan, Kheri Khurd and Sukhpura villages of Parsoli gram panchayat.

(7) The following villages of the gram panchayats of Bali tehsil in Pali district as mentioned below:

(a) Amliya, Kagdara, Thandi Beri, Laxman Pura Jod and Bothara villages of Amliya gram panchayat,

(b) Kooran, Khetrali, Kolwara, Kotiwada, Kooran Khadra and Khetrali Khada villages of Kooran gram panchayat,

(c) Goriya and Korwa villages of Goriya gram panchayat,

(d) Bheemana, Upla Bheemana, Tani, Urana and Nadiya villages of Bheemana gram panchayat,

(e) Kakradi, Aradwan, Danverli, Sambharwara and Berdi villages of Kakradi gram panchayat,

(f) Malnoo, Heerola and Lalpura villages of Malnoo gram panchayat,

(g) Peepla village of Peepla gram panchayat,

(h) Lundara, Chimanpura and Maldar villages of Lundara gram panchayat,

(i) Koyalavao, Chingta Bhata and Chopra Ki Nal villages of Koyalavao gram panchayat.

(8) The following in Sirohi district:

(a) Aburoad tehsil;

(b) the following villages of the gram panchayats of Pindwara tehsil as mentioned below:

(i) Varli, Kundal, Sabela, Vagdari, Dhanga, Kalumbari and Pindwara (Rural) villages of Varli gram panchayat,

(ii) Moras, Cheeniya Band and Bhadaveri villages of Moras gram panchayat,

(iii) Amli, Thandi Ben, Sadalwa and Malap villages of Amli gram panchayat,

(iv) Gharat, Malera, Navawas, Gadiya and Pahar Kalan villages of Gharat gram

panchayat,

(v) Lotana, Apri Khera and Kalabor villages of Loutana grampanchayat,

(vi) Mandwara Khalsa, Khokhri Khera and Varki Khera villages of Mandwara Khalsa gram panchayat,

(vii) Sanwara, Sada Phan, Navawas Dev, Navawas Khalsa and Semli villages of Sanwara gram panchayat,

(viii) Isra, Ker, Ubera and Churli Khera villages of Isra grampanchayat,

(ix) Waloriya village of Waloriya gram panchayat,

(x) Mandwara Deo, Peetari Padar, Kedar Padar and Bor Umri

villages of Mandwara Deo gram panchayat, (xi) Bhoola village of Bhoola gram panchayat,

(xii) Achpura, Kaseenda, Nagpura, Panch Dewal, Block No.2 and Kotra villages of Achpura gram panchayat,

(xiii) Basant Garh village of Basant Garh gram panchayat, (xiv) Siwera, Rajpura, Keshavganj and Dada Padar villages of Siwera gram panchayat.

3. Any reference in the preceding paragraph to a territorial division by whatever name indicated shall be construed as a reference to the territorial

division of that name as existing at the commencement of this Order.

RAM NATH KOVIND,

President.

[F. No. 1(31)/2017-Leg. II Dr. REETA VASISHTA, Addl. Secy.]

7. After issuance of the aforequoted notification dated 19.05.2018, the petitioners, who admittedly belonged to the extended TSP Area, immediately sought their inclusion in the TSP Category in relation to the recruitment in question.

8. Learned counsel for the petitioners has shown that in various ongoing recruitments, the TSP Area Notification dated 19.05.2018 has been made applicable by the Rajasthan Public Service Commission vide corrigendum dated 04.06.2018.

9. The aforementioned corrigendum dated 04.06.2018 reads as under:-

“[F. No. 1(31)/2017-Leg. II Dr. REETA VASISHTA, Addl. Secy.]

“[F. No. 1(31)/2017-Leg. II Dr. REETA VASISHTA, Addl. Secy.]

“[F. No. 1(31)/2017-Leg. II Dr. REETA VASISHTA, Addl. Secy.]

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29-03-2018] foa-la- 09@2017&18 fnukad 29-03-2018] foa-la- 12@2017&18 fnukad 29-03-2018] foa-la04@2018&19 fnukad 03-04-2018] foa-la-

09@2018&19 fnukad 09-04-2018 ,oa foa-la12@2018&19 fnukad 04-05-2018 eas vkosnu djus ds fy, volj iznku djrs gq, vkosnu dh vafre fnuakd vc

c17-06-2018 ls 23-06-2018 jkf= 12-00 cts rd dh tkrh gSAâ??

10. Learned counsel for the petitioners has however submitted that the TSP Area Notification dated 19.05.2018 is a welfare notification, which has

been issued with an intention to give a wider benefit to the tribals and other backward persons residing in the TSP Area, and as per the Constitutional

Scheme, such benefit has been conferred upon the present petitioners as well, and thus, in the ongoing selection process for recruitment to the post of

Teacher Grade III Level I Classes I to V under the Rajasthan Panchayati Raj Act, 1994 and the Rajasthan Panchayati Raj Rules, 1996, where the

last date for filling up the forms was 07.05.2018, the petitioners ought to have been treated as the candidates belonging to the TSP Area.

11. Learned counsel for the petitioners has further shown the representations of the petitioners, by which they were seeking their inclusion in the TSP

Category for the recruitment to the same post under the advertisement No.02/2018 issued on the same date i.e. 12.04.2018, and the recruitment

process wherefor is being conducted simultaneously with the advertisement No.01/2018 dated 12.04.2018 issued for Non TSP Area.

12. Learned counsel for the petitioners has relied upon the precedent law laid down by the Honâ??ble Apex Court in Mithilesh Kumari & Anr. Vs.

Prem Behari Khare, reported in (1989) 2 SCC 95, relevant portion of which reads as under:-

â??19. However, the court has to interpret the language used in the Act, and when the language is clear and unambiguous it must. be given effect to.

Law Commission's Reports may be referred to as external aid to construction of the provisions. It may be noted that the Act is a piece of prohibitory

legislation and it prohibits benami transactions subject to stated exceptions and

makes such transactions punishable and also prohibits the right to defences against recovery of benami transactions as defined in section 2(a) of the Act. The Parliament has jurisdiction to pass a declaratory legislation. As a result of the provisions of the Act all properties held benami at the moment of the Act coming into force may be affected irrespective of their beginning, duration and origin. This will be so even if the legislation is not retrospective but only retroactive.

20. The learned counsel for the respondent rightly submits that the Act contains no specific provision making its operation retrospective. The Law

Commission itself observed that democratic culture abhors ex post facto legislation and that it was necessary to curb unlawful nefarious uses of property.

21. We read in Maxwell that it is a fundamental rule of English Law that no statute shall be construed to have retrospective operation Unless such a

construction appears very clearly at the time of the Act, or arises by necessary and distinct implication. A retrospective operation is, therefore, not to

be given to a statute so as to impair existing right or obligation, otherwise than as regards matter of procedure unless that effect cannot be avoided

without doing violence to the language of the enactment. Before applying a statute retrospectively the Court has to be satisfied that the statute is in

fact retrospective. The presumption against retrospective operation is strong in cases in which the statute, if operated retrospectively, would

prejudicially affect vested rights or the illegality of the past transactions, or impair contracts, or impose new duty or attach new disability in respect of

past transactions or consideration already passed. However, a statute is not properly called a retrospective statute because a part of the requisites for

its action is drawn from a time antecedent to its passing. We must look at the general scope and purview of the statute and at the remedy sought to be

applied, and consider what was the former State of Law and what the legislation contemplated. Every law that takes away or impairs rights vested

agreeably to existing laws is retrospective, and is generally unjust and may be oppressive. But laws made justly and for the benefit of individuals and

the community as a whole, as in this case, may relate to a time antecedent to their commencement. The presumption against retrospectivity may in

such cases be rebutted by necessary implications from the language employed in

the statute. It cannot be said to be an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed. The question is whether on a proper construction the legislature may be said to have so expressed its intention. Craie on Statute Law, 7th Ed. writes that the general rule of law that statutes are not operated retrospectively may be departed from (a) by express enactment and (b) by necessary implication from the language employed, and the author goes on to say: (pp. 392-93)

If it is a necessary implication from the language employed that the legislature intend- ed a particular section to have a retrospec- tive operation, the courts will give it such an operation. ""Baron Parke,"" said Lord Hather- ley in Pardo v. Bingham, did not consider it an invariable rule that a statute could not be retrospective unless so expressed in the very terms of the section which had to be construed, and said that the question in each case was whether the legislature had sufficiently expressed that intention. In fact, we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, what it was that the legislature contemplated."" But a statute is not to be read retrospectively except of necessity In Main v. Stark, Lord Selborne said: ""Their lordships, of course do not say that there might not be something in the context of an Act of Parliament, or to be collected from its language, which might give towards prima facie prospective a larger operation, but they ought not to receive a larger operation unless you find some reason for giving it In all cases it is desirable to ascertain the intention of the legislature."" He went on: ""Words not requiring a retrospective operation, so as to affect an existing statute prejudicially, ought not to be so construed"", but in Renold v. Att. Genl. for Novo Scotia it was held that this rule did not extend to protect from the effect of a repeal a privilege which did not amount to an accrued right.

22. As defined in Section 2(a) of the Act ""benami transaction"" means any transaction in which property is transferred to one person for a consideration paid or provided by any other person."" A transaction must, therefore, be benami irrespective of its date or duration. Section 3, subject to the exceptions, states that no person shall enter into any benami transaction. This section obviously cannot have retrospective operation. However,

section 4 clearly provides that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie, by or on behalf of a person claiming to be real owner of such property. This naturally relates to past transactions as well. The expression "any property held benami" is not limited to any particular time, date or duration. Once the property is found to have been held benami, no suit, claim or action to enforce any right in respect thereof shall lie. Similarly, subsection (2) of section 4 nullifies the defences based on any right in respect of any property held benami whether against the person in whose name the property is held or against any other person in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property. It means that once a property is found to have been held benami, the real owner is bereft of any defence against the person in whose name the property is held or any other person. In other words in its sweep section 4 envisages past benami transactions also within its retroactivity. In this sense the Act is both a penal and a disqualifying statute. In case of a qualifying or disqualifying statute it may be necessarily retroactive. For example when a Law of Representation declares that all who have attained 18 years shall be eligible to vote, those who attained 18 years in the past would be as much eligible as those who attained that age at the moment of the law coming into force. When an Act is declaratory in nature the presumption against retrospectivity is not applicable. Acts of this kind only declare. A statute in effect declaring the benami transactions to be unenforceable belongs to this type. The presumption against taking away vested right will not apply in this case inasmuch as under law it is the benamidar in whose name the property stands, and law only enabled the real owner to recover the property from him which right has now been ceased by the Act. In one sense there was a right to recover or resist in the real owner against the benamidar. Ubi jus ibi remedium. Where there is a right, there is a remedy. Where the remedy is barred, the right is rendered unenforceable. In this sense it is a disabling statute. All the real owners are equally affected by the disability provision irrespective of the time of creation of the right. A right is a legally protected interest. The real owner's right was hitherto protected and the Act has resulted in removal of that protection.

23. When the law nullifies the defences available to the real owner in recovering the benami property from the benamidar the law must apply

irrespective of the time of the benami transactions. The expression ""shall lie"" in section 4(1) and ""shall be allowed"" in section 4(2) are prospective and

shall apply to present (future stages) and future suits, claims or actions only. This leads us to the question whether there was a present suit between

the plaintiffrespondent and the defendant-appellant on the date of the law coming into force. We have noted the dates of filing the suit and judgments

of the courts below. On the date of the section 4 of the Act coming into force, that is, 19th May 1988 this appeal was pending and, of course, is still

pending. Can the suit itself be said to be pending?

24. Lachmeshwar v. Keshwar Lal, A.I.R. 1941 F.C. 5 is an authority for holding that the hearing of appeal under the procedural law of India is.in the

nature of re-hearing and therefore in moulding the relief to be granted in a case on appeal, the appellate court is entitled to take into account even

facts and events which have come into existence after the decree appealed against. Consequently, the appellate court is competent to take into

account legislative changes since the decision under appeal was given and its powers are not confined only to see whether the lower court's decision

was correct according to the law as it stood at the time when its decision was given. Once the decree of the High Court has been appealed against,

the matter became sub judice again and thereafter this court had seisin of the whole case, though for certain purposes e.g., execution, the decree was

regarded as final and the courts below retained jurisdiction in that regard. This was followed in Shyabuddinsab v. The Gadag-Betgeri Municipal

Borough, [1955] 1 S.C.R. 1268 where after the judgment of the High Court and after grant of special leave by this court the legislation was passed,

and it was applied by this Court. Their lordships, referring to The King v. The General Com- missioner of Income Tax, [1916] 2 K.B. 249 and

Mukharjee Official Receiver v. Ramratan Kaur, [1935] L.R. 63 I.A. 47 rejected the contention that unless there are express words in the amending

statute to the effect that the amendment shall apply to pending proceedings, it cannot affect the proceedings. In Dayawati v. Inderjit, [1966] 3 S.C.R.

275 it has been held that the word 'suit' includes an appeal from the judgment in the suit. The only difference between a suit and an appeal is that an

appeal only reviews and corrects and proceedings in a cause already constituted but does not create the cause. 1nMohanlal Jain v. His Highness

Maharaja Shri Man Singh, [1962] 1 S.C.R. 702 it was observed that ""A person is ""sued"" not only when the plaint is filed against him, but is ""sued"" also

when the suit remained pending against him. The word ""sued"" covers the entire proceeding, in an action."" In Amerjit Kaur v. Pritam Singh, [1975] 1

S.C.R. 605 it has been held that an appeal is a reheating and in moulding relief to be granted in a case on appeal, the appellate court is entitled to take

into account even facts and events which have come into existence after the passing of the decree appealed against.

25. For the respondent it is submitted that right of the parties to a suit would be determined on the basis of rights available to them on the date of filing

of the suit. Reliance is placed on Nand Kishore Marwah v. Samundri Devi, [1987] 4 S.C.C. 382. That however was a case of eviction where the

rights of the parties on the date of suit were material unlike in this case where subsequent legislation has nullified the defences of benami holders. That

case is, therefore, distinguishable.

26. Counsel for the respondent lastly submits that nobody should be allowed to suffer for fault of the court. As the maxim goes, *actus curiae neminem*

gravabit. Nobody should suffer for an act of the court. However, the delay in disposal of an appeal cannot be termed an action of the court. The

consequence is that the plaintiff-respondent's suit or action cannot be decreed under the law; and hence the decree passed by the lower courts is

annihilated and the suit dismissed.

27. In the result, this appeal is allowed in the manner indicated above. Under the peculiar facts and

circumstances of the case, we make no order as to costs.â??

13. Learned counsel for the petitioners has also placed reliance on the judgment rendered by the Honâ??ble Apex Court in Bharat Singh Vs.

Management of New Delhi Tuberculosis Centre, New Delhi & Ors., reported in (1986) 2 SCC 614, relevant portion of which reads as under:-

â??6. Before we deal with the rival contentions, it would be useful to read Section 17-B with which we are concerned. ""17B. Where in any case, a

Labour Court, Tribunal or National Tribunal by its award directs reinstatement of workman and the employer prefers any proceedings against such

award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in

the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the

workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court

:

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been

receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for

such period or part, as the case may be.

The three necessary ingredients for the application of this Section are (i) the Labour Court should have directed reinstatement of the workman, (ii) the

employer should have preferred proceedings against such award in the High Court or in the Supreme Court, (iii) that the workman should not have

been employed in any establishment during such period.

7. The question now before us is whether a workman would be denied the benefit of this Section, even if all the above three conditions are satisfied, if

the award was passed prior to August 21, 1984? We may, even at this stage, say that in cases where the award had become final prior to August 21,

1984, Section 17-B cannot be pressed into service to reopen the same. It is only when the award is challenged and the challenge is pending, that the

Section becomes operative.

8. It is common knowledge that even before Section 17-B was enacted, Courts were, in their discretion, awarding wages to workmen when they felt

such a direction was necessary but that was only a discretionary remedy depending upon Court to Court. Instances are legion where workmen have

been dragged by the employers in endless litigation with preliminary objections and other technical pleas to tire them out. A fight between a workman

and his employer is often times an unequal fight. The legislature was thus aware that because of the long pendency of disputes in Tribunals and

Courts, on account of the dilatory tactics adopted by the employer, workmen had suffered. It is against this background that the introduction of this

Section has to be viewed and its effects considered.

9. The objects and reasons for enacting the Section is as follows :

When Labour Courts pass award of reinstatement, these are often contested by an employer in the Supreme Court and High Courts. It was felt that

the delay in the implementation of the award causes hardship to the workman concerned. It was, therefore, proposed to provide the payment of wages

last drawn by the workman concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or

High Courts.

10. The objects and reasons give an insight into the background why this Section was introduced. Though objects and reasons cannot be the ultimate

guide in interpretation of statutes, it often times aids in finding out what really persuaded the legislature to enact a particular provision. The objects and

reasons here clearly spell out that delay in the implementation of the awards is due to the contests by the employer which consequently cause hardship

to the workmen. If this is the object, then would it be in keeping with this object and consistent with the progressive social philosophy of our laws to

deny to the workmen the benefits of this Section simply because the award was passed, for example just a day before the Section came into force? In

our view it would be not only defeating the rights of the workman but going against the spirit of the enactment. A rigid interpretation of this Section as

is attempted by the learned counsel for the respondents would be rendering the workman worse off after the coming into force of this Section. This

section has in effect only codified the rights of the workmen to get their wages which they could not get in time because of the long drawn out process

caused by the methods employed by the Management. This Section, in other words, gives a mandate to the Courts to award wages if the conditions in

the Section are satisfied.

11. In interpretation of statutes, Courts have steered clear of the rigid stand of looking into the words of the Section alone but have attempted to make

the object of the enactment effective and to render its benefits unto the person in whose favour it is made. The legislators are entrusted with the task

of only making laws. Interpretation has to come from the Courts. Section 17-B on its terms does not say that it would bind awards passed before the

date when it came into force. The respondents' contention is that a Section which imposes an obligation for the first time, cannot be made

retrospective. Such sections should always be considered prospective. In our view, if this submission is accepted, we will be defeating the very purpose for which this Section has been enacted. It is here that the Court has to evolve the concept of purposive interpretation which has found acceptance whenever a progressive social beneficial legislation is under review. We share the view that where the words of a statute are plain and unambiguous effect must be given to them. Plain words have to be accepted as such but where the intention of the legislature is not clear from the words or where two constructions are possible, it is the Court's duty to discern the intention in the context of the background in which a particular Section is enacted. Once such an intention is ascertained the Courts have necessarily to give the statute a purposeful or a functional interpretation. Now, it is trite to say that acts aimed at social amelioration giving benefits for the havenots should receive liberal construction. It is always the duty of the Court to give such a construction to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a literal construction. A construction which would defeat the rights of the havenots and the underdog and which would lead to injustice should always be avoided. This Section was intended to benefit the workmen in certain cases. It would be doing injustice to the Section if we were to say that it would not apply to awards passed a day or two before it came into force.â??

14. On the other hand, learned counsel for the respondents has opposed the aforesaid submissions made on behalf of the petitioners on the ground that the related selection process has already been initiated, and since there were two separate advertisements, as aforementioned, issued for the same recruitment process for the post of Teacher Grade III Level I Classes I to V, therefore, the relief claimed in the present writ petition cannot be granted to the petitioners, by applying the aforementioned notification dated 19.05.2018, retrospectively.

15. Learned counsel for the respondents has further submitted that for all practical purposes, any law cannot be applied retrospectively, and thus, if the TSP Area notification dated 19.05.2018 is to be made applicable for the purpose of inclusion of the present petitioners in the TSP Category, the same cannot be applied on the advertisement No.02/2018 issued on 12.04.2018 in relation to the recruitment in question.

16. Learned counsel for the respondents has also submitted that in respect of the other welfare inclusions of preferences, like widow and divorcee

categories, the preference is given from the date of the advertisement/ notification, and not prior thereto.

17. Learned counsel for the respondents has also pointed out the difficulty in making such inclusions, and submitted that since the forms have already

been filled and the TSP area is being dealt with in a separate advertisement No.02/2018, therefore, in relation to the said advertisement, the inclusion

of the present petitioners, who have filled their online forms in pursuance of the advertisement No.01/2018, would be a herculean task.

18. Learned counsel for the respondents has referred to the judgment of this Honâ??ble Court rendered in Devendra Kumar Meena Vs. State of

Rajasthan & Anr. (S.B.Civil Writ Petition No.7187/2009 decided on

10.04.2015), relevant portion of which reads as under:-

â??Heard and considered the arguments advanced at the bar and perused the material available on record.

Undisputedly, the process wherein the petitioner applied was initiated through the advertisement issued in the month of April 2007. The examination

for selection was held in the month of August 2007. The notification dated 12.9.2007, whereby TSP area reservation was declared was notified and

published in the official Gazette on 12.9.2007 and therefore, obviously the benefit of such reservation was not required to be extended to the

candidates, who had appeared in the examination conducted before the publication of the notification. Any such action would amount to giving a

retrospective effect to the notification declaring an area specific reservation, which in the opinion of this Court, is not permissible. So far as the

petitionerâ??s claim that the action of the respondents in giving benefit of the TSP area reservation to such candidates, who appeared in the

recruitment examination pursuant to the advertisement (Annex.11) dated 1.6.2007 is concerned, the same is also of no avail whatsoever to the

petitioner for the simple reason that the advertisement itself stipulated that the probable date of the examination would be in the month of October

2007. By that time, the TSP area reservation was notified and therefore, any selection process conducted thereafter had to be governed by the said

notification. As a consequence, the petitionerâ??s claim that he should be

extended the benefit of TSP area reservation introduced by the notification (Annex.4) on the ground of parity is unacceptable. It is further relevant to note that the selection process wherein, the petitioner seeks a direction for appointment was completed long back. No interim protection was provided to the petitioner. Thus, otherwise also, the petitioner is not entitled to the relief claimed in the writ petition.

Accordingly, the writ petition being devoid of any merit is hereby dismissed.

No order as to costs.â??

19. After hearing learned counsel for the parties as well as perusing the record of the case, alongwith the precedent law cited at the Bar, this Court is of the opinion that the TSP preference, which is under a Constitutional Scheme, has to be implemented in totality giving maximum benefit to the concerned territorial and under privileged persons/tribals.

20. This Court finds that for interpretation of law, the objects and reasons of the legislation/notification in question have to be taken into consideration.

The objects and reasons clearly spell out that the intention of the Central Government behind such an enactment was to confer special status of the TSP area, to the extended areas, in accordance with the notification dated 19.05.2018, and therefore, all the persons, who were born in these areas, in accordance with the prevailing law, should have been given all preferences even in the recruitments, in all the ongoing processes at least.

21. This Court has also seen that the Rajasthan Public Service Commission has taken a conscious decision, vide the aforequoted corrigendum dated 04.06.2018, to implement the notification dated 19.05.2018 giving benefit to the persons residing in the TSP Areas, in relation to the ongoing selection process.

22. This Court is thus of the opinion that any kind of rigid interpretation of prospective implementation of the notification dated 19.05.2018 would defeat the very purpose and spirit of the enactment, and thus, it has to be construed in a liberal manner to the extent of possibility. This Court is aware of the doctrine of impossibility, and thus, would not go to the extent of saying that the benefit of such legislation/notification may be extended qua the selection processes, which have already culminated into finality, by defining the merit list and selecting the candidates; but certainly, such

implementation process has to be inclusive of the processes, which are still away from the final appointments.

23. This Court has seen that the Honâ??ble Apex Court in the precedent law of Bharat Singh (supra) has adopted an approach, whereby the Courts

are left with the task of evolving the concept of purposive interpretation, which has found acceptance whenever a progressive social beneficial

legislation is under review. The Honâ??ble Apex Court has further observed in the said precedent law that where the words of a statute are plain, an

unambiguous effect must be given to them. Plain words have to be accepted as such, but where the intention of the legislature is not clear from the

words or where two constructions are possible, it is the Courtâ??s duty to discern the intention in the context of the background, in which a particular

section is enacted. In the said case, the Honâ??ble Apex Court has also observed that once such an intention is ascertained, the courts have

necessarily to give the statute a purposeful or a functional interpretation. It has also been observed by the Honâ??ble Apex Court that the acts aimed

at social amelioration giving benefits for the have-nots should receive liberal construction. It is always the duty of the Court to give such a construction

to a statute as would promote the purpose or object of the Act. A construction that promotes the purpose of the legislation should be preferred to a

literal construction. A construction, which would defeat the rights of the have-nots and the underdog and which would leave to injustice, should always

be avoided.

24. To assess the actual spirit of the progressive social beneficial legislation and for gouging the object of the notification in question, this Court has

seen the Report of the Scheduled Areas and Scheduled Tribes Commission, Government of India, Volume-I 2002-2004 as well as the Twelfth Five

Year Plan (2012-2017) Social Sectors Volume III issued by the Planning Commission, Government of India, relevant excerpts whereof are

reproduced as hereinbelow:-

â??Report of the Scheduled Areas and Scheduled Tribes Commission, Government of India, Volume-I 2002-2004:

The first post-Independence phase.

14. It might be appreciated that in the matter of tribal affairs, the perspective and wisdom expressed in the constitutional provisions rested on the work

and experience of not a few notable dedicated souls quietly at work among tribes for their welfare at the instance and inspiration of national leaders

like Mahatma Gandhi and Jawaharlal Nehru. In fact, Gandhiji included welfare of the tribes as one of the 'items in his 14-Point reconstruction

programme drawn up in January 1942. Postindependence, the first phase was a time for soulsearching. Dr. B.R. Ambedkar made a powerful

contribution to the cause of Dalit uplift through visionary leadership. Having initiated development module in democratic set-up, Prime Minister

Jawaharlal Nehru enunciated the Panch Sheel (five principles)-of Tribal Advancement. We have discussed these in detail elsewhere in this Report,

Here we cannot help referring to the first of these to the effect that tribals should be enabled to advance along the lines of their own genius and

imposition of anything on them should be avoided. The Panch Sheel-became an ideological foundation.

15. Another marked feature of this phase was the appearance of a number of reports on tribal affairs. Among these were the reports of the Study

Team of Social Welfare and Welfare of Backward Classes July 1959, also known as Renuka Ray Team, the Committee on Special Multi-purpose

Tribal Blocks chaired by Verrier Elwin and the Study Team on Tribal Development Programmes chaired by Shilu Ao 1969, the First Scheduled Areas

and Scheduled Tribes Commission 1961, also known as the Dhebar Commission. The report of the first Commission should be regarded as a high

water-mark of this phase. It dealt comprehensively with a number of aspects of tribal affairs and development. Among the salient observations of the

Commission were that the planning process was transforming the situation and important development activities had taken place in the fields of

education, health and community development. A host of sectors were illumined by the suggestions and recommendations of the Commission, but one

that turned out to be of far-reaching implications related to Article 275 of the Constitution. In it, the Commission expressed the view that grants under

the Article were intended to supplement the general welfare programmes for the scheduled tribes and that the State Governments might consider

issue of instructions on the lines of Andhra Pradesh Government to all heads of departments to the effect that 3 per cent of the total provision of each

Department should be earmarked for the welfare of scheduled tribes during the Third five Year Plan. They also added that since a grant was

intended to develop the area, the area's relative under development and problems should be assessed.

16. The point was subsequently emphasized in the 1969 report of the Study Team on Tribal Development Programmes led by Shilu Ao, a former chief

Minister of Nagaland. In fact, the Team recommended that the Planning Commission should insist that the general development programmes should

take into consideration the needs of tribals and indicate the directions in which the programmes could benefit the tribal communities. Adverse notice

was taken by the Team of the delay in implementation of the Dhebar Commission's recommendations worsening the plight of tribals.

17. Apart from the Committees and Dhebar Commission which put in monumental labours, the Commissioner for Scheduled Castes and Scheduled

Tribes was engaged in useful work conveying his observations and comments to the Government in his annual reports. On the whole, this phase was

characterized by the observations of such important bodies contemplating on the scenario as it then was and searching for viable policies, formulations,

programmes etc. The tribal masses were in receipt of small benefits from the backward classes sector of state plan projects and development works,

including the tribal development blocks. The protective laws were being enforced feebly. The 1952 Forest Policy Resolution, the second for the

country after 1894 and the first for Independent India, dealt a grievous blow to tribals. Their traditional rights over forest recognized as such earlier,

were converted into "rights and concessions" and subsequently into mere "concessions". It was stated that village communities should not be allowed

the use of forest produce "at the cost of national interest". The Dhebar Commission asked for reversion to pre-Independence position. On the whole,

while through planned socio-economic development effort, the condition of tribal mass was improving marginally, disparities between tribals and non-

tribals were enlarging on social, economic, educational fronts.

The second post-Independence phase

18. In the second post-Independence and more or less the contemporary phase, beginning in the decade of seventies, committees and task forces

were at work for evolving strategies and methodologies for tribal development. The ideas and suggestions of the forerunner committees had blazed

the trail. More specifically, the Dhebar Commission's concept of earmarking of

funds on Andhra pattern in proportion to or in excess of tribal population percentage in the state was the core around which other formulations evolved. The Shilu Ao Team had reinforced it. In the early seventies, the concept gave birth to the strategy of Tribal sub-Plan (TSP) whose chief ingredients were projectised integrated multi-sectoral approach pointedly suited to the local tribal communities in identified administrative units of tribal population concentration with the help of funds pooled from central, state and institutional organizations. The TSP strategy was launched enthusiastically in the Fifth Plan period and it has held the ground since. The subsequent main inputs have come from the reports of the Working Groups appointed by the Planning Commission on the eve of Sixth, Seventh, Eighth and Ninth Plans. It has been evaluated off and on. Its detailed consideration may be found in a separate chapter devoted to it.â??

Twelfth Five Year Plan (2012-2017) Social Sectors Volume III:

â??Tribal Sub-Plan (TSP)

24.126. The prime object of the Tribal Sub Plan is development of tribal areas. The TSP concept, thus, aims on one hand, at the quantification of investment in the Sub-Plan areas commensurate with its size and on the other, at an all-round development of the tribal communities, in accordance with their needs. Keeping in view the distinct tribal situation, the TSP has set the twin objectives: (i) socioeconomic development of STs; and (ii) protection of tribals against exploitation. Through realisation of these objectives, the ultimate aim of the TSP strategy is to narrow the development gap of the tribals with the rest of the country.

24.127. The development of tribal economy under TSP is envisaged through sectoral efforts including (i) Agriculture and allied activities, through provision of minor and medium irrigation facilities supplemented by programmes for animal husbandry, dairying, poultry, and so on; (ii) improvised credit and marketing facilities so as to ensure adequate return of the produce of the tribals in respect of agriculture and minor forest products; (iii) special training programmes for tribal farmers for agricultural extension supported by the provision of agricultural infrastructure; (iv) preparing suitable forestry programmes ensuring tribalsâ?? participation as equal partners; (v) promoting agricultural production through improved method of cultivation and rural electrification to promote small scale industry.

24.128. Provision of basic infrastructure for speeding up the socio-economic development of the tribal areas under TSP is another priority. Growth centres, communication network, schools, health centres, rural electrification, drinking water and other facilities and so on are being provided to the tribals. Protection of tribals against exploitation is sought to be done through land laws prohibiting transfer of tribal lands to non-tribals, law regulating money lending in tribal areas and laws for acquiring monopoly rights of collection and marketing of forest produce. The TSP pays special attention to the welfare and development of Particularly Vulnerable Tribal Groups (PVTGs) and tribals with special problems.â??

25. The reflections of the above material and the objective assessment of this Court point out that the notification in question is a piece of a progressive social beneficial legislation. This Court honours the defined powers of judicial review/ judicial interpretation, and while coming to the rescue of the candidates belonging to the TSP Areas, who had filled their forms under the advertisement No.01/2018, this Court deems it appropriate to arrive at a conclusion that such candidates, who were aware of their rights and have approached this Court in time, ought to be given an opportunity to migrate from advertisement No.01/2018 to the advertisement No.02/2018, so as to enable them to participate in the related selection process initiated for the TSP Area. It is noted that the posts are same and demarcation is also of same time, and the bifurcation into two advertisements is to give effect to the TSP reservation only, and otherwise, the advertisements address one single constituency of sanctioned posts.

26. This Court further takes notice of the relevant portions of the advertisements, which are in Clause 11.2 pertaining to provision for reservation in both the advertisements i.e. No.01/2018 and 02/2018, and the same read as follows:

â??Advertisement No.01/2018 dated 12.04.2018:

â??vkj{k.k izko/kku%&

Â¼iÂ½ mijksDr inksa esa vuqlwfprÂ tkfr@vuqlwfprÂ Â tutkfr@ukWu Ã?hfeys;j fiNMk oxZ@vfr fiNMk oxZ@fo'ks""k ;ksX;tu@HkwriwoZ

ISfudksa@mRd`""V f[kykfM;ksa@efgykvksa Â¼fo/kok ,oa fookg fofPNUu efgykvksa lfgrÂ½ o ckjka ftys ds lgfj;k vkfne tkfr dk fu;ekuqlkj vkj{k.k

ns; gksxkA jktLFkku ds fiNMk oxZ@vfr fiNMk oxZ ds Ã?hfeys;j Js.kh ds

vH;kfFkZ;ksa dks bl oxZ gsrq vkj{kr inksa dk ykHk ns; ugha gSA ,slh
 fLFkfr esa vU; fiNMk oxZ@vfr fiNMk oxZ ds Å?hfeys;j Js.kh ds vkosnd lkekU; oxZ
 ds vH;FkhZ ds :i esa vkosnu dj ldrs gSaA jktLFkku jkT; ls
 fHkUu jkT;ksa dh vuqlwfpr tkfr@vuqlwfpr tutkfr@fiNMk oxZ@vfr fiNMk oxZ oxZ
 ds lHkh vkosnd lkekU; oxZ ds vH;FkhZ ds :i esa vkosnu dj ldrs
 gSaAâ??

Advertisement No.02/2018 dated 12.04.2018:

â??11-2 vkj{k.k izko/kku%&

Â¼iÂ½-----

Â¼iiÂ½ mijksDr inksa esa jktLFkku jkT; ds vuqlwfpr {ks= ds vuqlwfpr
 tkfr@vuqlwfpr tutkfr@fo'ks""k ;ksX;tu@HkwriwoZ lSfudksa@mRd`""V

f[kykfM;ksa@efgykvksa Â¼fo/kok ,oa fookg fofPNUu efgykvksa lfrÂ½
 vH;fFkZ;ksa dks fu;ekuqlkj vkj{k.k ns; gksxAâ??

The above-quoted texts of both the aforesaid advertisements reflect that the reservation shall be accorded to the respective reserved categories as per

the Rules, and since the notification in question has clarified and amended the Rules to be made applicable also to the territory, where the present

petitioners are residing, therefore, as per the terms of the aforesaid advertisements also, reservation available to the candidates residing in the

respective area, including the TSP Area ought to be given to the petitioners.

27. The precedent law of Devendra Kumar Meena Vs. State of Rajasthan & Anr. (supra) cited by learned counsel for the respondents is not

applicable in the present case, as the advertisement in that case was issued in the month of April, 2007,Â whereas the notification came to be issued

on 12.09.2007, and when the writ petition was being adjudicated, the selection process was already over and the appointments had already been given,

even when no interim protection was provided to the petitioner therein. The said precedent law is also not applicable in the present case, as the result

therein was declared on 27.03.2009, and upon being not selected, the petitioner therein approached this Court, with the intention to get the TSP

notification implemented in the year 2009, whereas the notification had already been issued on 12.09.2007 and the selection process had already

culminated into finality.

28. This Court also notes that by this order, this Court is not carving out any

benefit for any particular geographical region or territory, but is simply extending the benefit of the notification dated 19.05.2018, which has already carved out the benefit to be extended to the residents of the TSP Area, which is a conscious decision of the Central Government, and this Court is only applying it by making a simple interpretation for the purpose of its applicability upon the petitioners by allowing them to migrate from the advertisement No.01/2018 dated 12.04.2018 to the advertisement No.02/2018 dated 12.04.2018 for the same post of Teacher Grade III Level I Class I to V, as all other eligibility conditions, for recruitment to the said post, are same in both the advertisements.

29. However, the respondents shall be free to seek any further information required for giving appointment to the meritorious and eligible persons in the TSP Areas, including the newly included areas, and for that purpose, personal information shall be required to be given to the petitioners.

Â 30. This Court completely follows such precedent law of Bharat Singh (supra), and while giving such purposive interpretation to the applicability of

the notification dated 19.05.2018, this Court directs the respondents to permit the petitioners, who give in writing within 20 days from today, that they

wish to migrate from advertisement 01/2018 dated 12.04.2018 to the advertisement No.02/2018 dated 12.04.2018. However, this Court makes it clear

that those persons, who have not filled their forms before 07.05.2018, in pursuance of either of the advertisement, would not be entitled for any benefit

arising out of this judgment.

31. This Court further makes it clear that after receiving such requests from the existing petitioners, who have filled their application forms under the

advertisement 01/2018 dated 12.04.2018, the same shall be processed by the respondents alongwith all other candidates, who are being processed

under the advertisement No.02/2018 dated 12.04.2018, and the petitioners shall thereafter be considered as per their otherwise eligibility and merits,

and such appropriate consideration shall be made alongwith all other candidates, who are already in the pipeline of the advertisement No.02/2018. The

selection in pursuance of the advertisement No.02/2018 dated 12.04.2018 for the post in question shall not be finalized until the aforesaid exercise is

completed. The petitioners shall be treated at par, for the purpose of being considered as TSP Area candidates, while switching them over in the right

spirit of the notification dated 19.05.2018 from advertisement No.01/2018 to the advertisement No.02/2018 for the post of Teacher Grade III Level I

Classes I to V, as the last date for filling such forms was 07.05.2018, whereas the notification dated 19.05.2018 came about 12 days ahead and the

selection process is still going on. It shall be open for the respondents to increase the posts in the Advertisement No.02/2018, if so required.

32. The present writ petition is accordingly allowed. The stay applications also stand disposed of.â??

Â 2. In light of aforequoted judgment, the present writ petition is disposed of with the direction to the respondents to decide the case of petitioner by

passing a speaking order within a period of 30 days from today while keeping into consideration the aforementioned precedent law. It is made clear

that the respondents while deciding the issue, shall permit the petitioner to continue with the selection process. The directions given in Manish Kumar

Nagda (supra) regarding applicability of newly expanded TSP area vide notification dated 19.5.2018 shall apply while the aforesaid consideration is made.