

(2008) 05 KL CK 0012

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 29149 and 31047 of 2007

Jose A. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 23-05-2008

Acts Referred:

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

Citation : (2008) 2 KLJ 547 : (2008) 3 KLT 677

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : Elvin Peter P.J. and Deepu Thankan, for the Appellant; P. Nandakumar, GP, T.A. Shaji, P.J. Mathew, P.C. Sasidhran, Kaleeswaran Raj, S.P. Aravindakshan Pillay and P. Narayanan, for the Respondent

Final Decision : Dismissed

Judgement

V. Giri, J.—Common issues arise for consideration in these two writ petitions and therefore they have been heard together and are being disposed of by this common judgment. WP(C) No. 31047/2007 is taken as the leading case. The petitioners entered service as Junior Co-operative Inspectors in the Industries and Commerce Department. They were promoted on regular basis as Senior Co-operative Inspectors. They were then provisionally promoted as Industries Extension Officers. All the above mentioned posts are included in the Kerala Industries Subordinate Service and are governed by the Subordinate Service Rules (hereinafter referred to as the Subordinate Rules).

2. The post of Assistant District Industries Officer is one which is comprehended by the Special Rules for the Kerala Industries Service (hereinafter referred to as the Rules). The said post is included in category No. 2, Class No. V and Branch No. 1 of the State service. The method of appointment to the said post as per the special rules is as follows:

Assistant District : By transfer from the following Categories of the Kerala

Industries Subordinate Service:

Industries Extension Officer/ Technical Supervisor.

Senior Co-operative Inspector.

3. Thus the post of Industries Extension Officer, Technical Supervisor along with Senior Co-operative Inspector from the feeder category for promotion to the post of Assistant District Industries Officer. The petitioners were entitled to be considered for promotion to the post of Assistant District Industries Officer. Even while continuing as Senior Co-operative Inspectors and as evidenced by Ext. P1, petitioners 1 and 2 were included in the select list for promotion to the post of Assistant District Industries Officer. As evidenced by Ext. P3 to P5 orders, they were promoted as Assistant District Industries Officer and their probation was also declared as evidenced by Exts. P6 to P8. Petitioners 3 to 7 were thereafter included in the select list published by the Government for promotion to the category of Assistant Registrar. The first petitioner was included in the select list for promotion to the post of Project Officer/Deputy Registrar and he was so promoted. The second petitioner was promoted as Assistant Registrar.

4. The contesting respondents had entered service as Technical Supervisors in the Department of Industries and Commerce. The post of Technical Supervisor was originally comprehended by the Subordinate Rules (according to the petitioners). While so, by Government Order dated 6-4-2001, Ext. R11(b) the Government declared the post of Technical Supervisor in the department of Industries and Commerce as gazetted. The Subordinate Rules were amended by Ext. R11(c) notification SRO No. 150/2001/ID dated 17-2-2001 with effect from 1-7-1983. The post of Technical Officer (which is the re-designated post of Technical Supervisor) was not included in the Subordinate Rules. But corresponding amendment was not made in the Rules by incorporating the post of Technical Officer as part of the state service. In the meanwhile, by the pay revision order of 1998, the scale of pay of Technical Officer and the Assistant District Industries Officer were brought on a par and fixed at Rs. 6675-10550. Prior to the pay revision order, the scale of pay of Technical Supervisor was actually higher than that of the Assistant District Industries Officer, as is evidenced by Ext. R16(d), (e) and (f) orders.

5. Respondents 3 to 18, as stated above, were recruited as Technical Supervisors in the Department of Industries and Commerce. Respondents 3 to 7 were included in Ext. P2 select list for promotion to the post of Assistant District Industries Officer for the year 2001, respondents 8, 9 and 10 were included in the select list for the same post for the year 2003 and respondents 12 to 18 were not included. The petitioners categorically assert that respondents 3 to 18 were promoted as Assistant District Industries Officer. The petitioners referred to Ext. P14 final seniority list for the period from 1-1-1997 to 30-6-2001 and Ext. P15 provisional seniority list of Assistant District Industries Officer's for the period from 1-7-2001 to 31-12-2003 and contend that respondents 3 to 18 are

obviously juniors to the petitioners in the post of Assistant District Industries Officer.

6. While so, the Government issued Ext. P16 Government order GO(MS).88/2007/ID dated 6-7-2007. Apparently, the said order came to be issued by the Government, taking note of the direction issued by this Court in Ext. R16(g) judgment dated 4-1-2005 in WP(C) No. 14917/2005.

7. The said writ petition was filed by certain persons working as Technical Officer in the Industries Department seeking a direction to the Government to approve and issue the amendment to the Special Rules for the State service in respect of the post of Technical Officer. Taking note of the admitted position that the post of Technical Officer has been excluded from the Subordinate rules with effect from 1983 as evidence by Ext. R11(b) Government order and therefore the necessity to include the said post in the special rules for the State service, this Court in Ext. R16(g) judgment issued the following directions:

The Government will consider Ext. P4 and facilitate grant of the approval to; the draft special rules as requested in Ext. P4 representation in accordance with law, at the Government's earliest and by taking whatever steps which can be taken from the side of the Government without causing any undue delay.

8. The Government noted that there were 15 posts of Technical Officers. The post of Technical Supervisor (later re-designated as Technical Officer) was declared as gazetted and the said post was excluded from the Subordinate Rules. The said post is included in the draft Special Rules for the Kerala Industries Service as feeder category for the post of Assistant Director. Apparently, taking note of the fact that the scale of pay of Technical Supervisor and Assistant District Industries Officer was brought on a par with effect from 1-3-1977, the date of implementation of the 1998 pay revision order, the Government ordered that in future the post of Assistant District Industries Officer shall be the feeder category to the post of Assistant Director of Industries and Commerce. The Director of Industries was directed to prepare a combined seniority list of Technical Officer and Assistant District Industries Officer on inter se seniority with effect from 1-3-1997. Ext. P16 reflects the decision on the part of the Government to merge 15 posts of Technical Officers with that of Assistant District Industries Officer. Taking note of Exts. P16, P17 provisional list was published by the Director of Industries and Commerce on 12-9-2007, respondents 3 to 18 are shown as appointed to the post of Technical Officer/Assistant District Industries Officer with effect from 1-3-1997 and consequently they are enable treated as seniors in the post of Assistant District Industries Officer's. It is in these circumstances, the petitioners have challenged Exts. P16 and P17.

9. The petitioners contended that Ext. P16 order is illegal and unsustainable on several grounds. Firstly it is contended that Ext. P16 order runs to the statutory rules relating to the State Service viz. Kerala State Industries Services Rules. As per the said Rules, the post of Assistant District Industries Officer is included in

category 2, Class V. and the post of Technical Supervisor is one of the feeder categories to the said post. Assuming that the Government has the power to merge the post of Technical Supervisor (petitioners do not admit this position) with that of Assistant District Industries Officer, it can be done only by an amendment of the statutory rules and not by an executive order.

10. It is then contended that the contesting respondents were recruited to the post of Technical Supervisors and they were actually considered for promotion to the post of Assistant District Industries Officer and were promoted as well. They were promoted pursuant to them being included in the select list for the said post. They had accepted promotion to the post of Assistant District Industries Officer and respondents 3 to 18 are juniors to the petitioners in the post. The said promotions were affected in accordance with law and seniority in the post of Assistant District Industries Officer is to be reckoned with reference to the commencement of service in the said post. This whole position is now sought to be changed by the executive order Ext. P16 by deciding to merge the post of Technical Officer with that of Assistant District Industries Officer with retrospective effect from 1-3-1997. According to the petitioners, the Government has clearly acted in an arbitrary manner and even without jurisdiction in passing Ext. P16 order.

11. A counter affidavit has been filed on behalf of the first respondent Separate counter affidavits have been filed by the contesting respondents. The contentions taken up by them are mostly similar. It will suffice to give hereunder the contentions taken up by the respondents.

12. The respondents point out that the post of Technical Supervisor should never have been treated as a feeder category to the post of Assistant District Industries Officer. The post of Technical Officer was created as per GO(MS) No. 127/61/ID dated 23-2-1961. The qualification prescribed for direct recruitment to the post of Technical Supervisor was B.Sc. Degree in Mechanical Engineering obtained from Indian Institution of Engineers or an equivalent qualification. It is pointed out that even a person with SSLC who joined as a Co-operative Officer can aspire for appointment to the post of Assistant District Industries Officer. At the time of issue of the special rules for the Industries service, the scale of pay of Industries Extension Officer and Technical Supervisor was the same. But subsequently by Ext. R16(d) order dated 26-9-1995, pursuant to the request made by the Director of Industries and Commerce for allowing the higher scale of pay to Technical Supervisor who are graduates in Engineering on a par with professional degree holder in other department, the Government ordered that the scale of pay of Technical Supervisors of Industries Department who are graduates in Engineering will be Rs. 2060-3200. This was higher than the scale of pay of Assistant District Industries Officer. By the pay revision order 1998, the scale of pay of Technical Officer was revised to Rs. 6675-10550. The same is that of the revised scale of Assistant District Industries Officer which post was included in the State Service. Though the contesting respondents say that

injustice was done to Technical Officers by equating the post with Assistant District Industries Officer, (they contend that the post of Technical Officer should be placed higher to the post of Assistant District Industries Officer should be placed higher to the post of Assistant. District Industries Officer) they contend that by Ext. P16 order the injustice has been ameliorated to a great extent.

13. It is contended that when the Government issued the amended Subordinate Service Rules (or issued a fresh set of rules as the case may be) with effect from 1-7-1983, the post of Technical Supervisor was not included therein. The post of senior Co-operative" Inspector and Industries Extension Officer are included in the Subordinate Service. The State Rules in so far as it provides for the feeder category to the post of Assistant District Industries Officer in category 2 Class V will have to be read in conjunction with the Subordinate Service Rules. Though the post of Technical Supervisor is included in column No. 2 against the post of Assistant District Industries Officer, the said provision became unenforceable qua the post of Technical Supervisor when the same was excluded from the industries Subordinate Service. It is contended that only a post which is included in the Subordinate service could be treated as a feeder category to the post of Assistant District Industries Officer which is included in the State Service. A post which is admittedly not included in the subordinate service and which was eligible to be treated atleast on a part with that of Assistant District Industries Officer with effect from 1-3-1997, going by the revised scale of pay brought into existence with effect from the said date obviously cannot be treated as feeder category for the post of Assistant District Industries Officer. In the circumstances it is contended that what has been under Ext. P16 order is only what ought to have been logically, reasonably and fairly done by die Government, contemporaneous to the enforcement of the subordinate rules by GO.(P) No. 30/2001/ID dated 17-2-2001. There is no warrant for interference with Ext. P16 order, contend the respondents.

14. I heard learned Counsel for the petitioners Sri Elvin Peter, Sri Deepu Thankan, Senior Government Pleader Sri Nandakumar, learned Counsel for the contesting respondents Sri P.C. Sasidharan, Sri S.P. Aravnidakshan Pillai, Sri Kaleeswaram Raj, Sri P. Narayanan and Sri T.A. Shaji.

15. Sri Elvin Peter vehemently contends that Ext. P16 order is vitiated and unsustainable for more than one reason. He firstly contends that enforcement of Ext. P16 would result in a direct conflict with the statutory rules viz. State Rules for the Industries Service, in as much as the post of Technical Officer which according to the State Rules is treated as feeder category to the post of Assistant District Industries Officer has been merged with the promotion post. In effect, therefore Ext. P16 order amends the statutory rules, according to him. He refers to the following judgments to contend for the position that executive orders issued by the Government under Article 162 of the Constitution cannot go against statutory special rules. He submits that executive orders can only supplement or not supplement but not supplant the statutory rules. The

decisions referred to in this regard are:

- (1) State of Maharashtra v. Jagannath Achyut Karandikar AIR 1989 S.C. 1133
- (2) T.R. Kapur and Others Vs. State of Haryana and Others,
- (3) C.L. Verma Vs. State of M.P. and another,
- (4) Pankajakshan v. State 1996 (2) KLT 124.
- (5) Ex-Major N.C. Singhal Vs. Director General Armed Forces Medical Services, New Delhi and Another, .
- (6) P. Sadagopan and Ors. v. Food Corporation of India and Anr. 1997 (4) SOC 301
- (7) P. Mohan Reddy etc. Vs. E.A.A. Charles and Others etc., and
- (8) Vishal Properties (P) Limited v. State of U.P. (2007 (4) KLTSN 69 (SC).

16. Sri Elvin Peter contends that assuming that the Government has power to merge the post of Technical Supervisor (Technical Officer) to that of an Assistant District Industries Officer, it can be done only with prospective effect. In merging the post with retrospective effect from 1-3-1997 the Government has really tinkered with the vested right of the petitioners to reckon the seniority in the post of Assistant District Industries Officer, with reference to the date of Assistant District Industries Officer, with reference to the date of commencement of service in the said post. He then contends that the contesting respondents have actually been considered for selection to the post of Assistant District Industries Officer and had been promoted to the said post, later in point of time to the petitioners. Interse seniority of the petitioners and the contesting respondents are governed by the said orders of promotion and such orders have attained finality. Final seniority list in the post of Assistant District Industries Officer cannot be tinkered with by an executive order, which is given retrospective effect.

17. In my view, the first and foremost issue is whether the order issued by the Government is vitiated by an arbitrariness which is violative of Article 14 and 16 of the Constitution. If the answer to the above question is in the affirmative, then the petitioners are obviously entitled to succeed, without necessitating a detailed adjudication on the other contentions raised by the counsel for the petitioners including the one that the order is in contravention of the statutory rules. Though I propose to consider each one of the contentions raised by the counsel as enumerated above, it will be apposite to consider the question of constitutionality of the order in question in the first instance.

18. There are certain facts which are either admitted or not admitted. The post of technical Supervisor in the Industries Department was brought into existence by GO(MS) 127/61/ID dated 23-2-1961. It was originally included in the non gazetted category. The educational qualification for the said post, as I have mentioned in paragraph 12 above, is principally a degree in Engineering.

Admittedly, it was declared to be a gazetted post by Government Order GO(MS) No. 428/01/ID dated 6-4-2001. Obviously it ought to have been included in the State Service Rules. The special rules for the subordinate service issued as per GO(P) No. 30/2001/ID dated 17-2-2001 with effect from 1-7-83 consciously excluded the post of Technical Officer from the purview of the Subordinate service. At the same time the post of Industries Extension Officer and senior Co-operative Inspector are comprehended by the Subordinate rules.

19. It would be advantageous to consider, as to what could have been logically done by the Government at least contemporaneous to the enforcement of the subordinate service rules vide GO dated 17-2-2001. It took a conscious decision not to include the post of a Technical Officer as part of the Subordinate service. It will have to be remembered that almost at the same point of time viz. on 6-4-2001 vide GO(MS) No. 429/2001 the post of Technical Officer was declared as gazetted. There is no gazetted post as such included in the Subordinate service, nor can it be gainsaid that any gazetted post in the Industries Department is not included in the State Service. If that be so, in the fitness of things, it would have only been appropriate that the post of Technical Officer be included in the State service.

20. Once this position is accepted, then the next question which arises in the logical sequence of events, is the place in the state service where the post of Technical Officer is to be included. This obviously lies exclusively within the domain of the Government which also is the Rule making authority. But the fact which commends itself for acceptance in the regard is that the scale of pay of Technical Officer has been on a par with that of an Assistant District Industries Officer with effect from 1-3-1997. As a matter of fact, going by Ext. R16(d)(e) and (f), the scale of Technical Officer was higher than that of Assistant District Industries Officer prior to 1998 pay revision order. Be that as it may, it is undisputed that the scale of pay of Technical Officer has been the same as that of the Assistant District Industries Officer with effect from 1-3-1997. Had therefore the Government been prompt in taking contemporaneous action on the post of Technical Officer being declared as gazetted, it would have been only appropriate for the post of Technical Officer to be treated on a par with Assistant District Industries Officer, within the format contemplated by the State Service Rules. In an ideal situation, amendment to the State Service rules, contemporaneous to the enforcement of the subordinate service rules should have followed logically. For some reason there has been delay on the part of the Government in effecting appropriate amendment to the statutory rules to reflect the factual position as stated above.

21. In this view of the matter I am unable to accept the contention of the learned Counsel for the petitioners that Ext. P16 order in so far as it directs merger of 15 posts of Technical Officer with that of Assistant District Industries Officer in the department of Industries and Commerce with effect from 1-3-1997 should be considered as arbitrary or otherwise violative of Articles 14 and 16 of

the Constitution of India.

22. The principal contention put forwarded by Sri Elvin Peter, learned Counsel for the petitioners was that Ext. P16 order obviously contravenes the special rules for the State Service. He contends that the rules contemplates the post of Technical Officer as a feeder category to the post of Assistant District Industries Officer. The situation continues even as on date. Ext. P16 order behooves that the post of Technical Officer be merged with that of its promotion post of Assistant District Industries Officer. He contends that assuming without admitting that it can be done, the same obviously necessitates an amendment to the special rules. This has not been done and therefore Ext. P16 order in so far as it contravenes the statutory rules will have to be declared as violative of the decisions cited by him in support of his contention. As a proposition in law, it could hardly be disputed that executive orders cannot contravene the statutory rules. The moot question is whether Ext. P16 order contravenes the statutory rules as such.

23. I have referred to the relevant portion of the State Services Rules which provides for the method of appointment to the post of Assistant District Industries Officer coming under category 2 in Class V. I have also extracted the relevant portion dealing with the method of appointment for the purpose of appreciating the contention of the learned Counsel for the petitioners. There are three posts which are contemplated as feeder categories for the post of Assistant District Industries Officer. Going by the above rule, the commonality in these three posts is that they are categorized under the Kerala Industries Subordinate Service Rules. Thus going by a literal and purposeful enforcement of the State Service rules, the post of Industries Extension Officer, senior Co-operative Inspector and Technical Supervisor contemplated as feeder categories to the post of Assistant District Industries Officer in the State Service must be posts in the Kerala Industries Subordinate Service. In other words, the rules for the State service in so far as the post of Assistant District Industries Officer is concerned provides for the enumerated categories, included in the subordinate service rules as the feeder categories, included in the subordinate service rules as the feeder categories. The rule which provides for the method of appointment to the post of Assistant District Industries Officer is enforceable qua the enumerated categories of posts which are included in the Kerala Industries Subordinate Service. There is no difficulty in the enforcement of the aforementioned rules qua the post of Industries Extension Officer and senior Co-operative Inspector because both these posts are squarely enumerated in the subordinate rules for the Industries service.

24. But the situation is different when it comes to the post of Technical Officer. The Statutory Rules for the Subordinate Service simply does not comprehend the post of Technical Officer. I find considerable force in the submission of Sri P.C. Sasidharan, learned Counsel for the respondents that one has to read the State service rules in a logical and purposeful manner and the post of Technical

Supervisor as occurring in column No. 2 in Appendix 2 in the State Service rules relating to category No. 2 Class No. V can only mean the post of Technical Supervisor as included in the Kerala Industries Subordinate Service. Therefore, since the post of Technical Supervisor is not included in the State Service will have to be read in such a manner as to exclude the post of Technical Supervisor from column 2, Appendix-2 of the State Service rules.

25. There was some dispute in the bar as to whether the post of Technical Supervisor was ever included as part of the Subordinate Service. Learned Counsel for the contesting respondents categorically submits that the post of Technical Supervisor which was later re-designated as Technical Officer was never included as part of the Subordinate Service in the Industries Department. It is not necessary to finally determine whether the post of Technical Officer was included as part of the Subordinate Service rules, at any point of time. Going by the subordinate service rules as they now stand, the post of Technical Officer is not included in the Subordinate Service at least with effect from 1-7-1983. It is a matter of significance that the note to category No. 2, Class No. V of Branch (1) of Appendix which prescribed the ratio among the feeder categories for appointment by transfer to the post of Assistant District Industries Officer are also deemed to have come into force on 1st July, 1983.

26. The outcome of the above discussion, in my view is that the post of Technical Officer would therefore not be comprehended by the statutory rules for the subordinate service and therefore would not be comprehended by the method of appointment relating to the post of Assistant District Industries Officer as prescribed in the State Rules. The post is created by an executive order. Further promotion from the said post is not governed by any statutory rules and therefore Ext. P16 order in so far as the Government has decided therein to merge 15 posts of Technical Officer with that of an Assistant District Industries Officer cannot be considered as a blanket contravention of the statutory rules as such. I am afraid I am unable to accept the contention of the learned Counsel for the petitioners in this regard.

27. Sri Elvin Peter then contended that vested rights have been purported to be taken away by Ext. P16 order and to that extent the order is therefore violative of Articles 14 and 16 of the Constitution. The elaboration made to this aspect is that every person who is promoted to the post of Assistant District Industries Officer is entitled to reckon his seniority to the said post from the date of commencement of his service. He is also entitled to legitimately expect that inter se seniority of persons promoted to the cadre of Assistant District Industries Officer will also be reckoned only on the said basis. By merging the cadre of Technical Officer to that of Assistant District Industries Officer, that too with retrospective effect from 1-3-1997, this right which had accrued in favour of the petitioners has been taken away. It is contended that the respondents had been promoted as Assistant District Industries Officer by operation of the special rules for the State Service and such promotions were governed by the general rules of

the KS and SSR as well. Steps taken cannot be retraced and settled issues of seniority cannot be unsettled by an executive order as such.

28. The contention that vested and accrued rights cannot be diluted or taken away by an executive order especially where the field is governed by the statutory rules, obviously is an argument which does not admit of any equivocation. But how far is this principle applicable in this case? Is it really a case where any vested right of the petitioners have been affected under Ext. P16? The petitioners had a right to be considered for promotion to the post of Assistant District Industries Officer and they were so considered and promoted. The petitioners have a right to insist that their seniority in the cadre of Assistant District Industries Officer must be reckoned with reference to the commencement of their service in this cadre. The special rules indicate the aforementioned rights which are capable of being described as vested rights and the petitioners are entitled to say that such rights cannot be diluted or detrimentally affected by an executive order. A close scrutiny of Ext. P16 will show that it does not purport or flatter itself to affect any vested right, conferment of which is governed by statutory rules. Ext. P16 does not result in the alteration of the date of commencement of the petitioners' service in the cadre of Assistant District Industries Officer. Ext. P16 further does not also dilute the right of the petitioners to reckon the seniority with reference to the date of commencement of the service in the said cadre. What Ext. P16 purports to do and actually does is to provide for the merger of 15 posts of Technical Officers with the post of Assistant District Industries Officer.

29. I have already found that merger of 15 posts does not result in infraction of any statutory provisions. The post of Assistant District Industries Officer is not comprehended by the statutory rules of the State service or the subordinate service. As I have already found, though the post of Technical Supervisor is mentioned as a feeder category in the 2nd column relating to the post of Assistant District Industries Officer as contained in the State Subordinate Rules, the said provision could have been treated as operative only if the post of Technical Supervisor was comprehended by the special rules for the subordinate service at any material point of time. In effect therefore, there was all along a mistake in treating the gazetted post of Technical Supervisor/Technical Officer as a feeder category to the post of Assistant District Industries Officer, within the format of the special rules of the State Service or the subordinate service, as the case may be. If that be so, appointment of any Technical Officer as Assistant District Industries Officer by treating the same as promotion was not as contemplated or regulated by the statutory rules as such. The statutory rules did not really contemplate or provide for the appointment of Technical Officer, as Assistant District Industries Officer by way of promotion from a lower post to higher post, in a vertical hierarchy. Once this position is made clear, then it follows that the petitioners cannot claim a vested right merely on the basis of the fact that the contesting respondents came to be appointed as Assistant District Industries Officer later to the petitioners.

30. Referring to the judgment of the Supreme Court in S.K. Saha and others Vs. Prem Prakash Agarwal and others, , Dr. (Mrs.) Pushpa Vishnu Kumar Gurtu Vs. State of Maharashtra and others, and Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others, , Sri Elvin Peter contended that inter se seniority of persons appointed or promoted to the cadre of Assistant District Industries Officer are liable to be reckoned with reference to the date of commencement of their respective service in the said cadre. This is the purport of Rule 27(a) of the General Rules and the entitlement of the petitioners to see that inter se seniority is reckoned in terms of the statutory provisions cannot be taken away by enforcement of Ext. P16 order. I do not find any force in the said submission. The crucial distinguishing fact as I have already is that the post of Technical Officer was not specifically comprehended by the special rules for the State Service or subordinate service, as the case may be, at the relevant point of time. Therefore the appointment of the contesting respondents (either by way of promotion or by way of transfer as a Assistant District Industries Officer) cannot be considered as one brought about by enforcement of the statutory rules. It also cannot be held that Ext. P16 results in infraction of the statutory rules.

31. The decision cited by Sri P. Narayanan in Vinay Kumar Verma and others Vs. State of Bihar and others, in my view is apposite to the present context. The Supreme Court was dealing with the case of merger of two cadres as such, along with their posts, by an executive order. The cadre of District Engineer was created by an executive order but the cadre of an Executive Engineer was governed by statutory rules. The two posts in question carried the same scale of pay. One cadre was governed by statutory rules and the other by an executive order. Repelling an argument that the merger has resulted in infraction of the statutory rules, the Supreme Court held that the statutory cadre of Executive Engineers has not be interfered with. The post of District Engineers were merged with that of Executive Engineers and not vice verse. By the executive order impugned in the said case, the Supreme Court noted that a group of persons similarly situated have been brought into service. The Supreme Court noted that the incumbent in a non statutory cadre, on merger came into a post born in a statutory cadre along with the post which they were occupying. The court further noted that the conditions of service of the existing members of the service have not been detrimentally affected by the order impugned in this case.

32. The dictum applies on all fours to the facts of the case. 15 posts of Technical Officers are to be merged with the cadre of Assistant District Industries Officer by virtue of Ext. P16 order. The incumbents who come into the cadre of Assistant District Industries Officer only do so by virtue of the merger of the post as such. Ext. P16 order by itself does not affect the existing service conditions of the petitioners or similarly situated persons who were promoted to the post of Assistant District Industries Officer, from the feeder categories which are specifically comprehended by subordinate rules.

33. I also consider it appropriate to refer to the argument by Sri Kaleeswaram

Raj that the concept of vested right in the context of inter se seniority will become relevant only for the purpose of averting reversion as such. The decisions referred to by him and Sri P. Narayana viz. K.S. Vora and Others Vs. State of Gujarat and Others, , S.P. Shivprasad Pipal Vs. Union of India and Others, , P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others, and State of Tripura and Others Vs. K.K. Roy, support the stand taken by the contesting respondents in this regard. Ext. P16 order obviously will not entail the reversion of any of the petitioners from the cadre of Assistant District Industries Officer. It is true that there is a possibility of future prospects of the petitioners for promotion beyond the cadre of Assistant District Industries Officer could be detrimentally affected by Ext. P16 order. But that is only as a consequence of the merger of the Technical Officer with that of Assistant District Industries Officer. Competence of the Government to do so is beyond challenge. Reasons which the Government has afforded in justification of the decision taken by them to merge the post of Technical Officer with that of Assistant District Industries Officer can by no means be treated as unreasonable, unfair or untenable.

34. I agree with the submission of the learned Government Pleader and the learned Counsel for the contesting respondents that by Ext. P16 order the Government has really done, was ought to have been done earlier, contemporaneous to the enforcement of the special rules for the subordinate service, specifically excluding the post of Technical Supervisor therefrom and the clear indication given in the pay revision order of 1998 prescribing the same scale of pay for Technical Officer and Assistant District Industries Officer.

35. No other contentions have been urged by the petitioners.

In the result, I find that:

- (i) Ext. P16 passed by the Government is not unconstitutional or illegal.
- (ii) Ext. P16 order does not contravene any statutory provision.
- (iii) The said order does not result in divestiture of any vested rights of the petitioners.

For all these reasons, I am of the view that the writ petitions are bereft of merit. Accordingly, they are dismissed. There will be no order as to costs.