

(2002) 02 KAR CK 0073

In the Karnataka High Court

Case No : Writ Petition No's. 25521 to 25525, 25527 to 25530, 25533, 25534, 29315, 29540 to 29546, 30455, 31052 to 31081 and 31399 to 31428 of 1997 and 11576 to 11599 of 1998

M.S. Ganesh and Others

APPELLANT

Vs

H.K. Subramanya and Others

RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15
Constitution of India, 1950 — Article 14, 16
General Recruitment Rules, 2006 — Rule 15 (1) (b)
Karnataka State Civil Services Act, 1978 — Section 3, 8

Citation : (2002) ILR (Kar) 4123 : (2003) 5 KarLJ 306 : (2002) 4 KCCR 2469 : (2004) 1 LLJ 246

Hon'ble Judges : R.V. Raveendran, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : M.H. Datar, in W.P. Nos. 25521 to 25525, 25527 to 25530, 25533 and 25534 of 1997, M.V. Hiremath, in W.P. No. 29315 of 1997, H.P. Mudlappa, in W.P. Nos. 29540 to 29546 of 1997, Jayakumar S. Patil, in W.P. Nos. 30455 and 31052 to 31081 of 1997, S.V. Narasimhan, in W.P. Nos. 31399 to 31428 of 1997 and A.N. Jayaram, General and M.B. Prabhakar in W.P. Nos. 11576 to 11599 of 1998, for the Appellant; A.N. Jayaram, General and M.B. Prabhakar, A.G.A. for Respondent-1 in W.P. Nos. 30455 and 31052 to 31081 of 1997 and for Respondents-1 to 2 in W.P. Nos. 29315, 29540 to 29546 of 1997 and for Respondents-3 and 4 in W.P. Nos. 31399 to 31428 of 1997, K. Subbarao and Company for Respondents-1 to 9 in W.P. Nos. 25521 to 25525, 25527 to 25530, 25533 and 25534 of 1997, for Respondents in W.P. Nos. 31399 to 31428 of 1997 and for Respondents-1 and 2 in W.P. Nos. 11583 and 11584 of 1998 and for Respondents-1 to 7 in W.P. Nos. 11576 to 11582 of 1998 and for Respondent-3 in W.P. No. 29315 of 1997 and for Respondents-3 to 9 in W.P. No. 29540 to 29546 of 1997, for Respondents-3 to 11 in W.P. Nos. 30455 and 31052 to 31081 of 1997, Subramanya Bhat, for Respondent-2 in W.P. Nos. 31399 to 31428 of 1997, B.B. Bajanthri, for Respondents-1 to 11 in W.P. Nos. 11585 to 11595 of 1998 and for Respondents-10 to 20 in W.P. Nos. 25521 to 25525, 25527 to 25530, 25533 and 25534 of 1997 and for Respondents-12 and 13 in W.P. No. 30455 and 31052 to 31081 of 1997, M.S. Anandaramu, for Respondents in W.P. Nos. 11596 to 11599 of 1998 and for Respondent-21 to 24 in W.P. Nos. 25521 to 25525, 25527 to 25530, 25533 and 25534 of 1997 and A.N. Jayaram, General

Judgement

R.V. Raveendran, J.—As all these petitions challenge the common order dated 25-7-1997 of the Karnataka Administrative Tribunal, in Application Nos. 7948 to 7954, 8001, 8002, 8069 to 8078 and 8078-A of 1996 and Application Nos. 19 to 22 of 1997, they are heard together and disposed of by this common order.

1.1 W.P. Nos. 25521 to 25525, 25527 to 25530, 25533, 25534, 29315, 29540 to 29546, 30455 and 31052 to 31081 and 31399 to 31428 of 1997 are filed by the contract Groups "C" and "D" employees who were some of the respondents in the said applications. W.P. Nos. 11576 to 11599 of 1998 are filed by the State and its authorities.

1.2 The applicants in the 24 applications before the Tribunal are respectively, the respondents 1 to 24 in W.P. Nos. 25521 to 25525, 25527 to 25530, 25533 and 25534 of 1997, and respondents 3 to 26 in W.P. Nos. 30455 and 31052 to 31081 of 1997 and respondents 1 to 7 in W.P. Nos. 11576 to 11582 of 1998, respondents 1 and 2 in W.P. Nos. 11583 and 11584 of 1998, respondents 1 to 11 in W.P. Nos. 11585 to 11595 of 1998 and respondents 1 to 4 in W.P. Nos. 11596 to 11599 of 1998.

1.3 Respondent 3 in W.P. Nos. 29315 of 1997 is applicant 1 in Application Nos. 7948 to 7954 of 1996. Respondents 3 to 9 in W.P. Nos. 29540 to 29546 of 1997 were applicants 1 to 7 in Application Nos. 7948 to 7954 of 1996. Respondents 1 and 2 in W.P. Nos. 31399 to 31428 of 1997 were applicants 1 and 2 in Application Nos. 8001 and 8002 of 1996.

1.4 Respondents 1 to 24 (in W.P. Nos. 25521 to 25525 of 1997) filed Application Nos. 7948 to 7954, 8001, 8002, 8069 to 8078 and 8078-A of 1996 and 19 to 22 of 1997 before the Karnataka Administrative Tribunal, Bangalore challenging the validity of Karnataka State Civil Services (Absorption of Contract Group "C" Employees in the Karnataka Government Secretariat Service) (Special) Rules, 1996 (hereinafter referred to as "Group "C" Absorption Rules") and Karnataka State Civil Services (Absorption of Contract Group "D" Employees in the Karnataka Government Secretariat Service) (Special) Rules, 1996 (hereinafter referred to as "Group "D" Absorption Rules"). The said rules were framed by the State Government in purported exercise of powers under Sections 3 and 8 of the Karnataka State Civil Services Act, 1978 (hereinafter referred to as "the Act"). The said rules were notified and published on 2-12-1996.

2. We may refer to the provisions of the said Rules briefly.

2.1 Rule 3 of the Group "C" Absorption Rules provided that notwithstanding anything to the contrary contained in the Karnataka Civil Services (General Recruitment) Rules, 1977 and Karnataka Government Secretariat Services

(Recruitment) Rules, 1992 or in any other Rules made or deemed to have been made under the Karnataka State Civil Services Act, 1978, every contract Group "C" employee mentioned in column (2) of the Schedule to the said rules, who satisfies the conditions of eligibility specified in the said rules, shall be absorbed in the corresponding category of posts and pay scales in the Karnataka Government Secretariat Service mentioned in columns (4) and (5) of the said Schedule. Rule 3 of the Group "D" Absorption Rules contains an identical provision in regard to absorption of Group "D" employees.

2.2 Group "C" Absorption Rules define the term "contract Group "C" employee" as a person appointed as Assistant or Stenographer or Junior Assistant or Typist or Personal Assistant or Driver, as the case may be, on contract basis in the personal establishment of Chief Minister or Minister or Political Secretary to the Chief Minister and was in service as on 29-5-1996. Group "D" Absorption Rules define the term "contract Group "D" employee" as a person appointed in the Group "D" post on contract basis in the personal establishment of Chief Minister or Minister or Political Secretary to the Chief Minister and was in service as on 29-5-1996. The Schedule to Group "C" Absorption Rules contains the names of 135 contract Group "C" employees. The Schedule to Group "D" Absorption Rules contains the names of 132 contract Group "D" employees.

2.3 Conditions of eligibility specified in the proviso to Rule 3(1) for absorption in the Group "C" Absorption Rules are as follows:

(a) He should not be disqualified for appointment under the Karnataka Civil Services (General Recruitment) Rules, 1977 on the date of his appointment as contract Group "C" employee.

(b) He should possess minimum academic qualification specified in the rules of recruitment applicable for recruitment to such posts on the date of his appointment as contract Group "C" employee.

Similarly, the proviso to Rule 3(1) of Group "D" Absorption Rules prescribes the following conditions of eligibility for absorption:

(a) He should not be disqualified for appointment under the General Recruitment Rules, on the date of his appointment as contract Group "D" employee.

(b) He should possess minimum academic qualification specified in the rules of recruitment applicable for recruitment to such posts on the date of his appointment as contract Group "D" employee.

2.4 Rule 3(2) of both rules makes it clear that age limit specified in Rule 6 of the Karnataka Civil Services General Recruitment Rules were inapplicable for absorption under the said two specified rules.

2.5 Rule 4 of the said Rules deals with pay, pension, leave and seniority of persons absorbed under the said rules. Rule 5 provides that provisions of the Karnataka Civil Services Rules, Karnataka Civil Services (General Recruitment)

Rules, the Karnataka Civil Services (Conduct) Rules, 1966 and other rules regulating the conditions of service of Government servant shall insofar as they are not inconsistent with the provisions of the said Special Rules, shall apply to persons absorbed under the said Special Rules.

3. The applicants before the Tribunal (respondents 1 to 24 in the first batch) claimed that they are unemployed persons possessing the prescribed qualifications for the posts of Assistants, Stenographers, Junior Assistants, Typists, Drivers as also Group "D" posts; that several of them had also applied for recruitment to the said posts in the Secretariat Services; that the Groups "C" and "D" Absorption Rules denied them the opportunity to apply for and compete with others for recruitment to the said posts. They therefore filed the said applications before the Tribunal for quashing the said Groups "C" and "D" Absorption Rules. The Tribunal, by common order dated 25-7-1997 allowed the said applications, holding that the said rules are invalid, arbitrary and discriminatory and unconstitutional being violative of Articles 14 and 16 of the Constitution of India. Consequently, the Tribunal directed the State Government to take immediate measures to annul the absorption of contract employees (respective respondents in the applications) under the two Absorption Rules within three months from the date of receipt of the order with a further direction to the Government that if it intended to fill the existing vacancies, then, to do so by following the well-established constitutional norms relating to recruitment process.

4. Feeling aggrieved, some of the contract Groups "C" and "D" employees whose names are found in the Schedules to the Groups "C" and "D" Absorption Rules have filed these writ petitions contending that the order of the Tribunal is erroneous. They contend the applicants before the Tribunal had no locus standi to challenge the Rules. They also contend that Absorption Rules are valid and just and do not suffer from any infirmity. The State has challenged the order of the Tribunal on similar grounds.

5. On the contentions raised, the following points arise for consideration in these petitions:

(i) Whether applicants before the Tribunal had no locus standi to challenge the validity of the Groups "C" and "D" Absorption Rules?

(ii) Whether the Tribunal was justified in holding that the Groups "C" and "D" Absorption Rules are violative of Articles 14 and 16 of the Constitution of India and therefore invalid?

(iii) If the rules are invalid, whether any relief should be granted to the contract employees?

6. Re: Point No. (i).--Petitioners contend that applicants before the Tribunal had no locus standi to file the applications challenging the Rules; that the applications virtually amounted to a public interest litigation; that an Administrative Tribunal

constituted under the Administrative Tribunals Act, 1985, cannot entertain a public interest litigation and therefore the applications were not maintainable. Reliance is placed on the decisions of the Supreme Court in the cases of L. Chandra Kumar Vs. Union of India and others, and Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc., . The said decisions make it clear that while the Administrative Tribunals have the competence and power to test the constitutional validity of Statutory Rules, they cannot entertain public interest litigation; and that application can be made before the Administrative Tribunal only by a person aggrieved and not a total stranger to the concerned service.

7. The applications before the Tribunal were not by way of public interest litigation. But for the rules which are under challenge, posts in question would have been notified by the Government and as persons qualified and eligible, the applicants before the Tribunal would have had an opportunity to apply for and compete with others for recruitment to those posts. Their right to apply for and be considered for selection to such posts have been taken away by the rules. Therefore, they were directly affected by the rules. Consequently, they were entitled to challenge the rules. A Full Bench of the Madras High Court in the case of Government of Tamil Nadu v. P. Hepzi Vimalabai, 1995(1) SLR 168 (Mad.) , and a Full Bench of Himachal Pradesh High Court in Arti Gupta v. State of Himachal Pradesh, 1997(2) SLR 71.6 (HP.) , have held that Administrative Tribunals have jurisdiction to deal with matters which arise before the actual appointment of any person to civil post, if they relate to recruitment or matters concerning recruitment. It was held that even persons who had not applied for a post, can move the Tribunal for appropriate relief on complaint as against the action taken by the concerned authority in the matter of selection and recruitment.

8. Section 15 of the Administrative Tribunals Act, 1985 provides that Administrative Tribunal shall exercise the jurisdiction, power and authority in relation to recruitment and matters concerning recruitment to any Civil Service of the State or to any civil posts under the State. The validity of the Rules is a matter relating to recruitment to the Civil Services of the State. The applicants before the Tribunal were prospective candidates who were denied the chance of applying and competing for appointment to the posts in Secretariat by reason of the rules. Therefore, applications filed by the applicants before the Tribunal were maintainable.

9. Re: Point No. (ii).--Principles relating to challenge to the validity of subordinate legislation are well-settled. In the case of I.E. Newspapers (Bombay) Private Ltd. v. Union of India (1), (1986) 159 ITR 856 (SC) , the Supreme Court held that subordinate legislation could be challenged: (i) on the grounds on which a statute can be challenged (that is lack of legislative competence or that it violates the fundamental rights guaranteed under the Constitution or that it violates any provision of the Constitution); or (ii) on the ground that it does not

conform to the statute under which it is made or that it is contrary to some other statute; or (iii) on the ground that it is manifestly arbitrary and unreasonable. In the cases of *State of M.P. Vs. Mahalaxmi Fabric Mills Limited and others*, and *General Officer Commanding-in-Chief and Anr. v. Dr. Subhash Chandra Yadav and Anr.*, AIR 1988 SC 870 : (1988)2 SCC 851 : 1988-II-LLJ-345 (SC), it is held that a rule will be void if (i) it does not conform to the provisions of the statute under which it is framed; or (ii) it falls outside the scope of the rule making power; or (iii) if they are arbitrary and irrational. Let us now examine whether the two Absorption Rules are manifestly unreasonable or arbitrary and violative of the fundamental rights of the petitioners guaranteed under Part III of the Constitution of India.

10. Article 14 provides that the State shall not deny any person equality before law or equal protection of the laws within the territory of India. Article 16 assures equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. As a general rule recruitment to public employment is done by inviting applications from eligible candidates and making selection from among the applicants. While the mode of inviting applications is in its discretion, the State is bound to ensure equal opportunity to all eligible candidates to apply for recruitment. The normal process of recruitment by inviting applications by advertisement or through Employment Exchanges cannot be bypassed by providing for absorption of persons who were appointed as contract or ad hoc basis for short periods. The Supreme Court has referred to the obligations of the State in matters relating to employment/appointment in several decisions. We may refer to a few of them.

10.1 In *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, , the Supreme Court held that every eligible person is entitled to apply for and to be considered for recruitment provided he fulfils the prescribed requisite qualifications. It observed:

"... To tide over unforeseen exigencies, power to make ad hoc appointments may be visualized as envisaged by Explanation-b to Rule 4 but it expressly states that by virtue of such appointment, the ad hoc appointee does not become member of the service. The rule prescribes direct recruitment/promotion by selection as the mode of recruitment which would be done only by Public Service Commission or promotion committee duly constituted and by no other body. Therefore, ad hoc employee should be replaced as expeditiously as possible by direct recruits. A little leeway to make ad hoc appointment due to emergent exigencies does not clothe the executive Government with power to relax the recruitment or to regularise such appointment nor to claim such appointments to be regular or in accordance with rules. Back-door ad hoc appointments at the behest of power source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair play. The latter are the products of order and regularity. Every eligible person not necessarily be fit to be appointed to a post or office

under the State, selection according to rules by a properly constituted commission and fitment for appointment assures fairness in selection and inhibits arbitrariness in appointments. . .".

10.2 In *Ashok Kumar and Others Vs. Chairman, Banking Service Recruitment Board and Others*, : the Supreme Court held that Articles 14 and 16 of the Constitution enshrine the fundamental right to every citizen to claim consideration for appointment to a post under the State and appointment of any person to a post without notifying the vacancy for recruitment is unconstitutional.

10.3 In *Pradip Gogoi and Others Vs. State of Assam and Others*, , the Supreme Court held that all eligible candidates have a fundamental right to apply and be considered for appointment under Article 16 of the Constitution and when the State wants to fill up any vacancies, it should take steps to notify them so that all eligible candidates can get an opportunity to apply.

11. Article 309 provides that subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed to public services and posts in connection with the affairs of any State. The proviso enables the Governor of a State to make rules regulating the recruitment, and the conditions of service of persons appointed to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature. The State Legislature enacted the Karnataka State Civil Services Act, 1978 ("Act", for short), to regulate the recruitment and conditions of service of persons appointed to civil services of the State and posts in connection with the affairs of the State. Section 3(1) of the Act provided that the State Government, may, by modification, make rules, specifying the different categories of posts and regulating the recruitment and conditions of service of persons appointed to public services. Section 3(3) provides that all rules relating to matters referred to in Section 3(1) and in force on the date of commencement of the Act shall be deemed to be rules made u/s 3(1) and shall continue to be in force until modified or replaced by rules made under the Act.

12. In Karnataka, recruitment to posts in Secretariat are regulated and governed by the following among other rules:

- (i) Karnataka Civil Services (General Recruitment) Rules, 1977;
- (ii) Karnataka Civil Services (Recruitment to Ministerial Posts) Rules, 1978;
- (iii) Karnataka Civil Services (Recruitment to Posts of Stenographers and Typists) Rules, 1983;
- (iv) Karnataka Government Secretariat Services (Recruitment) Rules, 1992.

The first three sets of rules were made in exercise of power under Article 309 and the last was made in exercise of power under the Act. These rules provide for method and procedure for recruitment, age limit for appointments, provision for reservation to Scheduled Caste, Scheduled Tribe and other Backward Classes,

Ex-servicemen, Physically handicapped and Women and appointment by direct recruitment/promotion in certain cases. These provide that in the absence of Special Rules, method of recruitment shall be by direct recruitment which may be either by competitive examination or by selection after an interview or by promotion. Rule 4 of the General Recruitment Rules provides that subject to the provisions of the said rules, direct recruitment either by competitive examination or by selection shall be in the order of merit. Existence of General Recruitment Rules do not of course come in the way of any Special Rules being made for recruitment, or rules being made for regularisation or absorption, provided they are fair, reasonable and in consonance with the General Rules governing recruitment. Any special rules which provides for recruitment without providing equal opportunity to all eligible candidates will offend Articles 14 and 16. There may be valid exceptions where the State may provide for recruitment by absorption, provided it is rational, as when a scheme is made to regularise the services of candidates who have been in ad hoc or temporary service for a specified period (which normally is about 10 years). But, if the Special Rules provide for absorption of persons appointed on contract basis without prescribing any minimum period of service thereby enabling a contract employee appointed yesterday being absorbed today without undergoing the process of recruitment, the same will violate Articles 14 and 16 and therefore be invalid.

13. The petitioners point out that the Absorption Rules specifically provide that only persons who are qualified can be appointed and therefore they are valid. It is true that the Absorption Rules provide that a person who is disqualified for appointment under the General Recruitment Rules and a person who does not possess minimum academic qualification specified in the rules for recruitment applicable to recruitment to such posts, shall not be absorbed. The fact that the rules ensure that the person to be absorbed is not disqualified for appointment under the recruitment rules or the fact that the rules ensure that the person to be absorbed possess minimum required academic qualification will not by itself make the rules valid. A candidate possessing the prescribed minimum qualification may satisfy the eligibility test, but not the suitability test which requires a candidate to undergo a competitive process, with other eligible candidates. The following observations of the Supreme Court in *State of Karnataka Vs. Kumari Gowri Narayana Ambiga etc.*, , are relevant and are a complete answer to the contention:

"It would be useful to refer briefly to various sets of statutory rules which are operating in the State of Karnataka. The Karnataka State Civil Services (General Recruitment) Rules, 1957 provide that recruitment by competitive examination is to be made in the order of merit, from the list of candidates prepared by the Public Service Commission or other examining authority. It is further laid down in the said rules that recruitment by selection after giving such adequate publicity as the Appointing Authority may determine, is to be made in the order of merit of candidates as determined by the Public Service Commission/Selection Committee/Appointing Authority. Similarly, the Karnataka State Civil Services

(Recruitment to Ministerial Posts) Rules, 1966 regulate the method of direct recruitment to the cadres of Assistants, First Division Clerks, Junior Assistants and Second Division Clerks in the Karnataka State Civil Services. Rule 4 of the said Rules provides that the recruitment shall be made on the basis of merit determined by competitive examination conducted by the Public Service Commission. There is yet another set of rules called the Karnataka State Civil Services (Direct Recruitment by Selection) Rules, 1973. These rules provide that recruitment to various posts under the rules is to be made on the basis of the merit list prepared as a result of the qualifying examination. The viva voce test is also provided and the candidates are to be called on the basis of the merit secured by them in the qualifying examination.

7. It is thus obvious that the direct recruitment to various cadres in Class III service in the Karnataka State is on the basis of merit (list) prepared on the basis of competitive examination or selection made on the basis of objective criteria provided in the various rules. The special rules on the other hand provide entry into various cadres of Class III service to Scheduled Caste, Scheduled Tribe and Backward Tribe candidates without undergoing the process of selection. They are appointed as local candidates in the first instance and thereafter under the Special Rules, they are inducted into various cadres of Class III service without going through the process of selection.

8. We have no hesitation in agreeing to the conclusion reached by the Division Bench of the Karnataka High Court that the procedure provided under the Special Rules is not consistent with the maintenance of standards of efficiency in the State Services.... The candidates may have the minimum educational qualification prescribed for the post, but that only satisfies the eligibility test and not the suitability test. The basic eligibility is quite distinct and different from suitability. Suitability could be considered only by competitive test with an application of the same yardstick to all candidates with a prescription of a minimum standard.

The purpose of every competitive examination must be to select the worthiest person. The interview or the examination must be held for the assessment of candidates competence, proficiency and attainment and in other words to measure merit. Only those persons who possess the required standard of excellence assessed on no other basis than their performance in the examination or interview prescribed in that behalf can be considered to be suitable.

If different standards are prescribed under the rules for different classes, then it would plainly run counter to the doctrine of equality before law and would be inconsistent with equality of opportunity in matters relating to employment or appointment as guaranteed under Article 16(1)".

(emphasis supplied)

14. The Absorption Rules provide that any person who had been employed on contract basis in the personal establishment of Chief Minister or a Minister or

Political Secretary to the Chief Minister and who was in service as on 29-5-1996 shall stand absorbed provided he possessed the qualification for appointment prescribed under the General Recruitment Rules. That would mean that a person who was appointed even one day prior to 29-5-1996 in the establishment of Chief Minister or a Minister or Political Secretary to the Chief Minister, if he possessed the prescribed minimum academic qualification became entitled for absorption without undergoing the process of selection. The Schedule to the rules contain the names of some who were appointed hardly a week or month prior to 29-5-1996 and several who were appointed within one year prior to 29-5-1996. These candidates in the normal course could not have been appointed on regular basis without undergoing the competitive recruitment process. Further, it should be kept in view that contract appointments in the establishment of Chief Minister or Minister are made under Rule 15(1)(b) of the General Recruitment Rules. Clause (iii) of Rule 15(1)(b) provides that Government may, if it considers it necessary for the reasons to be recorded in writing that it is in public interest so to do, appoint to the posts in the personal establishment of Chief Minister, or a Minister of State or Deputy Minister, any person who in its opinion is able to discharge the duties of such post on such terms and conditions, as may be determined by agreement, on contract basis. Rule 15(2) provides that the total period of appointment of any person or total period of appointment in any post under Rule 15(1)(b) shall not exceed five years. Thus, appointment of personnel on contract basis to the establishment of Chief Minister or Minister is to serve the specific needs of the Ministers concerned and such appointments are not based on a competitive process, but on the basis of subjective satisfaction of the Minister concerned. The fundamental basis of Articles 14 and 16 is that selection to any Government service should not be on any subjective satisfaction but should be by an objective process of recruitment. That is why the selection to the establishment of Ministers is made on contract basis and is coterminous with the tenure of office of the Minister concerned. Persons who enter such contract employment under Ministers are fully aware when they are so appointed, that they are not entering Government service as regular employees but their service is for a limited period which cannot extend beyond the tenure of the Minister in whose establishment he or she is employed or five years. Therefore, a person who is appointed on contract basis on the establishment of a Minister cannot have any legitimate expectation to be regularised in such post. As stated above, filling up of any post in the Government should normally be by notifying the vacancies and giving an opportunity to all eligible candidates to apply and compete for the same. While Special Rules providing for absorption by way of any exception to the general rules is permissible, there should be some logical or reasonable basis/for such special recruitment and it should be free from the vice of arbitrariness.

15. The petitioners placed strong reliance on the decision of the Supreme Court in State of Karnataka and Another Vs. B. Suvarna Malini and Another etc., , wherein the Supreme Court reversed the decision of the Karnataka

Administrative Tribunal which had struck down Rule 2(b)(iii) of the Karnataka Civil Services (Absorption of Persons Working as Part-time Lecturers in the Karnataka Education Department of Collegiate Education) Special Rules, 1996. The Tribunal had held that the lecturers were back-door entrants and their regularisation was contrary to the decisions of the Supreme Court and their regularisation would affect the rights of aspirants for regular appointment. The Supreme Court upheld the validity of the rules even though selection had not been made by the Public Service Commission, on the ground that there was a process of selection and unqualified people had not been appointed part-time lecturers, and on the ground that the matter had been examined by the State Government and re-examined by the Committee of Experts as to how best services of such part-time lecturers could be utilised without diluting the quality of teaching and without any infraction in the minimum qualification for appointment as lecturer. In that context the Supreme Court observed thus:

"The concept of equality before the law does not involve the idea of absolute equality among human beings which is a physical impossibility. All that Article 14 guarantees is a similarity of treatment contra-distinguished from identical treatment. Equality before law means that among" equals the law should be equal and should be equally administered and that the likes should be treated alike. Equality before the law does not mean that things which are different shall be treated as though they are the same.... When the Absorption Rules are examined from the aforesaid standpoint and when we consider the circumstances under which the said rules were made to solve a human problem and that the rules made were put to objection to the general public and even the Public Service Commission was consulted and finally was before the State Legislature to have their concurrence, we are of the considered opinion that the High Court committed error in striking down the rules on the ground that it is discriminatory. When this Court deprecates the regularization and absorption, when it comes to the conclusion that such regularisation and absorption has become a common method of allowing back-door entries and then regularizing such entry, it is not that in every case, the Court would be justified in striking down the process of absorption or regularization, more so when such absorption has been made as a legislative measure and that also as a one time measure, and at the same time insisting upon the essential qualifications to be duly complied with, by the persons intended to be absorbed on regular basis".

(emphasis supplied)

The petitioners point out that even the two Absorption Rules with which we are concerned, require possessing of minimum academic qualifications and also require that the candidates should not be disqualified under the General Recruitment Rules and also provide that the absorption is a one time measure. They contend that the Absorption Rules should be upheld on the basis of the ratio laid down in *Suvarna Malini's* case. But the distinguishing feature in *Suvarna Malini's* case is that it dealt with the absorption of part-time lecturers

who had served for periods varying from 10 years to 20 years. The Supreme Court proceeded on the basis that the case involved not only a question of law, but also a human problem and that if they were not regularised and treated as regular service, they will not be able to get themselves engaged anywhere else and at the same time, their experience in teaching would be lost to the student community. The significant aspect is that the Rules provided for absorption of lecturers who had put in 10 to 20 years of service. It is now recognised by a series of decisions that there is need to make an exception to the general rule (requiring the notifying or advertising posts, inviting applications from all eligible candidates) where persons have served continuously either temporarily or on ad hoc basis or on contract basis for long periods (say 10 years) by framing a scheme for regularizing their service. Therefore, if the Absorption Rules with which we are concerned had provided for absorption on completion of say 10 years service as contract employees, it would have been possible to hold the rules as valid with reference to the decision in *Suvarna Malini's* case, *supra*, and the series of other decisions which have permitted regularisation on completion of a long period of temporary service. But where the rules enable absorption of all contract employees, even those who were appointed a day earlier, without undergoing the process of selection and thereby denies opportunity to other eligible candidates to compete, it would be nothing but an arbitrary exercise of power violating Articles 14 and 16 of the Constitution. It is this aspect that persuaded the Tribunal to hold that the impugned rules were unconstitutional.

16. There is yet another aspect. The Absorption Rules provide for virtual back-door entry to a selected few who were fortunate enough to be on the personal establishment of Ministers. It should be remembered that there are thousands of other contract employees and temporary or ad hoc employees. If only a particular ` of contract employees are to be favoured by providing for absorption, even when they have not put in any significant period of service, merely because they are servicing Ministers, by treating them as a separate and distinct class, that would amount to hostile discrimination of other similarly placed employees, who are serving on contract or ad hoc basis.

17. We therefore hold that the two sets of Absorption Rules which provide for absorption without undergoing the process of recruitment by competitive examination or selection and without prescribing any minimum period of service for absorption violate of Articles 14 and 16 of the Constitution and therefore invalid. We find no reason to interfere with the decision of the Tribunal in this question.

18. Re: Point No. (iii).--The petitioners plead hardship. The question is whether petitioners in these cases and others whose names are found in the Schedules to Groups "C" and "D" Absorption Rules, are entitled to any relief? We are informed that some of them are still working as contractual employees in the establishment of Ministers. The services of many were discontinued either as a result of the modification of the interim order granted in these cases and on

account of Ministers under whom they were working, ceasing to be Ministers. Some of them have obtained regular employment by undergoing recruitment process. Exact number of the persons who have entered regular service is not available.

19. The decisions of the Supreme Court have made it clear that human angle is something that cannot be ignored. We have already referred to the decision in Suvarna Malini's case. We may also refer to the decision of the Supreme Court in H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others, . In that case, it was found that certain appointments made violated constitutional protection of equality of opportunity guaranteed to the candidates under Articles 14 and 16(1) of the Constitution. The High Court quashed the appointments so made. The said decision of the High Court was affirmed by the Supreme Court. Subsequently, affected employees filed review petitions. While allowing the said review petitions, the Supreme Court held thus:

"The human problem stands at the outset in these cases and it is that problem that motivated us in allowing the review petitions. It may be recalled that the appellants are in service for the past 10 years.... One could only imagine their untold miseries and of their family if they are left at the midstream. Indeed, it would be an act of cruelty at this stage to ask them to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection".

The Supreme Court directed that such employees shall be treated as regularly appointed with all benefits of past service. Here again, the fact that the employees had been in service for more than 10 years persuaded the Supreme Court to give relief.

20. In pursuance of the decision in The Dharwad Distt. P.W.D. Literate Daily Wages Employees Association and others, etc. Vs. State of Karnataka and others etc., , the State had formulated the scheme for regularizing the services of persons who were employed on daily wage before 1-7-1984 and who had served for 10 years. This Court in several decisions had recognised the need for regularizing the services of those who have served for 10 years by formulation of some scheme, even if their initial appointment was not as per Rules.

21. The Absorption Rules relate to a group of people who were appointed, not on daily wage basis but on contract basis to serve the Ministers. If such employees had served Ministers for only one term and had left, obviously, they will not be entitled to claim any benefit. But, several of them have been continuously re-employed except for small breaks which shows that they have been found to be efficient and their services are found to be necessary. In the circumstances the quashing of the Rules by the Tribunal will not come in the way of any Rules or scheme being made by the Government enabling absorption in the case of those who have served either for 10 years or as special case for those who have

worked not less than 2,400 days in a block period of 10 years. Even those who have not completed 10 years of contract service but who are continued in contract employment may be considered for absorption on completion of that period. We make it clear that ultimately, it is for the State Government to prescribe the minimum period required for absorption, while framing the scheme, provided such period is not arbitrary and is in consonance with the period that is prescribed for absorption/regularization by the Government in other cases.

22. Conclusion.--The challenge to the order of the Tribunal fails. As a consequence these petitions are disposed of, subject to the observations in para 21 above.