

(2013) 06 GUJ CK 0025
In the Gujarat High Court

Case No : Special Civil Application No. 5931 of 2012, Civil Application No. 14094 of 2012, Special Civil Application No. 4205 of 2012, Special Civil Application No. 8443 of 2012, Special Civil Application No. 16314 of 2012, Special Civil Application No. 8945 of 201

N.S. Joshi and 15 Others

APPELLANT

Vs

Principal District Judge and Others

RESPONDENT

Date of Decision : 10-06-2013

Acts Referred:

Constitution of India, 1950 — Article 118, 13(3), 14, 145, 145(1)

Citation : (2013) 06 GUJ CK 0025

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : K.B. Pujara in Special Civil application Nos. 5931, 4205 and 14094 of 2012, Mr. Mukul Sinha in Special Civil application Nos. 8443, 8945, 9065, 9066, 9067 of 2012, Mr. P.P. Majmudar in Special Civil application No. 16314 of 2012, Mr. Deep D. Vyas in Special Civil application No. 11581 of 2012 and Mr. Jeet Bhatt in Special Civil application No. 15181 of 2012 and Civil application No. 3042 of 2013, for the Appellant; Mehul S. Shah for Respondent Nos. 1 and 2 in Special Civil Application Nos. 5931 and 14094 of 2012 and for Respondent Nos. 2 and 3 in Special Civil Application No. 11581 and 15181 of 2012 and Civil Application No. 3042 of 2013, Mr. Urshit Oza, AGP for Respondent No. 4 in Special Civil Application No. 5931 of 2012 and Civil Application No. 14094 of 2012, Mr. Urshit B. Oza, AGP for the Respondent No. 3 in Special Civil Application Nos. 4205 of 2012 and for Respondent No. 1 in Special Civil Application Nos. 8443, 8945, 9065, 9066, 9067, 11581 and 16314 of 2012, Mr. Shalin Mehta for Respondent Nos. 2 and 3 in Special Civil Application Nos. 8443, 8945, 9065, 9066, 9067 of 2012 and for Respondent Nos. 1 and 2 in Special Civil Application No. 4205 of 2012, Mr. Hemang M. Shah for Respondent Nos. 1 and 2 in Special Civil Application No. 4205 of 2012, Mr. G.M. Joshi for Respondent Nos. 2 and 3 in Special Civil Application Nos. 8443, 8945, 9065, 9066, 9067 of 2012, Mr. A.S. Supehia for Respondent Nos. 2 and 3 in Special Civil Application No. 16314 of 2012 and Ms. V.S. Pathak, AGP for the Respondent No. 1 in Special Civil Application No. 15181 of 2012 and Civil Application No. 3042 of 2013, for the Respondent

Final Decision : Dismissed

Judgement

C.L. Soni, J.—All these petitions filed by ad-hoc employees serving in subordinate Courts of different districts, raise common challenge to the centralized selection process undertaken by the High Court on its administrative side for appointment on different non-judicial posts in subordinate Courts under its control. They have prayed to treat them as regularly selected candidates and not to replace them by the candidates selected by centralized selection process undertaken by the High Court. All these petitions are, therefore, heard and decided together. Special Civil Application No. 5931 of 2012 is filed by the employees presently serving as Assistants (Junior Clerks) on ad-hoc basis. It is their case that they had applied for the posts of Peon and Assistant (Junior Clerk) as per the advertisement dated 7.7.2003. However, recruitment process for the posts of Assistant (Junior Clerk) was kept in abeyance and they were called for interview for the posts of Peons (Class-IV) and all of them were selected and appointed as Peons. They joined the service as Peons but subsequently, with the permission of the High Court, they were appointed as Assistants (Junior Clerks) in the pay scale of Rs. 3050-4590 and they have been discharging their duties as Assistants (Junior Clerks). They have been continuously serving on the said post for last 7 years. They have been issued Identity cards and allotted Government quarters as they are regular employees in the establishment of Valsad District Court. They have, therefore, while challenging the fresh recruitment undertaken by the High Court prayed to declare that they have been regularly appointed on clear, vacant and substantive posts of Assistant (Junior Clerk) on the establishment of Valsad District Court and they are entitled to regular pay scale for the said cadre from the date of their initial appointments. They have sought direction not to replace them by giving appointment to any other candidates selected in the fresh recruitment undertaken by the High Court.

1.1. Special Civil Application No. 4205 of 2012 is filed by the employees serving as Assistants/Junior Clerks as ad-hoc on the establishment of Porbandar District Court. It is their case that their names were called from the District Employment Exchange and then appointed as Assistants/Junior Clerks in the month of November 2006. That though they have been termed as ad-hoc employees, but their appointments have been made on substantive, vacant, clear and sanctioned posts of permanent nature in the regular pay scale and by following due procedure of selection. They have, therefore, while challenging the fresh recruitment undertaken by the High Court prayed to declare that they have been regularly appointed in accordance with law on clear vacant posts of Assistant/Junior Clerk on the establishment of Porbandar District Court and they are entitled to regular pay scale.

1.2. Special Civil Application No. 8443 of 2012 is filed by the employees serving as Assistants (Junior Clerks) on the establishment of Metropolitan Magistrate Court at Ahmedabad, except petitioner Nos. 37 and 38 who were appointed as Stenographers. It is their case that though they have been termed as ad-hoc/

temporary employees, however their appointments were under the Recruitment Rules of 1957 on the basis of due selection process and against regular, vacant and sanctioned posts. They have, therefore, while challenging the fresh recruitment initiated by the High Court prayed to treat them as regular employees for their respective posts with effect from the date of their initial appointments and to place them in the regular pay scale.

1.3. Special Civil Application No. 16314 of 2012 is filed by the employees serving on the post of drivers in the establishment of sub-ordinate courts in Patan District.

1.4. Special Civil Application No. 8945 of 2012 is filed by the employees serving in different Courts in the district of Surendranagar on the posts of Stenographer and Assistant (Junior Clerk).

1.5. Special Civil Application No. 9065 of 2012 is filed by the employees serving as Assistants (Junior Clerks) on the establishment of District Court, Surat.

1.6. Special Civil Application No. 9066 of 2012 is filed by the employees serving on the post of Assistants (Junior Clerks) in the Courts in Kheda District.

1.7. Special Civil Application No. 9067 of 2012 is filed by the employees serving as Assistants (Junior Clerks) in the courts in District Bharuch.

1.8. Special Civil Application No. 11581 of 2012 is filed by the employees serving as Class-IV employees in the courts in District Porbandar.

It is the case of the petitioners of these petitions that their appointments were made after due selection process as per the Recruitment Rules of 1957 and therefore, though they are termed as ad-hoc employees, they are to be treated as regular employees as their appointments were on clear, vacant and sanctioned posts. They have, therefore, while challenging the fresh recruitment undertaken by the High Court prayed to treat them as regularly appointed employees to their respective posts with effect from their initial date of appointments and to place them in the regular pay scale.

1.9. Special Civil Application No. 15181 of 2012 is filed by the employees serving as ad-hoc Sweepers/Hamals in the courts of District Junagadh. It is their case that their appointments came to be extended from time to time. Clear vacancies in the cadre of Class-IV are available. The concerned authorities issued advertisement, pursuant to which, they had applied but no further proceedings were taken and they have been just continued as ad-hoc and temporary employees. It is their further case that nearly 40 vacancies for the posts of Peon in the District Court, Junagadh are available and though for such posts, interview calls were issued to several persons, they were not called for interview and no preference was given to them. Petitioner No. 1 of this petition was appointed on 21.1.1990, petitioner No. 2 was appointed in 1997, petitioner Nos. 3, 4 and 5 were appointed in 2002, petitioner Nos. 6, 7 and 8 were appointed in 2005, petitioner No. 9 was appointed in 2007, petitioner No. 10 was appointed in 2003,

petitioner No. 11 was appointed in 1999, petitioner No. 12 was appointed in 2003, petitioner Nos. 13 and 14 were appointed in 2004, petitioner No. 15 was appointed in 2005, petitioner No. 16 was appointed in 2007 and petitioner No. 17 was appointed in 2004. They have, while challenging the fresh recruitment undertaken by the High Court, prayed to absorb them as regularly appointed employees to their respective posts.

2. I have heard learned advocates for the parties.

3. Learned advocate Mr. K.B. Pujara appearing for the petitioners in Special Civil Application Nos. 5931 of 2012 and 4205 of 2012 has made following submissions:-

(1) Recruitment on non-judicial posts in subordinate courts are governed by the Rules made vide Government of Bombay Resolution dated 26.12.1957, under which only the Advisory Committee at district level is empowered to make recruitments for such posts. High Court has, therefore, no power to undertake Centralized Recruitment Process unless by amendment in the Rules of 1957 or by statutory rules, such powers are specially conferred upon it.

(2) The recruitment process undertaken by the High Court, since de hors the Rules of 1957, the petitioners cannot be replaced by candidates selected in such illegal and unauthorized process.

(3) The petitioners were appointed after following due selection process and therefore, even if the petitioners are termed as ad-hoc or stop-gap employees, they are required to be treated as regular employees for all purposes and are entitled to be placed in the regular pay scale.

(4) Under the terms of appointment of the petitioners, the petitioners since completed more than one year of service, as per the condition of appointment order, have acquired status of permanent employees.

(5) The petitioners have even otherwise completed long period of service and since their appointments were against the sanctioned posts, they are entitled to all benefits of regular employees.

4. Learned advocate Mr. Mukul Sinha appearing for the petitioners in Special Civil Application Nos. 8443, 8945, 9065, 9066 and 9067 of 2012 has made following submissions:-

(1) High Court cannot control and usurp the power of the Advisory Committee of the District level for recruitment of the staff on the establishment subordinate courts.

(2) Recruitment of the staff on the establishment of the subordinate Courts is governed by Recruitment Rules of 1957. The recruitment undertaken by the High Court for such staff since contrary to the said Rules is illegal and void.

(3) Article 229 of the Constitution of India is the only source of power available

with the Hon''ble Chief Justice or such other Hon''ble Judge or Officer of the Court as may be directed for making appointment to non-judicial post but only for the High Court. Thus, there is no power with the High Court for recruitment of the staff on the establishment of the subordinate Courts.

(4) In absence of amendment in Recruitment Rules of 1957 or any statutory Rules framed under Article 309 of the Constitution of India authorizing the High Court for recruitment of the staff in the subordinate Courts, recruitment of the staff on the establishment of the subordinate Courts has to be only in accordance with the Rules of 1957. Therefore, any Rules framed by the High Court under the guise of the additional procedure to be followed for the purpose of and in connection with the recruitment of the staff on the establishment of the subordinate Courts, are ultra vires to Rules 1957 as also the Constitutional provisions.

(5) High Court has got no control or power under Articles 233 to 235 of the Constitution of India for recruitment of non-judicial staff on the establishment of the subordinate Courts, therefore, anything done by the High Court under purported exercise of powers under Articles 233 to 235 of the Constitution of India for undertaking the Centralized Recruitment of the staff on the establishment of the subordinate Courts is unauthorized and illegal. Such unauthorized process of selection for the subordinate Courts'' staff by the High Court can be challenged even by ad-hoc employee as it affects the rights of such employee. Even any citizen can challenge such illegal process being undertaken by the High Court.

(6) The petitioners have been selected by due selection process from amongst large number of candidates whose names were called from the Employment Exchange. Selection of the petitioners was under Rules of 1957, which were the only Recruitment Rules prevailing on the date of their selection. The respondents also do not term the selection and appointment of the petitioners as illegal. Therefore, appointments of the petitioners though termed as ad-hoc or stopgap, however, being not illegal, the petitioners are required to be treated as regularly selected employees.

(7) Rules framed by the High Court for the purpose of recruitment of the staff in the subordinate Courts, are still born and ultra vires to the Constitution of India and any recruitment made pursuant to such Rules by the High Court is invalid.

(8) Article 235 of the Constitution of India providing for control of the High Court does not include power to issue executive order or to frame rules for the recruitment to non-judicial posts on the establishment of the subordinate Courts. High Court, therefore cannot substitute or add anything to the Rules of Recruitment provided under the Notification of 1957 issued by the then State of Bombay.

(9) Since after 1957, no statutory Recruitment Rules have been framed under Article 309 of the Constitution of India by the State Government, appointments

of the petitioners made as per the Recruitment Rules of 1957 are required to be treated as regular appointment and the petitioners, therefore, cannot be replaced or substituted by the candidates selected under the Centralized Recruitment process undertaken by the High Court.

5. Learned advocate Mr. Deep Vyas appearing for the petitioners in Special Civil Application No. 11581 of 2012 while adopting the arguments advanced by learned advocates Mr. Pujara and Mr. Sinha, submitted that the appointments of the petitioners since made after following due procedure, though they are termed as ad-hoc employees, they are to be treated as regular employees. Mr. Vyas submitted that it is not open to the High Court to initiate the centralized selection process ignoring the claim of the petitioners especially when the appointments of the petitioners were made by the competent District authorities. Mr. Vyas submitted that the respondents are not justified in not granting benefit of permanency to the petitioners especially when the appointments of the petitioners were on vacant posts.

6. Learned advocate Mr. Jeet Bhatt appearing for the petitioners in Special Civil Application No. 15181 of 2012 has made the following submissions:-

(1) Recruitment Rules made vide Notification/Resolution of 1957 of the State of Bombay hold the field in absence of any statutory rules framed by the State of Gujarat under Article 309 of the Constitution of India.

(2) Since as per the Rules of 1957, only the Advisory Committee at District level is authorized for recruitment of the staff on the establishment of the subordinate Courts, the High Court has no power to undertake the Centralized Recruitment for such staff.

(3) Notification of 1957 providing for recruitment of the staff of the subordinate Courts is in consonance with Article 13(3) of the Constitution of India. Such Recruitment Rules cannot be changed or substituted by the High Court by framing new Rules so as to authorize itself to undertake the Centralized Recruitment for the staff on the establishment of the subordinate Courts.

(4) There is a difference between illegal and irregular appointment. Appointment by competent authority from amongst the eligible persons on vacant posts cannot be termed as illegal. The petitioners had applied pursuant to the advertisement for regular selection. However, such advertisement was not pursued on account of the Centralized Recruitment undertaken by the High Court. But, since the High Court has no such power, the petitioners are required to be considered for selection pursuant to the advertisement given by the District authority and are required to be treated as regular employees.

(5) Articles 15, 16, 77, 145, 146, 161, 176, 187, 208, 225 and 227 of the Constitution of India provide for rule making powers in the respective subjects by the State or the Hon"ble Supreme Court or the High Court. However, in" the subject of recruitment of the staff on the establishment of the subordinate

Courts, no such rule making powers are available with the High Court under Article 235 of the Constitution of India. High Court is, therefore, required to take prior approval of the Governor for making rules for recruitment of the staff on the establishment of the subordinate Courts. Thus, the High Court having no independent power to make Rules for the said purpose, the Rules made by the High Court for recruitment of the staff in the subordinate Courts are against the constitutional discipline and therefore, the Centralized Recruitment undertaken by the High Court under the Rules framed by it is void and invalid.

(6) Some of the petitioners have completed 10 years of minimum service without any interim order of the Court. Therefore, as per the judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, , appointments of such petitioners are required to be regularized. For rest of the petitioners, since they have applied pursuant to the advertisement given by the District authority, the said advertisement is required to be revived to enable the petitioners to pass through the regular selection process.

7. Learned advocate Mr. P.P. Majmudar appearing for the petitioners in Special Civil Application No. 16314 of 2012 while adopting the arguments made on behalf of the other petitioners, made the following submissions:-

(1) Since the High Court lacked the power to undertake the Centralized Recruitment for the staff of the subordinate Courts, the petitioners cannot be replaced by the candidates selected for the post of driver under such Centralized Recruitment undertaken by the High Court.

(2) The petitioners were duly appointed and therefore, they are required to be treated as regular employees.

(3) Appointments of the petitioners are on vacant posts and such appointments since not illegally made are required to be treated as regular appointment.

7.1. As against the above arguments, learned advocates appearing for the respondents in the respective petitions, made the following submissions;:

8. Learned advocate Mr. Mehul S. Shah appearing for the High Court in Special Civil Application Nos. 5931, 11581 and 15181 of 2012 made the following submissions:-

(1) The petitioners are ad-hoc employees and cannot claim any right to the posts.

(2) Appointment of the petitioners was not by following any selection procedure but the same was made to meet with the exigency prevailing at the relevant time till the regularly selected candidates were made available.

(3) The petitioners having consciously accepted such ad-hoc/stopgap appointment, cannot claim to treat them as regularly selected employees.

(4) High Court has not committed any illegality in undertaking the Centralized

Selection Process for appointment in the subordinate Courts. The High Court has streamlined the procedure to be followed in consonance with the Recruitment Rules of 1957 with a view to save time and expenses

(5) Control of the High Court under the provisions of the Constitution of India over the subordinate Courts would also include administrative control and the High Court is, therefore, authorized to undertake the Centralized Selection for Recruitment of Staff in Subordinate Courts at one place. There is no illegality in such process being undertaken by the High Court.

(6) Simply because the petitioners have completed 6 to 7 years of service, they cannot claim to treat them as regular employees.

9. Learned senior advocate Mr. Shalin Mehta appearing with Mr. G.M. Joshi and Mr. Hemant M. Shah for respondent Nos. 1 and 2 in Special Civil Application No. 4205 of 2012 and for respondent Nos. 2 and 3 in Special Civil Application Nos. 8443, 8945, 9065, 9066 and 9067 of 2012 made the following submissions:-

(1) The petitioners have not challenged the validity of the Rules made by the High Court providing for procedure to be followed for Centralized Selection at the High Court.

(2) Rules of 1957 have not been replaced or substituted by the High Court. The Centralized Selection Process for recruitment of the staff in the subordinate Courts undertaken by the High Court is not de hors the Rules of 1957.

(3) High Court has undertaken such Centralized Selection Process to save time and expenses and to ease the burden of judicial officers of cumbersome process of evaluating large number of candidates for recruitment at District level. Ultimate object is to undertake selection process at one place instead of different places at District level. The District authority retains the power for appointment on the basis of the selection undertaken.

(4) Control over subordinate Courts available with the High Court under Article 235 of the Constitution of India includes administrative control too. In exercise of such controlling powers, High Court has framed rules of procedure to be followed in order to see that in each District, the judicial officers may not be required to spend their judicial time for selection for the staff required on the establishment of the subordinate Courts.

(5) In absence of any statutory rules under Article 309 of the Constitution of India framed by the State Government for recruitment of the staff in subordinate Courts, the High Court under its controlling power under Article 235 of the Constitution of India is justified in adopting the procedure to be followed for selection of the staff in the subordinate Courts which is in furtherance of the Recruitment Rules of 1957 and for good and avowed purpose of saving time and expenses.

(6) The petitioners since have participated in the selection process, are not

entitled to challenge the Centralized selection undertaken by the High Court. The petitioners are also otherwise not entitled to challenge the Centralized selection undertaken by the High Court after having consciously accepted appointments as ad-hoc/stopgap.

(7) The appointments of the petitioners are ad-hoc and stopgap and without following any selection procedure as required by the Recruitment Rules of 1957. They therefore, cannot claim to be treated as regularly appointed. The petitioners have consciously accepted the appointments as ad-hoc and stopgap and since they have no legal right to continue on their posts, they should make way for regularly selected candidates.

10. Learned Assistant Government Pleaders Mr. Urshit Oza and Ms. V.S. Pathak while adopting the arguments made by learned advocates for the High Court submitted that the High Court has not committed any illegality in undertaking the Centralized selection process. High Court having control over the subordinate Courts, under the provisions of the Constitution, was and is well within its administrative power to undertake such Centralized selection process for District authorities which are ultimate authorities for giving appointments to the selected candidates. Therefore, the Rules framed by the High Court and Centralized selection process undertaken by the High Court involving the district level authorities cannot be said to be in any way illegal or ultra vires the Constitution of India.

11. In reply to the arguments made by learned advocates for the respondents, learned advocate Mr. Pujara submitted that as per the directions issued by the Hon''ble Supreme Court, the High Court on administrative side as also the State Government were required to implement the Shetty Commission Recommendations. One of such recommendations is to undertake recruitment process by Advisory Committee at district level. It was therefore not open to the High Court to act contrary to the Shetty Commission recommendation for such recruitment and to defy the directions dated 7.10.2009 issued by the Hon''ble Supreme Court. High Court cannot say that it will make its own rules and procedure. Recruitment thus undertaken by the High Court since contrary to the recommendation of the Shetty Commission and the directions issued by the Hon''ble Supreme Court, no legality could be attached to the selection made by the High Court under the Central Recruitment process and the petitioners, therefore, cannot be permitted to be replaced by the candidates selected in such selection process illegally undertaken by the High Court. Mr. Pujara submitted that immediately after the advertisement, the petitioners had to decide to apply for the selection as non making of any application would have caused serious prejudice to the petitioners. Mr. Pujara submitted that if the Centralized selection undertaken by the High Court is illegal and de hors the constitutional provisions, even if the petitioners have participated in such illegal selection process, the petitioners are not estopped from challenging the same.

12. Learned advocate Mr. Sinha also submitted that participation in illegal

selection process cannot estop the petitioners from challenging the same. Mr. Sinha submitted that the petitioners when applied to the High Court in the Centralized selection process, did not know about the framing of the Rules by the High Court and being subordinate staff, they could not gather immediate courage to challenge the Centralized selection process. He submitted that under the apprehension that non-applying in response to the advertisement might finish their future career, the petitioners decided to apply. The petitioners cannot be thrown out of the challenge simply on the ground that the petitioners have participated in the selection process.

13. To decide questions raised challenging the Centralized selection process undertaken at High Court for recruitment of the staff in subordinate Courts, the notification dated 26.12.1957 issued by the State of Bombay for recruitment of the staff in subordinate Courts needs to be first referred.

14. Notification dated 26.12.1957 is annexed with the reply filed by the Deputy Registrar, High Court of Gujarat at Annexure-J in Special Civil Application No. 4205 of 2012. The notification reads as under:-

Advisory Committees Formation Of Advisory Committees For Recruitment to Class III and Class IV Services.

Government of Bombay Home Department, Resolution No. MIS. 1055/62546-III Sachivalaya, Bombay Dated 26th December 1957.

Government Resolution, Political and Services Department No. GDR-1955-X dated the 2nd May, 1955, Government letter, Home Department No. MIS-1055/62546-B, dated the 1st February, 1956.

Letter No. B-5602/53, dated the 19th September, 1957 from the Registrar, High Court (Appellate Side) Bombay.

Resolution:

Government has decided that Advisory Committee should be formed in every District to assist the District Judges in making appointments to Class III and Class IV Services in the Judicial Department. The Advisory Committee for each District should compose of the District Judge, the Assistant Judge and the Civil Judge, Senior Division. In a District where there is no Assistant Judge, the Advisory Committee should compose of the District Judge and the Civil Judge, Senior Division.

2. The rules for recruitment of candidates to Class III and IV Services in the District are contained in the Appendix attached.

With the said notification, Rules to be followed for recruitment to Class-III and Class-IV services in subordinate Courts are found attached.

15. As per the aforesaid notification, the Government of Bombay decided to form an Advisory Committee for every district to assist District Judges in making

appointments to Class-III and Class-IV services in judicial departments. Such Advisory Committee is to be composed of District Judge, Assistant Judge and Civil Judge (S.D.). In the district where no Assistant Judge is there, "Advisory Committee is to be composed of District Judge and Civil Judge (S.D.). Such Advisory Committee is responsible to prepare list for recruitment to categories of Class-III and Class-IV for the districts. Rules further provide for method of preparing the list of eligible candidates.

16. The above Rules though not framed under Article 309 of the Constitution of India are the Recruitment Rules followed for appointments in Class-III and Class-IV services. Since the Rules are not framed under Article 309 of the Constitution of India, Rules framed vide notification dated 26.12.1957 could be said to be in exercise of the powers under Article 162 of the Constitution of India as the notification is stated to be issued by the order and in the name of the Governor of Bombay.

17. Reading the contents of the notification, it appears that the Government of Bombay clearly intended that the selection process for recruitment to Class-III and Class-IV services was to be undertaken by the Committee, consisting of Judicial Officers of the subordinate Courts. There is no involvement of Government machinery or Government officers. Therefore, in each district, it was sole responsibility of judicial officers who were required to spend their judicial time for cumbersome procedure of evaluating and assessing large number of candidates, applying for appointments in Class-III and Class-IV services in the subordinate Courts.

18. The common thread of arguments of all learned advocates for the petitioners is that the High Court has no power to undertake recruitment to Class-III and Class-IV posts on the establishment of the subordinate Courts. It was contended the control given to the High Court under Article 235 of the Constitution of India is for the purpose of the discipline of the staff and judicial officers serving in subordinate Courts but does not include the power for recruitment of the staff on the establishment of the subordinate Courts.

19. Article 235 of the Constitution of India reads as under:-

235. Control over subordinate courts-The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

20. The control given to the High Court under Article 235 over the District Courts and Courts subordinate thereto is inclusive of other matters provided therein. It is very wide administrative control over the District Courts and Courts

subordinate thereto. Such control would include the power of High Court to ensure that the judicial officers serving in subordinate Courts may not be burdened with much non-judicial work which might result into affecting the judicial work. To achieve such objects, the High Court is required to take some decisions on its administrative side considering various circumstances. Exercise of such administrative power by the High Court would certainly fall within the control envisaged under Article 235 of the Constitution of India.

21. With the affidavit-in-reply filed by the High Court on its administrative side, the High Court has placed on record decision taken in the Chamber meeting dated 7.4.2011, whereby the report of the Committee, which was constituted for establishment of the Central Recruitment Cell in the High Court of Gujarat for undertaking selection process for recruitment of the staff in the subordinate Courts, was resolved to be accepted and implemented. Notes of the said Committee read as under:-

The Committee was constituted to frame rules for Centralized recruitment of Class-III and Class-IV posts in various Courts in the Districts. Presently such selections are being made at the District level inviting applications from qualified candidates and conducting written tests and viva voce after scrutinising the applications received.

Understandably, the applications received for any recruitment would be in large numbers. Since the Districts carry out such process individually, number of candidates apply in more than one Districts thereby multiplying the applications and increase the total number of applications in each district.

Written examination is descriptive in nature. The Principal District Judge and some of the senior Judges spend endless number of hours assessing the written papers of the candidates. This results into wastage of judicial time and energy. Conduct of oral interview at the District level also has its own peculiar problems.

To remove such difficulties, effort is made in the proposed recruitment rules. It is proposed that selections should be centralized and should be conducted under the supervision of the High Court. Common applications can be invited for different districts and the candidates could be asked to give preferences of the districts. This would ensure that candidates may not have to apply in different districts and multiplicity of applications would therefore, be eliminated. Written examination would be objective in nature with multiple choice questions with or without negative marks. This would eliminate subjective assessment of the answers and would save time and energy in assessing question papers. Rules are therefore, framed with a view to ensuring uniformity, consistency and transparency in the selection process and saving of time and energy.

It is suggested that instead of amending the existing rules and having them notified by the Government, the same may be brought in force by way of High Court notification or High Court's Administrative direction/order.

22. As per the Rules of procedure for selection for recruitment to Class-III and Class-IV posts provided by the Committee and accepted in the Chamber meeting, Hon'ble the Chief Justice is to constitute an Advisory Committee consisting of two High Court judges and the Registrar (Recruitment) or any other judicial officers not below the rank of Additional District Judge. Method of inviting applications on-line with other procedure is provided therein and district-wise list of candidates recommended for appointment by Advisory Committee is to be forwarded to the Principal Judicial Officer of the concerned District. The details regarding vacant posts in subordinate Courts in all cadres to be filled in by direct recruitment as prescribed in Rule 6 of the Recruitment Rules 1957 are to be supplied every year by all Principal judicial Officers of the District/Courts in the prescribed format and on the basis of such data, total number of vacancies in the State for each cadres are to be notified.

23. On the basis of the above decision, the "Recruitment Cell at the High Court is established for preparing select list for the posts to be filled in subordinate Courts under its control leaving to the District authorities for giving appointments to the selected candidates.

24. Such task undertaken by the High Court with avowed object and purpose of saving judicial time of the judicial officers and of minimizing huge expenses for undertaking selection process in different Districts cannot be said to be either contrary to the Rules of Recruitment under the notification dated 26.12.1957 or de hors the powers available to the High Court under Article 235 of the Constitution of India.

25. The petitioners have not challenged the Rules of Procedure framed by the High Court to be followed for selection of candidates for recruitment to Class-III and Class-IV services. What is challenged is initiation of the Centralized selection undertaken by the High Court for recruitment to Class-III and Class-IV services on the ground that such action of the High Court is de hors the Rules of 1957 and without sanction of the law.

26. But, such challenge cannot stand in view of the fact that the High Court has not given go-bye to the Recruitment Rules framed vide notification dated 26.12.1957. In fact, the High Court while exercising its administrative control has relieved judicial officers at District level from a cumbersome, time consuming and expensive process of evaluating and assessing large number of candidates so as to ensure that time of such judicial officers could be utilized for important judicial work. Such could never be said to be exercise of the powers by the High Court de hors the Rules of 1957. In fact, when the notification of 26.12.1957 itself provides for formation of the Advisory Committee only of the judicial officers, the Government could be said to have intended to authorize only the judicial officers to undertake the process of selecting the candidates for Class-III and Class-IV services in the subordinate Courts. The High Court being the head Institute at the State level if decides to form Advisory Committee involving High Court Judges with Lower Judicial Officers and make it to function at one place for

all the districts in exercise of its controlling power for good purpose, it cannot be said that the High Court has exercised its power *de hors* the Rules of 1957. In fact, the exercise of powers by the High Court for the Centralized Recruitment Cell at the High Court for all candidates aspiring for appointments in different districts could be said to be within the Rules of Recruitment of 1957 and under Article 235 of the Constitution of India.

27. It is required to be noted that the High Court has not framed any statutory rules for recruitment to the posts of Class-III and Class-IV cadres in subordinate Courts in purported exercise of powers under Article 235 of the Constitution of India. However, if the High Court decides to exercise its controlling power under Article 235 of the Constitution of India for the reasons and purposes stated above, in furtherance of recruitment rules under notification of 1957, the High Court cannot be said to have framed any rules independent of and contrary to the Recruitment Rules of 1957. What is provided by the High Court is to have Centralized Recruitment Cell at one place with pure object and purpose to see that not only the judicial officers at district level may not be required to utilize their time for non-judicial work but there would be great saving expenses incurred at district level. Such exercise of powers by the High Court could never be said to be contrary to the Rules of 1957 or in violation of the constitutional provisions.

28. Decision in the case of R.M. Gurjar and another Vs. High Court of Gujarat and others, relied on by learned senior advocate Mr. Mehta, though lays down that control of the High Court under Article 235 of the Constitution of India extends to ministerial officers and servants on the establishment of the subordinate courts, but the same is in the context of taking disciplinary action against the servants of the subordinate Courts.

29. Decision in the case of B.S. Yadav and Others Vs. State of Haryana and Others, relied on by learned advocate Mr. Sinha lays down that Article 235 does not confer upon the High Courts the power to make rules relating to conditions of service of judicial officers attached to District Courts and the courts subordinate thereto. The power of control vested in the High Court by Article 235 is thus expressly, by the terms of that Article itself, made subject to the law which the State legislature may pass for regulating the recruitment and service conditions of judicial officers of the State. The mere power to pass such a law is not violative of the control vested in the High Court over the judicial officers. A combined reading of Articles 235 and 309 will yield the result that though the control over subordinate courts is vested in the High Court, the appropriate legislature, and until that legislature acts, the Governor of the State, has the power to make rules regulating the recruitment and the conditions of service of judicial officers of the State. The power of the legislature or of the Governor thus to legislate is subject to all other provisions of the Constitution like, for example, Articles 14 and 16.

In fact, what Mr. Jeet Bhatt contended about High Court having no powers to

make rules under Article 235 of the Constitution is found to be supported by observation in para 42 of this decision which reads as under:

42. I Article 235 does not confer upon the High Courts the power to make rules relating to conditions of service of judicial officers attached to district courts and the courts subordinate thereto. Whenever it was intended to confer on any authority the power to make any special provisions or rules, including rules relating to conditions of service, the Constitution has stated so in express terms. See, for example Articles 15(4), 16(4), 77(3), 87(2), 118, 145(1), 146(1) & (2), 148(5), 166(3), 176(2), 187(3), 208, 225, 227(2) & (3), 229(1) & (2), 234, 237 and 283(1) & (2). Out of this fasciculus of Articles, the provisions contained in Articles 225, 227(2) & (3) and 229(1)(2) bear relevance on the question, because these Articles confer power on the High Court to frame rules for certain specific purposes. Article 229(2) which is directly in point provides in express terms that subject to the provisions of any law made by the legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by the rules made by the Chief Justice or by some other judge or officer of the court authorized by the Chief Justice to make rules for the purpose. With this particular provision before them, the framers of the Constitution would not have failed to incorporate a similar provision in Article 235 if it was intended that the High Courts should have the power to make rules regulating the conditions of service of judicial officers attached to district courts and courts subordinate thereto.

30. In the case of Ramesh Kumar Vs. High Court of Delhi and Another, relied on by learned advocate Mr. Pujara, the Hon"ble Supreme Court has held that when statutory Rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the Rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the test and further specify the minimum bench marks for written test as well as for viva voce.

31. In the case of H.C. Puttaswamy and others Vs. The Hon"ble Chief Justice of Karnataka High Court, Bangalore and others, , relied on by learned Advocate Mr. Pujara, action of filling up of the vacancies in the subordinate Courts by the Hon"ble Chief Justice of Karnataka High Court was challenged on the ground that the statutory rules required the district judges to initiate action for filling up such vacancies. The Hon"ble Supreme Court held and observed that methodology adopted by the Hon"ble Chief Justice was manifestly wrong and in violation of the statutory requirement as the Hon"ble Chief Justice himself arranged selection of candidates and posting to the District Courts.

32. However, in the present case, as stated above, the High Court has not framed any statutory rules for recruitment of the staff on the establishment of the subordinate Courts. What is provided by the High Court is the Rules of procedure for Centralized Recruitment Cell for preparing select list to be implemented by the District authorities.

33. Though learned advocate Mr. Jeet Bhatt is right when he submitted that unlike other Articles providing for Rule making power, Article 235 of the Constitution of India does not give any Rule making power to the High Court, however, present is not the case where the High Court has framed Recruitment Rules in substitution of the Rules of Recruitment to Class-III and Class-IV posts contained in Appendix attached to the notification dated 26.12.1957 of the State of Bombay.

34. Power of control available to the High Court under Article 235 of the Constitution of India over the subordinate Courts cannot be read for limited purpose of posting or disciplinary action etc. for the judicial officers and staff working in the subordinate Courts. Under such control, the High Court is equally empowered to take measures for proper utilization of Judicial time of judicial officers working in the subordinate Courts. Taking of any such measures would be in exercise of the controlling power available to the High Court under Article 235 of the Constitution of India and such would never be said to be enacting or framing the statutory rules for recruitment in Class-III and Class-IV services by the High Court. In fact, exercise of such control by the High Court would be in furtherance of the general superintendence over the working of the subordinate courts which would include judicial officers and staff working in such Courts.

35. In the case of High Court of Judicature for Rajasthan Vs. P.P. Singh and Another, , relied on by learned senior advocate Mr. Mehta, the Hon''ble Supreme Court has held and observed in para 18 as under:-

18. It is beyond any pale of controversy that the control over the subordinate courts within the meaning of Article 235 of the Constitution of India is that of the High Court. Such control of the High Court includes general superintendence of the working of the subordinate courts, disciplinary control over the presiding officers, disciplinary proceedings, transfer, confirmation and promotion and appointment etc. Such control vested in the High Court is complete.

36. In the case of State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, , the Hon''ble Supreme Court has held and observed in para 16 as under:-

16. For answering this question it is necessary in the first place to bear in mind that the power of control over the subordinate courts which is vested in the High Court comprises such numerous matters, often involving consideration of details of the minutest nature, that if the whole High Court is required to consider every one of those matters, the exercise of control instead of becoming effective will tend to cause delay and confusion in the administration of justice in the State. A construction which will frustrate the very object of the salient provisions contained in art. 235 ought, as far as possible, to be avoided. The control vested in the High Courts by that article comprehends, according to our decisions, a large variety of matters like transfers, subsequent postings, leave, promotions other than initial promotions, imposition of minor penalties which do not fall

within art. 311, decisions regarding compulsory retirements, recommendations for imposition of major penalties which fall within art. 311, entries in character rolls and so forth. If every Judge is to be associated personally and directly with the decision on every one of these matters, several important matters pertaining to the High Court's administrative affairs will pile into arrears like court arrears. In fact, it is no exaggeration to say that the control will be better and more effective exercised if a smaller committee of Judges has the authority of the court to consider the manifold matters falling within the purview of art. 235. Bearing in mind therefore the nature of the power which that article confers on the High Courts, we are of the opinion that it is wrong to characterise as "delegation" the process whereby the entire High Court authorises a judge or some of the Judges of the Court to act on behalf of the whole court. Such an authorisation effectuates the purpose of art. 235 and fin deed without it the control vested in the High Court over the subordinate courts will tend gradually to become lax and ineffective. Administrative functions are only a part, though an important part, of the High Courts' constitutional functions. Judicial functions ought to occupy and do in fact consume the best part of a Judge's time. For balancing these two-fold functions it is inevitable that the administrative duties should be left to be discharged, by some on behalf of all the judges. Judicial functions brook no such sharing of responsibilities by any instrumentality.

37. In the case on hand, as stated above, the Committee of two Hon"ble Judges was constituted by the High Court and its report came to be accepted in the Full Court Chamber Meeting. The High Court has thus exercised its power under Article 235 of the Constitution of India in overall interest of the administration of the subordinate Courts.

38. However, learned advocate Mr. Pujara submitted that in view of the Shetty Commission Recommendation and the directions issued by the Hon"ble Supreme Court to comply with the recommendation of the Shetty Commission, the High Court could not have undertaken the recruitment process for Class-III and Class-IV services and the same was to be left to District Authorities.

39. As stated above, by notification dated 26.12.1957, Government of Bombay had already left recruitment process for Class-III and Class-IV posts to be undertaken by the judicial officers. The Government never intended involvement of any Government officers. When the Rules were framed in the year 1957, the Government would not have envisaged increase in judicial work with passage of time to a large extent. Considering today's scenario about increase in judicial work as against shortage of the judicial officers, the High Court is required to see that judicial officers working in the subordinate Courts may utilize their time for maximum judicial work. The High Court has, therefore, formed an Advisory Committee, including judicial officer not below the rank of Additional District Judge with Registrar (Recruitment) and other two Hon"ble Judges of the High Court. Thus, the Advisory Committee still remained composed of judicial officers. The Shetty Commission recommended for selection committee at the District

level and formation of the Recruitment Cell. However, the State Government vide its notification dated 26.7.2011 left to the High Court to take decision with caution note that there may not be any additional financial burden. What is provided by the high Court is some modification in the Advisory Committee and establishment of the Recruitment Cell at one place, i.e. Centralized Recruitment Cell at the High Court. Such could not be said to be contrary to the Rules of 1957.

40. In any case, the petitioners have participated in the Centralized selection process undertaken by the High Court. When the petitioners participated in the process of selection with full knowledge that such selection process was being undertaken at Central Recruitment Cell in the High Court, the petitioners are not entitled to challenge such Centralized selection. In fact, the petitioners could be said to have waived their rights to question the Centralized selection and methodology adopted in such Centralized selection.

41. In the case of Ramesh Chandra Shah and Others Vs. Anil Joshi and Others, , relied on by learned senior advocate Mr. Mehta, the Hon"ble Supreme Court has held and observed in para 24, as under:-

24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents.

The above-said ratio would apply to the case of the petitioners.

42. Now, turning to the other prayers made by the petitioners to treat their appointments as regularly made though they are termed as ad-hoc/stopgap or temporary, it is required to be noted that in none of the case, selection procedure as required by the Rules of 1957, was duly followed.

42.1. In Special Civil Application No. 5931 of 2012, the selection process undertaken was for the post of Peon. The petitioners were then actually given appointments for the post of Peon. They were working also on the posts of Peon. But, thereafter, to meet with the administrative exigency, they were offered appointments purely on ad-hoc basis as Assistant Junior Clerks. It is required to be noted that for the post of Assistant Junior Clerks, the petitioners had never undergone any selection process. In their appointment orders also, it has been made very clear that their appointments are purely temporary and ad-hoc and by way of stopgap arrangement and they will be relieved from such appointment without any reason or without any notice. Therefore, by such appointment, the petitioners were never conferred any right to hold the posts on permanent basis. The petitioners were already holding the posts of Peon and while holding such posts of Peon, they consciously accepted their appointments as Assistant Junior Clerks with the above conditions. They are, therefore, to make way for the

regularly selected candidates. When the appointments on the posts of Assistant Junior Clerk of the petitioners were not by following any selection process and the same being purely ad-hoc, the petitioners cannot claim that since they have served for 6 to 7 years, they should be considered as regularly appointed Assistant Junior Clerks. So far as the prayer for salary is concerned, as stated by learned Advocate Mr. Pujara, the dispute does not survive.

42.2. In Special Civil Application No. 4205 of 2012, the petitioners consciously accepted their appointments as Assistant Junior Clerks on purely ad-hoc and by way of stopgap arrangement. In their appointment also, it is specifically provided that they shall be relieved without any notice. Their appointments were made in the year 2006. By such appointments, the petitioners have not acquired any legal right to hold the posts of Assistant Junior Clerks. They are also, therefore, to make way for the regularly selected candidates.

42.3. In Special Civil Application No. 8443 of 2012, the petitioners claimed that for their appointments, Rules of 1957 were followed. It is their say that though their appointments are termed as ad-hoc appointments, however since they were selected from the list of the candidates whose names were called from the employment exchange and since they were appointed after taking interviews, they are to be treated as regularly appointed. However, the conditions in their appointment orders specifically provide that they were appointed on fixed salary without any other benefits. Their appointments are purely temporary and ad-hoc and till the regularly selected candidates are made available. It is also provided that they could be relieved from their posts without any notice and they were required to undertake that they shall not make any claim on the posts held by them. It is required to be noted that there was no public advertisement and appointments of the petitioners were made by calling their names from Employment Exchange. Such appointments were purely on temporary basis till regularly selected candidates were made available. The petitioners have consciously accepted such appointments. They have, therefore, no legal right to hold the posts.

42.4. In Special Civil Application No. 16314 of 2012, the petitioners were appointed purely on ad-hoc basis on the posts of Driver on fixed salary on various conditions, including the condition of relieving the petitioners without any notice. Such appointments of the petitioners were made in the year 2004 and 2005. No procedure under the Recruitment Rules were followed. The petitioners thus have not acquired any legal right to hold the posts and therefore, no direction to absorb the petitioners could be given.

42.5. In Special Civil Application No. 8945 of 2012, appointments of the petitioners as Assistant Junior Clerks were also not by following the selection process. These appointments are also purely ad-hoc and till the regularly selected candidates are made available. It is also stated that they shall be relieved without any notice.

42.6. Similar is the case of the petitioners of Special Civil Application No. 9065 of 2012, Special Civil Application No. 9066 of 2012 and Special Civil Application No. 9067 of 2012.

42.7. Petitioners of Special Civil Application No. 11581 of 2012 are appointed on the posts of Peon on ad-hoc and temporary basis. It is also provided in their appointment orders that they shall be relieved without any notice. Their appointments were made in the year 2007. Such appointments were not by following any selection process.

42.8. Petitioners of Special Civil Application No. 15181 of 2012 are also appointed on temporary and ad-hoc basis, to work as Sweepers in subordinate Courts in Junagadh District. In their appointments orders also, it was provided that they shall be relieved without any notice. Such appointments were also without following any selection process. It is their case that they had appeared in regular selection process undertaken by the District authorities but they could not be selected.

43. Thus, all the petitioners of these petitions have accepted their appointments as ad-hoc employees with full knowledge that they will have to make way for regularly selected candidates. Their appointments have not been made by following the regular selection process as per the Rules of 1957. Therefore, the contention made on behalf of the petitioners that they should be treated as regularly selected candidates cannot be accepted. They are bound by the terms and conditions of their appointments. It is required to be noted that except four sweepers in Special Civil Application No. 15181 of 2012, no petitioner in any of the petitions has completed 10 years of service. However, since no legal procedure was followed for their appointments, their services cannot be regularized.

44. In similar facts situation, learned Single Judge of this Court in the case of Pancholi Ranikaben Dharmesh Kumar and others Vs. High Court of Gujarat and others reported in 2013 (1) GLR 695, relied by learned senior advocate Mr. Mehta has held and observed in paragraph Nos. 9 to 13 as under:-

9. The petitioners herein were appointed as English Stenographer Grade-II Assistant (Junior Clerk) in District Court, Jamnagar, by the then Principal District Judge, Narmada at Rajpipla. Until recently, the selection procedure to different posts on the administrative side, in subordinate judiciary of the State, was done by the competent authority of the District Court concerned, depending upon the administrative exigency and the High Court used to act as the authority approving the select list of appointees. It was by the issuance of Advertisement No. R.C./1434/2011 dated 15.02.2012 by the High Court of Gujarat that appointment to different posts on the administrative side, in subordinate judiciary throughout the State, was taken over by the High Court of Gujarat, by way of a centralized recruitment system. The petitioners herein were appointed by respondent no. 3 on account of the administrative exigency that prevailed at

the relevant time.

10. For the purpose of this group of petitions, it would be beneficial to reproduce the relevant part of the order of appointment, which reads as under;

The Principal District Judge, Narmada At-Rajpipla is pleased to pass the following orders for appointments and postings with immediate effect....

He/She shall take note that his/her appointment is purely temporary and on ad hoc basis by way of stop gap arrangement and his services are liable to be terminated at any time without any notice and without assigning any reasons. He shall not be entitled to claim any allowances and leave. He is directed to furnish an undertaking for the temporary service and not entitled to claim any right for permanent post and declaration of plural marriages etc. at the time of resuming his duties. He shall generally be governed by the Government Rules in force.

10.1 A plain reading of the order of appointment goes to show that the petitioners were appointed on the posts in question on account of the administrative exigency that prevailed at the relevant point of time. It was stated in the order of appointment, in no uncertain terms, that their appointment is purely temporary and on ad hoc basis, by way of stop-gap arrangement and also that their services are liable to be terminated, at any point of time, without issuing any Notice and without assigning any reasons. It was also stated that the petitioners shall furnish an Undertaking for the temporary service and shall not claim any right for permanent post

10.2 In The Pocket Oxford Dictionary and Thesaurus, 2003 Edition, the word "ad hoc" has been defined as "for one particular purpose" The Webster's New World Dictionary, Second College Edition, defines "ad hoc" as "for this specific purpose", "for a special case only, without general application". If we go by the Dictionary meaning of the term "ad hoc", as appearing in the order of appointment, it can be said that the petitioners were appointed for a specific purpose. The order also speaks that appointment is made "as a stopgap arrangement" meaning thereby, that until the regularly selected candidates are available, the petitioners shall continue to work on the post in question. Such appointment was made in order to meet with the administrative exigency of the District Court. The order of appointment is self-explanatory. No where the order states that the appointment of the petitioners is on regular or permanent basis. In fact, it categorically states that the appointment is on a "purely temporary" basis. Therefore, there is not an iota of doubt that the petitioners herein were appointed as English Stenographer Grade-II/Assistants (Junior Clerks) in the District Court on purely temporary basis for the purpose of meeting with the administrative exigency of non-availability of regularly selected candidates. It, therefore, consequentially follows that no soon as the regularly selected candidates are appointed, the petitioners shall have to make way for them.

It may be that the petitioners are appointed, after their names were forwarded by the District Employment Exchange and after they had cleared the examination

conducted by the District Court, Jamnagar. Therefore, at the most, it could be said that the appointment of the petitioners was not illegal. However, since the petitioners were appointed without following due process of law, viz. not in pursuance of any public advertisement, their appointment is, undoubtedly, "irregular". Had the petitioners been appointed through a regular selection process, then the order of appointment would not have read such but, since their appointment had risen out of administrative exigency and no due selection process was followed, their service was categorized to be "purely temporary" and on "ad hoc basis". Learned counsel for the petitioners was not in a position to show that the petitioners were appointed on the post after following due selection process.

11. The High Court published the Advertisement dated 15.02.2012 in which age relaxation is already granted. If further relaxation as prayed for is granted for the purpose of accommodating some of the petitioners, who had become over-aged, then it would amount to travelling beyond the scope of Advertisement. This Court does not have the powers to grant age relaxation in matters pertaining to recruitment. The appropriate authority to decide the issue of age relaxation is the appointing authority itself and not the Court. Considering the principle laid down by the Apex Court in Arulmozhi Iniarasu's case (supra) wherein the Apex Court has categorically held that writ of mandamus can be issued by High Court only when there exists a legal right vested in writ petitioner and corresponding legal obligation on State, I do not find this to be a case wherein writ jurisdiction could be exercised in favour of the petitioners by further granting age relaxation.

12. The case of the petitioners for regularization also could not be considered for the reason that none of the petitioners satisfy the criteria, as prescribed by the Apex Court in Umadevi's case (supra). In the opinion of this Court, the appointment of the petitioners can be considered as "irregular" and not "illegal" and therefore, the petitioners could be given the benefit of regularization, if they had continued to work for ten years or more, without the intervention of the orders of Courts or Tribunals, as has been held in para-53 of Umadevi's case (supra). There is no dispute about the fact that the petitioners have been working on regular vacant posts since the date of their appointment. However, the petitioners have not completed ten years of service and therefore, they could not be granted the benefit of the principle rendered in Umadevi's case (supra). Therefore, on this count also, the petitioners could not be granted the benefit of regularization.

13. The decision rendered in Gujarat Agricultural University's case (supra) and relied upon by learned counsel for the petitioner shall not come to the rescue of the petitioners since in that case the concerned University had framed a proposed Scheme for regularization of daily rated labourers subject to fulfillment of certain eligibility criteria. However, in this case, no such Scheme of regularization is in existence. As stated herein above, the petitioners have claimed regularization though their orders of appointment categorically speak

that their appointment was purely temporary and on ad hoc basis and as a stop-gap arrangement. Therefore, the facts of this case are totally different to the facts of the case relied upon by learned counsel Mr. Trivedi and hence, the said decision shall not apply to the case on hand. Considering the facts of the case and the principle rendered in Umadevi's case (supra), I find no reasons to entertain the present petition.

45. In light of the above decision of this Court, the petitioners could neither be treated as regularly appointed nor could be granted benefit of regularization.

46. For the reasons stated above, all the petitions are required to be dismissed. They are accordingly dismissed. Rule is discharged. Interim relief, if any, stands vacated. Since the main petitions are dismissed, Civil Applications do not survive and hence, disposed of accordingly.

After pronouncement of the judgment, learned advocate Mr. Pujara requests to stay the operation of this judgment and order in view of the fact that the select list is now out. This request is opposed by learned senior advocate Mr. Mehta.

Considering the fact that the select list is already out, no stay as prayed for can be granted and hence, the request to stay this judgment and order is rejected.