

(2017) 01 MAD CK 0155

In the Madras High Court

Case No : Writ Petition No. 21221 of 2016 and W.M.P. No. 18136 of 2016

P.H.C.M. Gandhi

APPELLANT

Vs

Chairman

RESPONDENT

Date of Decision : 12-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 MLJ 1

Hon'ble Judges : Mr. S. Manikumar And Mr. N. Authinathan, JJ.

Bench : Division Bench

Advocate : Mr. L. Chandrakumar for M/s. Law Square, Advocates, for the Petitioner; Mr. K. Venkataramani, Additional Advocate General for Mr. P. Sanjay Gandhi, Spl. GP, for the Respondent No. 3

Final Decision : Dismissed

Judgement

S. Manikumar, J. -Claiming himself to be the President of RICA Employees Union (AITUC), Registration No.953/NAT, Vellore, Mr. P.H.C.M. Gandhi, has filed the instant W.P.No.21221 of 2016, for a writ of declaration to declare Part I (iii)-3 of the APCA Service Rules, 1997 as null and void and unconstitutional, insofar as the existing retirement age of 58 years, is concerned and prayed for a direction to the Chairman, Board of Management of the Academy of Prisons & Correctional Administrations, Vellore, the first respondent herein, to implement G.O.Ms.No.147 Finance (HRM-IV) Finance Department dated 30.06.2014, issued by the Government of Andhra Pradesh, to the members of petitioner union, and to fix the retirement age as 60 years, on superannuation with retrospective effect, by invoking the provisions of Rule Part II(i)-28 and Rule Part II (ix)-9 of APCA Service Rules, 1997, duly reinstating the members of the petitioner union, relieved from service, at the age of 58 years in service, and to permit them to draw back-wages, with continuity of service, with all other attendant benefits thereon, within a time frame, as may be fixed by this Hon"ble Court.

2. The petitioner has contended that formerly, Regional Institute of Correctional

Administrations (in short RICA) was formed with an object of imparting training, in correctional administration and allied subjects to the Officers, in the rank of Assistant Jailers to Superintendent of Prisons, and equivalent ranks, and above the level of Supervisory officers of allied department of the States of Andhra Pradesh, Telangana, Karnataka, Kerala and Tamil Nadu, with special reference to criminal justice, and for educational purpose, incidental thereto. The said institute was registered on 03.07.1986 under the Tamil Nadu Societies and Registration Act, 1975 with Registration No.76/86. The Management of the institute is vested with the Board of Management comprising of members, representing the participating States and Union Government, as per RICA Service Rules, details of which are extracted.

Sl.No

Name of the State/Union Government

Members of the Board of Management

1

The Government of India

The Deputy Secretary/Director from the Ministry of Home Affairs, Government of India

2

State of Andhra Pradesh

The Inspector General of Prisons, Andhra Pradesh

3

State of Tamil Nadu

The Inspector General of Prisons, Tamil Nadu

4

State of Karnataka

The Inspector General of Prisons, Karnataka

5

State of Kerala

The Inspector General of Prisons, Kerala

3. The petitioner has further contended that draft service rules were framed in the year 1997 by APCA and approved by the participating State Governments and Government of India, in the year 2003. At the time, when the draft rules were framed in 1997, the retirement age on attaining the age of superannuation to the employees of the participating states and Union Government was fixed as

hereunder:

Sl.No

Name of the State/Union

Retirement age for Superior Service

Retirement age for Inferior service

1

Government of India

60 years

60 years

2

State of Andhra Pradesh

58 years

58 years

3

State of Tamil Nadu

58 years

60 years

4

State of Karnataka

58 years

58 years

5

State of Kerala

55 years

56 years

4. It is the submission of the petitioner that, while approving the draft APCA (RICA) Service Rules, the retirement age of superior and inferior service of the employees of the States of Tamil Nadu and Kerala was as follows:

State of Tamil Nadu: 58 years (Superior) - 60 years(Inferior)

State of Kerala: 55 years (Superior) - 56 years(Inferior)

5. According to the petitioner, the retirement age on superannuation in respect of all categories of inferior service such as watchman, sweeper, office assistant (peon), scavenger, orderly, chowkidar, hostel servant, gardener and cleaner etc. who come under basic service, has been fixed as 60 years, by all the participating State Government and Central Government. The petitioner has further contended that as per Rule 4 in Part-I(ii)-Classification of Service, scale of pay, as per Andhra Pradesh Revised Scale of Pay Rules/Government of India shall be applicable to all the employees of APCA (RICA). All the participating States, including Tamil Nadu, Karnataka, Andhra Pradesh, Kerala and Government of India, have contributed financial sources, proportionately, to conduct the affairs of APCA, since its inception. The functions of APCA are connected with the participating States and Union Government, with regard to correctional administration in jail departments.

6. It is the further submission of the petitioner that APCA Institute comes under the definition of State/Union Public Sector. As per APCA Rules 1997, the institute shall either follow the scales of pay, dearness allowance, house rent, reservation policy and leave rules of the Government of India or the scale of pay, dearness allowance, house rent allowance of the State of Andhra Pradesh, as the case may be.

7. It is also case of the petitioner that the Board of Management of Academy of Prisons & Correctional Administration, Tamil Nadu/ respondent No.1, ought to have implemented the scales of pay, sanctioned to the employees of the Central Government, as per Rule 4 in Part-I(ii), classification of service of APCA Service Rules, and simultaneously should have fixed the retirement age as 60 years, on par with that of the employees of Government of India, under Part I (iii) 3 of the APCA Service Rules, 1997. The petitioner has further submitted that as per Rule 28 of APCA Service Rules, 1997, it is stipulated that for any clarification, in respect of APCA Employees Conduct Rules, Tamil Nadu Government Servants Conduct Rules, be referred.

8. It is also his contention that as per Rule Part II (iv) 9, Board of Management of Academy of Prisons & Correctional Administrations, Tamil Nadu, should follow the Government of India Rules for surrender leave, maternity leave and bonus, issued by Government of India, from time to time, and as per Part II (vi), dearness allowance, for the directly recruited staff of the institute and for those on deputation should be given the option for the scale of pay of the institute, and the same, be decided as per the Andhra Pradesh Government/Government of India pattern.

9. Claiming himself to be the President of the union, the petitioner has further contended that the Board of Management is empowered to relax any rules and the Chairman, Academy of Prisons & Correctional Administrations, Tamil Nadu, respondent No.2 can pass any orders by relaxing the rules, subject to the approval of respondent No.1. According to the petitioner, instead of taking action to relax or amend or modify or delete the provision of the Rules with regard to

fixation of retirement age, employees working in inferior service, have been relieved on attaining the age of 58 years. The petitioner has submitted that as per the Central Pay Commission report, Government of India, have fixed the retirement age of inferior service as 60 years, and also issued office memorandum for extension of benefits to other employees.

10. Taking note of the disparity in retirement age of the employees in superior and inferior service, Government of Andhra Pradesh have issued G.O.No.147 dated 30.06.2014, amending sub section (1) of Section 3 of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 and fixed the age of retirement of inferior service, as 60 years. Scale of pay, dearness allowance, house rent allowance and the conditions of services Andhra Pradesh employees alone have been incorporated in APCA (RICA) Service Rules, 1997, except the age of superannuation. The Board of Management of the Academy of Prisons & Correctional Administrations, Tamil Nadu, has extended all the benefits of the Andhra Pradesh, and revised scales of Pay Rules, 1998, 2004, 2010 and 2014 and DA and HRA to the employees of APCA and adopted the conditions of service to the employees of APCA, scrupulously.

11. The petitioner has further submitted that the Director, Academy of Prisons & Correctional Administrations, Thorapadi, Vellore - 632002, the third respondent herein, who is not the competent authority, as per Service Rules, has issued orders, relieving eight employees stating that the retirement age has been fixed as 58 years, as per APCA Service Rules, 1997. According to the petitioner the first respondent Board of Management, while adopting the Revised Scales of Pay Rules and Conditions of Service of Andhra Pradesh, to the employees of APCA, with retrospective effect, should have also revised age of the retirement on superannuation as 60 years, to all the employees as per G.O.147 dated 30.6.2014, as fixed for the employees of Andhra Pradesh, irrespective of the categories of posts, which come under superior service and inferior service. The petitioner has contended that the respondents have failed to follow the orders in G.O. Ms. No.147, dated 30.06.2014 of the Government of Andhra Pradesh. But, the Director, the Academy of Prisons & Correctional Administrations, Vellore, the third respondent, without jurisdiction, has issued orders, in a routine and mechanical manner, relieving eight employees, on their attaining the age of 58 years illegally, which affects the Fundamental Rights of the employees of APCA, as guaranteed under Articles 14, 16, 19 and 21 of the Constitution of India. Details of those, relieved are as follows:

Sl.No

Name

Post held

Date of Retirement

Age of Retirement

Kind of service

1

Mr.Arunachalam

Cook

30.06.2011

58 Years

Inferior

2

Mr.Jameel

Hostel Servant

31.03.2011

58 years

Inferior

3

Mr.Abdul Salam

Office Assistant

31.01.2014

58 years

Inferior

4

Mr.Sulaiman

Sweeper

31.07.2014

58 years

Inferior

5

Mr.Maria Joseph

Gardener

30.11.2015

58 years

Inferior

6

Mr.Nazeer Ahmed

Junior Assistant

29.02.2016

58 years

Superior

7

Jeyaraman

Office Assistant

30.04.2016

58 years

Inferior

8

K.Thulasivanan

Gardener

31.05.2016

58 years

Inferior

12. It is the further submission of the petitioner that he submitted a representation dated 06.04.2016 to the respondents herein, and requested the Board of Management of Academy of Prisons and Correctional Administrations, Vellore, the first respondent herein, to issue suitable orders by setting aside the illegal orders, passed, to the above said employees by the Director, Academy of Prisons & Correctional Administrations, Vellore, the third respondent herein, relieving them from service on attaining the age of 58 years, instead of 60 years on superannuation, as done in State of Andhra Pradesh, and to reinstate them, in service and also to permit them to render service till the date of attaining the age of 60 years.

13. The petitioner has further requested the Chairman, Board of Management of the Academy of Prisons & Correctional Administrations, Vellore, the first respondent herein, that if any employee had completed 60 years of service, on the date of representation, he should be sanctioned duty pay and allowances, all monetary benefits for 2 years, with terminal benefits taking into account of 2

years of service.

14. He has also requested the Chairman, Board of Management of the Academy of Prisons & Correctional Administrations, Vellore, the first respondent herein, to issue necessary directions to the Director, not to relieve, any employee on attaining the age 58 years, instead of attaining the age of 60 years, on retirement on superannuation in future.

15. Responding to the above, the Director, Academy of Prisons and Correctional Administrations, Vellore, the third respondent, has sent a reply on 15.04.2016 rejecting the request of the petitioner. In the reply, he has stated that all the employees named in the letter of the petitioner, have been relieved from service on attaining the age of 58 years, in accordance with APCA Service Rules and that there is no illegality in the matter.

16. The petitioner has contended that the Director, Academy of Prisons & Correctional Administrations, Thorapadi, Vellore - 632 002, third respondent, and Chief Executive Officer of APCA, while preparing an agenda for placing it before the Board of Director's meeting to implement the Andhra Pradesh Revised Scales of Pay Rules, 2015 to the employees of APCA, ought to have also prepared an agenda, well in advance to implement G.O.Ms.No.147 dated 30.06.2014 of the Andhra Pradesh Government, in which retirement age on superannuation has been fixed as 60 years.

17. The petitioner has contended that because of the failure on the part of the respondents, statutory and mandatory benefits of increase in age of retirement on superannuation, on attaining the age of 60 years, on par with the employees of the Andhra Pradesh cannot be deprived of. Hence the retirement age of 58 years fixed under Rule Part I (iii) 3 of the APCA Service Rules, 1997, is unconstitutional.

18. The Director of Academy of Prisons and Correctional Administration, Vellore, the third respondent herein, in his counter affidavit has contended that, the petitioner has no locus standi, to file this writ petition, as he is not in service of the Institute. Further no employee of the Academy of Prisons and Correctional Administration (APCA) is permitted to join any union, as per the Academy of Prisons and Correctional Administration Employees Conduct Rules 1997 and as such no union is recognised by the Board of Management. For the above said reasons, respondents have submitted that the Writ Petition is not maintainable.

19. He has further submitted that the nomenclature of RICA was changed to APCA, by the Board of Management in the 7th Meeting held at Vellore on 25.7.2009. Therefore, RICA Employees Union has no claim to represent the employees of Academy of Prisons and Correctional Administration.

20. He has denied the contention of the Petitioner that Academy of Prisons and Correctional Administration was formed in 1986; that rules were framed only in 1997 and approved by the participating states in 2003. According to him, the

institute came into being on 1.10.1979 with specified rules. Before the inauguration of the institute, the Board of Management in its meeting held on 11th and 12th March 1979, approved the rules by which the institute would be governed. He has submitted that the contention of the petitioner that the retirement age of 58 years was fixed, as per the draft Academy of Prisons and Correctional Administration Service Rules of 1997 is factually incorrect and misleading. The retirement age of 58 years was fixed, much before the draft service rules of 1997. He has contended further that the Board of Management, in various meetings, held from time to time have approved the rules relating to service, cadre, superannuation, leave, leave travel concession, medical attendance etc. which were subsequently incorporated, and consolidated into RICA Manual, and approved by the Board of Management, in its 39th Meeting held at Madras on 1.9.1993. RICA Manual states that the employees from the State of Tamil Nadu would retire from the Institute, on attaining the age of 58 years. When rules were approved, the retirement age of employees from the State of Kerala was 55 years.

21. The Director of Academy of Prisons and Correctional Administration, Vellore, the third respondent herein, has denied the contention of the petitioner of that retirement age of 58 years, was fixed, based on the retirement age fixed by the Andhra Pradesh Government, to Tamil Nadu employees. Retirement age of 58 years for the employees of Tamil Nadu, was decided by the Board, after deliberation and approved by the participating states.

22. The respondents have contended that the retirement of age of employees of the participating State Governments or Central Government, is not binding on the Academy of Prisons and Correctional Administration, as the Academy of Prisons and Correctional Administration is a non Governmental agency, with its own Service Rules, approved by the Participating States.

23. He further stated that the institute, at the time of its formation, adopted the pay scales of Tamil Nadu Government. Subsequently, after discussing the issue, in several meetings and to provide better scales of pay to RICA employees and to attract better talent, the Board of Management in its 43rd meeting held at Vellore on 11.01.1995, resolved to adopt the pay scales of the Andhra Pradesh Government, as they were better among the four states and beneficial to the employees Academy of Prisons and Correctional Administration. But adoption of pay scales, is in no way connected to adopting the retirement age of Andhra Pradesh employees. The Board of Management being the authority, has fixed 58 years, as the retirement age of employees for Tamil Nadu. Academy of Prisons and Correctional Administration is neither a Government Department nor a public sector undertaking and that the employees of the Academy of Prisons and Correctional Administration employees are not government employees.

24. The members constituting the Board of Management belong to All India Services, are governed by the All India Service rules. As regards age of retirement is concerned, officers deputed to the Academy of Prisons and

Correctional Administration are governed by the rules of the respective States, and not by the Academy of Prisons and Correctional Administration Service Rules. The respondents have submitted that to cite an example, an officer other than All India Services, deputed from the State of Kerala to the Academy of Prisons and Correctional Administration will retire at 56 years, and not at 60 years. Similarly, officers deputed from Tamil Nadu would retire at 58 years only, and the officers from other participating states would retire, depending upon the age of retirement of the employee, in that State, as the case may be.

25. The respondents 1 to 3 herein, have submitted that the Director and Head of the Institute, in the rank of Inspector General of Prisons, is the appointing authority for all the employees of the Academy of Prisons and Correctional Administration upto the level of Office Superintendent. Duties and responsibilities of the Director include, the day to day management of Academy, in all aspects.

26. The Board of Management being the competent authority, has the powers inter alia to alter, amend, add to Academy of Prisons and Correctional Administration Rules. The Board is the competent authority to take decisions on all matters, pertaining to Academy of Prisons and Correctional Administration. The Board consists of 4 senior officials of All India cadre, and one Director, from Ministry of Home Affairs, Government of India, and that the Board, is the competent authority to take decisions, on all the issues, in the best interest of Academy. Motive attributed against the Board is denied.

27. Contention of the petitioner that the retirement age of APCA from Tamil Nadu should have been fixed on the ground that the institute is located in Vellore has been denied. The respondents in the counter affidavit have submitted that, while the matter of location of RICA was under examination, Tamil Nadu Government came forward to give land and building, at Vellore, for the location of the regional institute, which was accepted by the four participating States. Location of the institute at Vellore is only for convenience and it does not follow that all the rules of Government of Tamil Nadu, would automatically apply to the institute. Merely because the institute is located, age of retirement of the employees cannot be held as 60 years.

28. The respondents have contended that Academy of Prisons & Correctional Administrations, a society registered under the Tamil Nadu Societies Registration Act, 1975, is governed by its own rules and regulations and it is not a Government institution. The Central Government is not the controlling authority on the affairs and functions of Board of the Management. The Central Government was not part of Board of Management for 18 years and it is only in May 1997, a representative of Government of India was invited to join, as one of the five members of the Board, with the approval of the Participating States.

29. Contentions of the petitioner that the Director, Academy of Prisons & Correctional Administration, the 3rd respondent herein, is not the authority to reject the demand of the petitioner, without referring the matter to Board of

Management has been denied. Representation dated 06.04.2016 of the President of RICA employees union, addressed to 3rd Respondent, in addition to other respondents was discussed in detail along with the reply given by the Director, the 3rd Respondent, in the Board of Management meeting held at Bangalore on 22.04.2016 and that the Board has unanimously approved the action taken by the Director.

30. Academy of Prisons and Correctional Administration Service Rules 1997 approved by the State Governments are consolidation of the rules, implemented by the Academy of Prisons and Correctional Administration with prospective effect and not retrospective, as contended by the petitioner. Earlier, Board of Management has adopted certain rules from the Participating States. Holidays notified by Tamil Nadu Government were followed, in respect of Academy of Prisons and Correctional Administration employees. The Board of Management is the competent authority to take all the decisions pertaining to the efficient management of Academy of Prisons and Correctional Administration.

31. When the Government of Andhra Pradesh announced revision of pay scales, the 3rd Respondent, (Director) placed the same before the Board, and after discussion, the Board passed orders, for its implementation for the employees of Academy of Prisons and Correctional Administration. With regard to other issues like, gratuity, surrender pay, tour travelling allowances D.A. etc., the Board has passed specific orders, as to their applicability to the employees of Academy of Prisons and Correctional Administration. It is further stated that adopting certain benefits, like maternity leave of the Central Government, has no relevance to the issue concerning retirement.

32. Contention of the petitioner that the Director, Academy of Prisons & Correctional Administrations, Thorapadi, Vellore - 632 002, the third respondent herein has no jurisdiction and not the competent authority to pass orders on retirement of employees has been denied, and on the contra, it is submitted that the 3rd Respondent being the Head of the Institute and also the appointing authority for all the posts, up to Office Superintendent is competent to pass orders of retirement.

33. The respondents have contended that as per the powers and functions of the Director, he is responsible for implementation of the rules. According to the respondents, Rule Part-I (III) of Academy of Prisons and Correctional Administration service Rules, specifically provides 58 years, as the age of retirement for all the employees including class IV employees of Tamil Nadu.

34. Further contention of the petitioner that it is the Chairman, APCA, the first respondent who is the competent authority to appoint and terminate services of the employees has been denied as incorrect, as the Board of Management in its 80th meeting held at Thiruvananthapuram on 20.10.2010, vide resolution No.15 has delegated powers to the Director, and declared the Director as the appointing authority for all posts up to Office Superintendent. According to the respondents,

even before delegation of powers, the Director was the appointing authority, for all the posts, in inferior service.

35. The respondents have further stated that in a matter relating to implementation of reservation policy in W.P. No.11696 of 2000 filed by Mr.Thulasivanan, the then President of Regional Institute of Correctional Administration, Vellore, this court, vide order dated 13.7.2000 held that the Academy of Prisons and Correctional Administration is not a Government Organization.

36. It is further submitted that in 1986, when the Board of Management sought to entrust audit of accounts of Academy of Prisons and Correctional Administration to the Accountant General, the Comptroller and Auditor General of India, it was opined by the latter that Academy of Prisons and Correctional Administration has to be treated as an autonomous Institute, as the funds provided by the participating states to the Academy of Prisons and Correctional Administration, are in the nature of grants. As per his opinion and advice, RICA was registered under the Societies Registration Act and auditing by the Accountant General was permitted on payment basis. Further, the employees of Academy of Prisons and Correctional Administration, contribute to the Employees Provident Funds and not GPF, as done for the Government servants of Tamil Nadu State Government.

37. The respondents have submitted that ever since the inception, the institute has been adopting rules of the participating states on different issues, wherever there was consensus by all the participating States. Initially, when the Institute was started, scales of pay of Tamil Nadu were adopted. Over a period of time, it was decided by the Board to extend to the employees of Academy of Prisons and Correctional Administration, pay scales of Andhra Pradesh Government, to its employees, to attract the best talent.

38. The respondents have contended that it is incorrect to say that the institute was adopting all the service conditions and rules of the Government of Andhra Pradesh. The Institute is adopting only the pay scales of Andhra Pradesh and has its" own service rules. Even, Andhra Pradesh State Government, while enhancing the retirement age from 58 to 60 years to its employees have clearly stated that, as per Section 2 of the Circular Memo No.41791141HRM IV/2014 Finance (HRM IV) Department dated 02.07.2014 enhancement of retirement age is not applicable to the employees of the State public enterprises and other autonomous institutions.

39. The respondents have further submitted that, in addition to the names of employees given by the petitioner, the following staff retired on attaining the age of superannuation 58 years, in accordance with rules.

Sri. R. Manoharan, Driver

30.4.2013

Smt. Hemalatha, A.O.

31.5.2013

R. Lazaru, Electrician

30.4.2014

Smt. N.Shanthakumari, Librarian

31.1.2015

40. The respondents have submitted that the petitioner made a representation to the Chairman, Board of Management, Director, Academy of Prisons and Correctional Administration and Under Secretary, M.H.A., Government of India. In response to the letter addressed to the Director, APCA, respondent 3, the petitioner was informed that his request cannot be accepted, in view of the rules, to the effect that employees of Academy of Prisons and Correctional Administration will retire at the age of 58 years. The respondents have further submitted that in the meeting of the Board of Management held at Bangalore on 22.04.2016, the issue came up for discussion and that the Board has unanimously approved the action taken by the Director, in replying to the petitioner.

41. The petitioner, in his rejoinder, has stated that though the Board of Management has passed a resolution on 25-07-2009 changing the nomenclature of the training institute as "Academy of Prison and Correctional Administration (APCA)", change of name has not been approved by the Registrar of Societies, Vellore District, Vellore, as required under law. According to the petitioner, legally, change of nomenclature as "APCA" has not come in to force. Hence the contention of the respondents that RICA Employees Union, has no claim to represent the employees of APCA is not correct. According to the petitioner, change of name, has not been approved by the Registrar of Societies, Vellore.

42. The petitioner has further submitted that, as per Article 19(1)(c) under Chapter III of the Fundamental Rights of the Constitution of India, right to form an association or an union in a co-operative society, is one of the Fundamental Rights of the employees of RICA/APCA. According to the petitioner, employees of RICA/APCA have formed a trade union, in the name as "RICA Employees Union" and registered the same, vide Regn.No.953/NAT, under the provisions of the Trade Union Act, 1926. The writ petitioner has further contended that according to the provisions of Section 22 of the Trade Union Act, 1926, outsiders not more than 50 percent can be elected, as office bearers in every trade union, in addition to the persons actually engaged or employed in an industry with which the Trade Union is connected. The writ petitioner has contended that Petitioner's Union has every right, to act as the representative of the union and thus has locus standi, to prefer this writ petition.

43. It is further submitted that RICA Conduct Rules, framed by the Board of

Management constituted under the provisions of the Tamil Nadu Societies Registration Act, 1975 cannot prevail over the rights of the employees of RICA training institute, to form a trade union, join as members of the trade union, under the provisions of the Trade Union Act, 1926 and oppose the action of the respondent and hence the writ petition is maintainable.

44. The Draft Service Rules, have been framed in 1997 and that the same have been approved by the four participating States only in 2003. The petitioner has further stated that as per Rule 1(2) of RICA Service Rules, 1997, the said Rules shall come into force with effect from the date of issue of these rules. According to the petitioner, under Rule 9-Part II-IX-Conditions of Service, RICA Service Rules have to be implemented, with retrospective effect, as per the Saving Clause.

45. According to the petitioner, rules framed prior to 1997 have become null and void. He has further submitted that, as per Rule 4 under Part I(ii) of the RICA Service Rules, 1997, Scale of Pay of Andhra Pradesh was implemented by APCA from 01.04.1993. As per the Rule 3(a) of Part I (iii) of the RICA Service Rules, 1997, retirement age of employees ought to have been fixed as 60 years, on par with that of the employees of Andhra Pradesh.

46. The petitioner has further submitted that though the respondent, in the counter affidavit, has stated that Andhra Pradesh scale of pay is more beneficial to the employees than the scale of pay of Tamil Nadu and therefore it was fixed with effect from 01.04.1993, as per Rule 4 under Part I(ii) and Schedule of the RICA Service Rules, 1997, the averments made by the respondent that adoption of pay scales is in no way connected to adopting retirement age of A.P. employees, is unreasonable and unjustifiable.

47. Though APCA is not a Government Department, all its expenditure, are only met out from public money, equally shared by the four participating States and grant from Government of India. Further, all the Rules are made only based on the Rules framed by the four participating States. APCA is not a private Company and hence the employees are entitled to render service till the attaining the age of 60 years on superannuation, as fixed by the Andhra Pradesh Government, which is better than the other participating States.

48. All the members of the petitioners union except Nazeer, Junior Assistant, come under inferior service i.e. basic service. As per RICA Service Rules for all the posts held by the members of the petitioner's union, the Second Respondent i.e. the Chairman is the appointing authority and not the third Respondent i.e. the Director as averred in the counter. When the Board of Management or the Chairman or the Director, has not acted in accordance with APCA Rules, the petitioner has every right to question the same.

49. Though location of the institute is not criteria, the Board of Management should have adopted the retirement age of 60 years, which is more beneficial to the employees. As regards age, APCA has adopted all the rules of the

participating States except Kerala in the RICA Service Rules, 1997. In Tamil Nadu, the retirement age for superior service is 58 years and for inferior service is 60 years. In Government of India, the retirement age is fixed as 60 years for inferior service. Hence refusal to fix the retirement age as 60 years to the employees of APCA is arbitrary.

50. Action of the Director, relieving the employees on attaining the age of 58 years, is vitiated, as he is not the competent authority and hence, it is not in accordance with the provisions of RICA Service Rules, 1997. Instead of correcting the maladministration of the third respondent, the Board of Management has approved his illegal action which is unjustifiable and arbitrary.

51. The petitioner has further submitted that when the Director of APCA, the 3rd respondent herein, has contended that the revision of pay scales of Andhra Pradesh and other issues like gratuity, surrender pay, tour travelling allowances, D.A., etc are made applicable to the employees of APCA and other privileges and benefits sanctioned to the employees of participating States (except Kerala) have been extended to the employees of APCA by the Board of Management, denial of enhancement of retirement age from 58 years to 60 years, on par with that of the employees of Andhra Pradesh is arbitrary, amounting to maladministration and biased attitude of the management which affects the Fundamental Rights of the members of the petitioner's union.

52. Though the Board of Management in its 80th meeting held at Thiruvananthapuram on 20-10-2010 has resolved to delegate the powers to the Director from the Chairman, Service Rules have not yet been amended with the approval of the four participating States. Hence the resolution passed for delegation of powers to the Director is null and void.

53. The petitioner has further submitted that the Accountant General, and Comptroller and Auditor General of India is a Constitutional Body which supervises, control, compile accounts and audit the nature of receipts, income and payments, expenditure of Government Organisations functioning out of public and Government money. The Accountant General is not empowered to audit the accounts of any organization which is not run by public money. As the accounts of APCA Training Institute are audited by the Accountant General, on payment of audit fee, like Tamil Nadu Water Supply and Drainage Board, Tamil Nadu Electricity Board etc, APCA is purely a Government Organisation. In Government Organisations, such as Tamil Nadu State Marketing Corporation (TASMAC), Tamil Nadu State Transport Corporation TANSI, etc., E.P.F. & M.P. Act, 1952 are made applicable. After 01.04.2003, in all the Government Departments, applicability of General Provident Fund Scheme has been stopped, because of the introduction of new contributory pension Scheme. Hence, APCA is a Government Organisation, functioning only out of Government funds.

54. The petitioner has further submitted that though Central Government Rules are not directly applicable to APCA, the Board of Management can adopt the

rules framed under Article 309 of the Constitution of India, by the participating states and the Central Government, by making or amending its rules, through Board meeting with the approval of the four participating states.

55. The petitioner has further submitted that in the letter dated 02-07-2014, the Principal Secretary of Andhra Pradesh has only clarified, to examine and adopt the enhancement of retirement age to other organisations. It is only an executive order and the same cannot prevail over the amendment issued to the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984. There is no specific provision that the amendment shall not be adopted by any public undertaking, which is functioning out of government funds. By citing that the letter, dated 02.07.2014, is only an executive order, and the same cannot prevail over the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984, the petitioner has contended that, the Government Order is applicable to the employees of RICA.

56. In the reply to the rejoinder, the respondents have submitted that APCA formerly RICA, has been registered under Tamil Nadu Societies Registration Act 1975 and not under Indian Societies Registration Act, 1860. The nomenclature of the Institute has been changed to APCA in accordance with the resolution of the Board of Management of APCA by the Registrar (Society), Vellore. The Registrar has accordingly approved change of nomenclature.

57. The Board of Management of APCA in the meeting held at Vellore on 7.10.1997 discussed the issue of RICA employees union and unanimously resolved not to recognise the union, inter alia, on the grounds, that there is no recognised union for the prison services in the prison department of Tamil Nadu, and that it is not necessary to have such a union to the employees APCA, which is imparting training to the Prison Officers; that APCA is required to maintain discipline, high standard and strict adherence to the rules and regulations and that though it is registered under Tamil Nadu Societies Registration Act 1975, the rules applicable to the Prison Department, are being implemented.

58. The regulations framed from time to time by the Board of Management have been consolidated and the same were approved by the participating states. The contention of the petitioner that the rules framed prior to 1997 have become null and void, has no merits. Even otherwise, APCA manual has clearly states that the employers from Tamil Nadu shall retire from service on attaining the age of 58 years. The Board of Management of APCA is the competent authority and has the powers inter alia to frame, alter, add or amend APCA rules. It is up to the Board of Management to decide as to the adoption of any rule, in the best interests of the employees of APCA. It is a joint project of the southern states funded by the grants provided by the participating states and managed by the Board of Management. It is neither a Government Department nor a Public Sector undertaking. The Central Government does not share the expenditure to the Academy. It is submitted that APCA is not a public sector undertaking.

59. All the members of the participating States have considered the issue of retirement and unanimously declined to raise the retirement age. The rules framed by Board are binding on the Director. It is further submitted here that Andhra Pradesh Pay scales and other benefits are not suo motu applicable, but are made applicable only after the Board's approval. For example, APCA employees were sanctioned a gratuity Rs.1.00 lakh only till 2009, even though Andhra Pradesh employees were eligible for Rs.7.00 lakhs in 2009. While the employees of Andhra Pradesh are eligible for Rs.12.00 lakhs, APCA employees are allowed only a Gratuity of Rs.10.00 lakhs by the Board. It follows that all the allowances are not applicable automatically to APCA employees.

60. Contention of the petitioner that Academy has to be treated as a Government department, as it is audited by the Accountant General has no merits. Based on the opinion of the Comptroller and Auditor General of India, after registering the Academy under the Societies Registration Act, the task of auditing the APCA accounts, was entrusted to the Comptroller and Auditor General of Tamil Nadu, as provided for in Section 20(1) CAG Act, on the condition that audit fees shall be shared by the participating states.

61. Heard the learned counsel for the parties and perused the materials available on record.

62. Material on record discloses that Government of Tamil Nadu have issued G.O.Ms.No.2645, Home dated 09.10.1973 accepting the proposal to start Jail Officers Regional Training Institute at Vellore, to cater to the needs of four Southern States. The said institute came into being on 01.10.1979. The Regional Training Institute, Vellore, has been registered under Act 27 of the Tamil Nadu Societies Registration Act, 1995, on 03.07.1986 with Registration No.76 of 1986 in the office of the District Registrar, Vellore.

63. As per the rules, the management of the Society shall vest in the Board of management, comprising of the Inspectors General of Prisons of the State of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu and Deputy Secretary (SP), Ministry of Home Affairs, Government of India, New Delhi or such other officers nominated by the participating State Governments and Government of India. One of the Inspector Generals of Prisons, a Member of the Board shall be the Chairman of the Board for one year by rotation (Amended vide 50th Meeting of the Board of Management of RICA held on 23.5.1997 and 24.5.1997).

64. The Director of the Institute shall be the Secretary of the Board. The Board shall meet at Vellore or in any other place chosen by the Board, at-least once in every six months. The quorum for the meeting of the Board shall be three. In the event of any difference of opinion amongst the Members of the Board on an issue arising in a Meeting, the Majority opinion shall prevail. In the event of equal division of votes on an issue, the Chairman shall have the right to exercise his casting vote. The Board may invite any expert on Correctional Administration or any authority dealing with the same to attend any Meeting, as a special invitee

for consultation and advice. (Amended vide 48th Meeting of the Board of Management of RICA, Vellore held on 11.10.1996). The Financial Control of APCA, is as follows:

"The Director shall administer all financial matters subject to control and direction of the Board. He may delegate such powers as considered necessary to the Accounts Officer subject to the approval of the Board [Amended vide 48th Meeting of the Board of Management of RICA, Vellore held on 11.10.1996].

The Director shall prepare budget indicating the heads of expenditure and place the same for approval of the Board not later than 15th December of every year.

The Budget statement shall be sent to the respective Inspectors General of Prisons of the States of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu and any other State or Government of India which may agree to join in the joint venture immediately for sanction and remittance of the share of expenditure of the State concerned. The entire expenditure shall be equally shared by the State Governments of the above mentioned four State.

The share of expenditure of the State shall be drawn by the concerned Inspectors General of Prisons and sent to the Director of the Institute through a Bank Draft drawn on any of the Nationalised Banks payable at Vellore. The amounts so received from the States shall be deposited in the State Bank of India, Vellore. Withdrawals from the Bank towards expenditure on establishment and other expenditure shall be made by cheques signed by the Director.

The Director shall have a permanent advance as fixed by the Board of Management. A statement of expenditure incurred shall be prepared and placed before the Board in every meeting along with the statements of Bank balance and cash on hand for information of the Board.

The Board may, however, permit the Director to exceed the allotment of funds in very exceptional cases due to sudden increase in expenditure under salaries, T.A., Office Contingencies, etc. In the event of any fresh expenditure the Director should obtain prior sanction of the Board of Management."

65. As per Clause 19 of the rules, the Board shall have the powers to alter, amend, or add to these rules consistent with the object of the Institute. The Board shall have the powers to regulate the functions of the Institute in any manner it may decide, by a resolution in the matters concerning the administration of the Institute, including service matters and pay scales of the staff.

66. Government of Tamil Nadu have issued G.O.Ms.No.1646, Home (Ser.H) Department, dated 11.07.2000, by which the request of the Inspector General of Prisons for auditing the accounts of RICA, Vellore be entrusted to the Comptroller and Auditor General of Tamil Nadu, has been accepted and decided that audit fees be shared by the four participating states viz., Andhra Pradesh, Karnataka, Kerala and Tamil Nadu.

67. Material on record further discloses that in the 43rd Meeting of the Board of Management of RICA, Vellore dated 11.01.1995, representation of RICA staff requesting for adoption of Andhra Pradesh revised Pay Scales Rules 1993, has been considered and accordingly, the Board has decided to accept the same.

68. RICA Employees Union, Vellore, has been registered under the Trade Unions Act, 1926 on 05.06.1997.

69. In the 51st meeting of the Board of Management of RICA, Vellore, held at Vellore 07.10.1997, the Board of Management has taken a decision that formation of union is not permissible for the prison staff and further decided that RICA being a Training Institute, adhering to the strict rules and regulations, indiscipline of staff or trainee officers cannot be tolerated. The Rules applicable to the prison department are the Tamil Nadu Government Servants Conduct Rules. RICA employees are paid salaries or other benefits from Government funds received from the prisons department of four Southern states.

70. As per rule 24 of the APCA Employees' Conduct rules, 1997, no APCA employee shall join, or continue to be a member of an association, the objects or activities of which are prejudicial to the interest of sovereignty and integrity of India or public morality and the Board of Management of APCA has not recognised and not authorised any union to the employees of APCA. If there is any official grievances of the employees of APCA it may be submitted to the Director and solve the problem.

71. As per Rule 27 of the RICA Employees' Conduct Rules, 1997, if any question arises relating to the interpretation of above rules, it shall be represented to the Board of Management of RICA whose decision thereon shall be final and for any clarification, Tamil Nadu Government Servant's Conduct Rules may be referred.

72. With regard to relaxation, Rule 28 states that notwithstanding anything contained in the rules, the Board of Management of RICA is the competent authority to relax any rule or abrogate. Service rules also state that when an employee of RICA retires on superannuation, he/she will be eligible to surrender of Earned Leave at credit for cash benefit as on the date subject to a maximum of 300 days. HRA shall not be payable for such surrender of Earned Leave. RICA shall follow the rules of Government of India for maternity leave.

73. Dearness Allowance for the directly recruited staff of the institute and for those deputationists who opt the scale of pay of the institute, shall be as per the Andhra Pradesh Government/Government of India pattern. The Director is empowered to sanction D.A. to the employees as and when the Government of India/Andhra Pradesh Government enhances D.A. to its employees. House Rent Allowance at the rate of 20% of basic pay, is also given, if rent free quarters are not allotted.

74. As per the Savings clause of RICA Service Rules, 1997, the requirement of minimum educational qualification, experience and age stipulated for each and

every post in RICA will not affect the incumbents presently holding the posts and they are entitled for regularisation from the date of appointment.

75. As per the Savings clause, the Board of Management of RICA is empowered to amend, modify or delete any of the provisions under these rules, subject to the approval by the participating State Governments. The Director may put up a proposal for amendment of Rules which are essential for the betterment of administration of the institute before the Board of Management.

76. Service rules for the employees of RICA, Vellore, have been framed providing for the Constitution, Cadre strength and method of recruitment, classification, scale of pay & special pay, termination, etc. As per Rule 3 of the said rules, enclosed in the typed set filed by the writ petitioner, an employee from Tamil Nadu shall retire from the service of the institute, on his attaining the age of 58 years. He may be re-employed for a specific period by the Board depending upon the situation. Central Pay Commission recommendation is not directly applicable to APCA employees. But, the Board has resolved to adopt Andhra Pradesh State Government's pay scales as it has been found to be better.

77. Material on record discloses that Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) New Delhi, have issued Official Memorandum No.25012/8/98-Estt.(A) dated 30.05.1998, accepting the Fifth Central Pay Commission's recommendation for increase in the age of retirement of Central Government employees from 58 years to 60 years. In so far as autonomous bodies/organisations are concerned, the official memorandum dated 30.05.1998 reads thus:

"(c) In respect of autonomous bodies/organization not covered by (a) & (b) above, the Administrative Ministry concerned may examine the matter on merits and thereafter approach the Department of Personnel, if it proposed to extend the age of retirement in these autonomous bodies/organization. The usual conditions that the maximum age of retirement, shall not exceed 60 years and there shall, be a complete ban on extension in service beyond the age of superannuation except in case of medical and scientific specialists, who can be granted extension in service, on a case to case basis, upto the age of 62 years and the orders relating to increase in age of retirement shall not be applicable to the persons on extension in service on the date of issue of orders shall apply.

3. Approvals in the cases covered by paras 2(a) and (b) above will be at the level of the Minister-in-Charge of the administrative Ministry."

78. Conduct and Service Rules of RICA, have undergone changes. Draft rules, have been sent to the Director General of Police and Inspector General of Prisons, Bangalore and that the same have been approved by the Government of Karnataka in their letter dated 07.03.2000. Thereafter, Government of Tamil Nadu have issued orders in G.O.Ms.No.381, Home (Prison II) Department, dated 19.04.2000, approving the Fresh Cadres Service Rules for the Regional Institute of Correctional Administration and Regional Institute of Correctional

Administration Employees Conduct Rules, 1997.

79. The Inspector General of Prisons, Bangalore, in his letter stated supra has stated that the Board of Management of Regional Institute of Correctional Administration, Vellore, in its 56th Meeting held at Vellore on 28.8.99 has instructed the Director to incorporate the modification amendments in the draft Service Rules, and also instructed the Director to take necessary action to get the approval of the Draft Service Rules of the Regional Institute of Correctional Administration, from the four Southern State Governments of Andhra Pradesh, Kerala, Karnataka and Tamil Nadu, along with the Regional Institute of Correctional Administration Employees Conduct Rules 1997, through proper channel, at the earliest.

80. Material on record discloses that RICA employees Union represented by its then Secretary, A. Thulasivanan, has filed W.P.No.11696 of 2000 for a writ of mandamus, directing the Chairman, Board of Management of RICA, Director General of Police (Prisons), Bangalore, State of Karnataka, and others, to follow the reservation policy and roster point by following the latest reservation policy norms of the Government of India for the recruitment of the all categories in the Regional Institute of Correctional Administration Employees Union, Vellore District.

81. After hearing the learned counsel for the parties, writ Court in W.P.No.11696 of 2000, dated 13.07.2000, has dismissed the same stating that the learned counsel for the petitioner was not in a position to satisfy the Court as to how the reservation policy is applicable to RICA, Vellore District, the 5th respondent therein, which not a Government organisation. Paragraph 2 of the order made in W.P.No.11696/2000 dated 13.7.2000, reads thus:

"The Learned Counsel for the petitioner is not in a position to satisfy this court, how the reservation policy is applicable to the fifth respondent administration, which is not a government organisation. Therefore, the petitioner has no statutory right to seek the relief, as prayed for. Hence the writ petition fails and therefore, the same is dismissed."

82. Decision made by the writ Court in W.P.No.11696 of 2000, dated 13.07.2000, holding that the RICA, is not a Government organisation has not been challenged. Material on record discloses that Government of Kerala, has fixed the age of Kerala Judicial Officers and Officers in the last grade of service as hereunder:

60 (a) Except as otherwise provided in these rules the date of compulsory retirement of an officer shall take effect from the afternoon of the last day of the month in which he attains the age of 55 years. He may be retained after this date only with the sanction of Government on public grounds which must be recorded in writing, but he must not be retained after the age of 60 years except in very special circumstances. [G.O.(P) 344/75/Fin., dated on 31.7.1975]

(aa) An Officer in the Kerala Judicial Service or the Kerala State Higher Judicial Service shall ordinarily retire when he attains the age of 60 years; but he shall have the option to retire when he attains the age of 58 years. His continuance in service beyond the age of 58 years shall however be subject to review by the High Court as per the provisions of the Kerala Judicial Service Rules and the Kerala State Higher Judicial Service Rules. [G.O(P) 457/95/Fin. dated 28.07.1995]

This amendment shall be deemed to have come into force with effect from 31st December, 1992.

(b) Officers in the Last Grade Service on 7th April 1970 will retire on the afternoon of the last day of the month in which they attain the age of 60 years provided that this benefit will be available to them only as long as they continue to be in the Last Grade Service as defined in Rule 12 (16-A). [G.O.(P) 344/75/Fin., dated on 31.7.1975]

Note: Ex.-servicemen who were in armed force prior to 7th April, 1970 and who have been appointed as Last Grade Employees in the Last Grade Service in the State after 7th April 1970 will also be eligible for the benefit of the above rule provided they continue to be in the Last Grade Service. [G.O.(P) 535/90/Fin., dated on 25.10.1990]

(c) The teaching staff of all educational institutions (including Principals of Colleges) who complete the age of 55 years during the course of an academic year shall continue in service till the last day of the month in which the academic year ends. "

83. Thereafter, the Director of RICA, Vellore, has issued proceedings dated 27.10.2001, in terms of the Revised Pay Scales of 1999 of Andhra Pradesh, as hereunder:

" As and when the other three participating State Government of Andhra Pradesh, Kerala and Tamil Nadu issue orders for implementation of Revised Pay Scales 1999 of Andhra Pradesh to the RICA Staff, it will be implemented with immediate effect and arrears will be paid as per Board of Management decision to be in the future Meeting. Till such time, the Revised Pay Scales 1999 of Andhra Pradesh is kept in abeyance. However, copies of Pay Fixation Statement are given to all individuals."

84. Government of Andhra Pradesh, have issued G.O.Ms.No.256, Home (Prisons. A) Department dated 22.08.2002, approving the draft Cadre and Service Rules along with Regional Institute of Correctional Administration Employees Conduct Rules, 1997. Government of Kerala have issued G.O.(Rt) No.1643/2003/Home Dated, 17.04.2001, approving the above said Rules. On 22.11.2008, the Director, has issued orders to implement the revised Pay Scales 1999 of the Government of Andhra Pradesh.

85. In the 77th Meeting of the Board of Management of RICA, Vellore held on

25.07.2009, the Board has decided and resolved that RICA should be renamed as "Academy of Prisons and Correctional Administration (APCA)" and the Board has instructed the Director to take necessary action. In the 79th Meeting of the Board of Management of APCA held on 28.06.2010, a request for enhancement of retirement age on superannuation from 58 years to 60 years for Class IV employees, has been rejected. The Director, has informed the Board that as per the existing APCA Rules in force under Part-I(iii) - the retirement age is 58 years. But the State Governments have fixed different age of retirement.

1

Government of Karnataka

Retirement age of Karnataka Government employees for all the categories is 60 years.

2

Government of Andhra Pradesh

Workmen and Last Grade employees - 60 years.

3

Government of Kerala State

Superannuation date of Class IV employees in Kerala Government Service 55 years

4

Government of Tamil Nadu

Last Grade Government Servants shall retire on attaining the age of 60 years.

The Board discussed the matter in detail and rejected the proposal for enhancement of retirement age. Though rejection for enhancement of retirement has been made in 2010, there was no challenge.

86. Government of Kerala, vide G.O.(P) No.170/12/Fin, Finance (Rules A) Department dated 22.03.2012, have issued orders stating that the age of compulsory retirement of Government employees, teachers and staff of aided Educational Institutions superannuating at the age of 55 years will be enhanced to 56 years. The teaching staff of educational institutions (including Principals of Colleges) who complete the age of 56 years during the course of an academic year will be allowed to continue in service till the last day of the month in which the academic year ends subject to the same conditions as were existing prior to the introduction of the unification of the date of retirement. Once again the Board in the 87th meeting of APCA held on 11.10.2013, has rejected the request of enhancement of the retirement age of Class IV employees from 58 to 60 years. Here again, rejection has not been questioned.

87. Government of Andhra Pradesh have issued G.O.Ms.No.147, Finance (HRM IV) Department, dated 30.06.2014, amending Section 3 of the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1985, stating that every Government employee shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. Government of Andhra Pradesh have also added that the amendment would be applicable to those who are governed under the said Act. Accordingly, a Circular Memorandum No.4179/14/HRM IV/2014 dated 02.07.2014, has also been issued clarifying certain doubts.

88. Material on record further discloses that when N. Shanthakumari, Librarian, APCA sought for enhancement of retirement age from 58 to 60 years on par with Andhra Pradesh employees, the same has been rejected by the Board in the 89th Meeting of APCA held on 20.10.2014.

89. RICA Employees Union seemed to have sent a representation dated 06.04.2016, to APCA represented by its Chairman and the Director of the said Association to set aside the orders of the Director, APCA, Vellore relieving some of the employees from service, on attaining the age of 58 years, instead of 60 years, which has been followed in the State of Andhra Pradesh and to reinstate them in service.

90. Vide letter dated 15.04.2016, the Director, APCA Vellore, has turned down the request stating that there is no illegality in the matter. Letter dated 15.04.2016 is extracted hereunder:

"E/Petition for enhance of retirement age/2016-17

Dated 15.4.2016

To

Sri. P.H.C.M. Gandhi,

No.17, Sindu Garden,

Gandhi Nagar,

Vellore - 632 006

Sir,

Sub: Your letter dated 6.4.2016 - Reply - Sent.

Ref: Your letter dated 6.4.2016 received on 9.4.2016

xxxx

With reference to your letter cited, I have to state as follows:

1. The Academy of Prisons & Correctional Administration (formerly RICA) was started in 1979 by the four Southern States of India as a joint venture.

2. The Management of the academy is vested with the Board of Management of APCA which consists of the following members.

(1) The Director General of Police/Inspector General of Prisons, Tamil Nadu.

(2) The Director General of Prisons & Correctional Services, Andhra Pradesh.

(3) The Director General of Prisons & Correctional Services, Kerala.

(4) The Director General of Police & Inspector General of Prisons, Karnataka.

(5) The Director General of Prisons & Correctional Services, Telangana.

(6) The Director (SR), Ministry of Home Affairs, Government of India, New Delhi

(7) The Director (Research), BPR&D, MHA, New Delhi is the co-opted Member.

(The Telangana State joined as a member of the Board of Management w.e.f., 21.4.2014)

(3) The Board of Management is the competent authority, interalia, to regulate the service matters and pay scales of staff, to revise and fix the terms and conditions employment, to alter and amend rules to regulate the functioning of the institute in any manner it may decide.

(4) APCA Service Rules were approved by the participating states. The Service Rules of any other Southern State (Who are members of the Board of Management of APCA) or Central Government have no relevance to the employees of this institute.

(5) You have rightly stated that as per RICA (Now APCA) Service Rules the retirement age on superannuation to the employees of APCA has been fixed as 58 years irrespective of the categories of posts i.e., inferior or superior service.

(6) Your contention that the retirement age of superannuation has been fixed as 60 years in all the participating states is incorrect.

(7) It is true that the 6 employees who were named in your letter retired on superannuation after completion of 58 years but there are also other employees who have been retired after completion of 58 years prior to these persons. Further, the application of Andhra Pradesh Pay Scales to APCA employees is always subject to the decision of the Board of Management.

(8) All the employees named in your letter, retired from service on attaining the age 58 years in accordance with the APCA Service Rules. there is no illegality in the matter.

Hence, it is requested to apprise the employees clearly about the Service Rules under which they entered the service on their employment in the institute and to avoid any unnecessary claims which cannot be considered."

91. Subsequently, When P.H.C.M.Gandhi, the petitioner herein has made a

representation for enhancement of retirement age of 58 years to 60 years, in the 92nd meeting of Board of Management of APCA held on 22.04.2016, the following decision has been taken

"8. Enhancement of retirement age 58 years to 60 to years - Petition received from Sri. P.H.C.M. Gandhi, Vellore and letter received from the under Secretary to the Government of India, M.H.A., New Delhi - Orders issued.

The Director brought to the notice of the Board that one Sri. P.H.C.M. Gandhi, No.17, Sindu Garden, Gandhi Nagar, Vellore, in the name of President of RICA Employees Union, sent a letter dated 06.04.2016 addressed to the Director, APCA and copy marked to the Members of the Board of Management wherein he requested that the retirement age on superannuation should be fixed as 60 years to all employees of APCA both in respect of inferior and superior service on par with employees in the State of Andhra Pradesh, instead of 58 years. Further, he informed that the retirement age on superannuation has been fixed as 60 years in all the participating States and Government of India. He further stated that 6 employees who retired on superannuation at the age of 58 years also should be reinstated into service and their arrears of pay and allowances, monetary and terminal benefits due for 2 years of service should also be paid to them. Further, he informed that 2 more employees are due for retirement in April 2016 and May 2016 and they should not be relieved on attaining 58 years on superannuation.

The Director informed the Board that as per APCA service rules in force, duly approved by the participating states under Part I [iii] Retirement [a] An employee shall retire from the service of the institute, on his attaining the age of 58 years. He may be re-employed for a specific period by the Board depending upon the situation. As per the above rules, the staff of APCA are being relieved from service on attaining the age of 58 years on superannuation.

Further, the Director informed the Board in its 79th meeting held at Vellore on 28.06.2010 and 87th meeting held at Kodaikanal dated 11.10.2013 discussed the issue of enhancement of retirement age for Class IV employees [inferior service] and rejected the proposal.

The Board again in its 89th meeting held at Vellore on 20.10.2014, rejected the request of Smt. N. Shanthakumari, Librarian [superior service] for enhancement of retirement age from 58 years to 60 years on superannuation on par with Government of Andhra Pradesh employees.

The Director informed the Board that a reply was already sent to Sri. P.H.C.M. Gandhi, Vellore vide letter No.E/Petition for enhancement of retirement age/2016-17 dated 15.4.2016 informing that as per APCA Service Rules approved by the Participating States, the retirement age is 58. Further he was informed that the Board of Management is the competent authority, inter alia, to regulate the service matters and pay scales of staff, to revise and fix the terms and conditions employment, to alter and amend rules to regulate the functioning

of the Institute in any manner it may decide and as per the APCA Service Rules and Resolutions of the Board of Management.

The Board while approving the action taken by the Director, requested the Director to send a suitable reply to the letter received from Sri. Rajnish Kwatra, Under Secretary to Government of India, Ministry of Home Affairs, New Delhi vide letter No.V-16014/3/2005-PR dated 21.04.2016 in this regard."

92. Thereafter, P.H.C.M. Gandhi, the petitioner herein, in his individual capacity has filed W.P.No.17224 of 2016 for a writ of certiorarified mandamus, to quash the order dated 15.04.2016 issued by the Second respondent vide his pro.No.E/ Petition for enhancement of the retirement age/2016-17 and prayed for a direction to the Chairman, the first respondent herein to implement the orders dated 30.06.2014 passed by the Government of Andhra Pradesh in G.O.Ms. No.147 Finance (HRM-IV) Finance Department to all the employees of Academy of Prisons & Correctional Administration-APCA and to fix the retirement age as 60 years on attaining age of Superannuation to the members of the petitioner union retrospectively, duly reinstating the members of the petitioners union those who were relieved from service on attaining the age of 58 years in service by permitting them to continue in service, till the date of retirement on 60 years on attaining age of superannuation and to permit them to draw back wages, continuity of service with all monetary benefits thereon within a time frame as may be fixed by this Court.

93. When W.P.No.17224 of 2016, came up for hearing on 04.05.2016, the learned counsel for the petitioner sought permission to withdraw the writ petition and also made an endorsement to that effect. Recording the same, writ petition has been dismissed, as withdrawn. Cause title of the writ petition is as follows:

"P.H.C.M. Gandhi.. Petitioner

Vs

1. The Academy of Prisons and Correctional Administrations, Thorapadi, Vellore - 632 002 Tamil Nadu by its representative The Chairman.

2. The Director, The Academy of Prisons and Correctional Administrations, Thorapadi, Vellore - 632 002... Respondents"

94. P.H.C.M.Gandhi, President of RICA Employees Union (AITUC), Registration No.953/NAT, Vellore, has filed this Writ Petition No.21221 of 2016, for a writ of declaration to declare Part I (iii)-3 of the APCA Service Rules, 1997 as null and void and unconstitutional, insofar as the existing retirement age of 58 years, is concerned and prayed for a direction to the Chairman, Board of Management of the Academy of Prisons & Correctional Administrations, Vellore, the first respondent herein, to implement G.O.Ms.No.147 Finance (HRM-IV) Finance Department dated 30.06.2014, issued by the Government of Andhra Pradesh, to the members of petitioner union, and to fix the retirement age as 60 years, on superannuation with retrospective effect, by invoking the provisions of Rule Part

II(i)-28 and Rule Part II (ix)-9 of APCA Service Rules, 1997, duly reinstating the members of the petitioner union, relieved from service, at the age of 58 years in service, and to permit them to draw back-wages, with continuity of service, with all other attendant benefits thereon, within a time frame.

95. At paragraph 2 of the supporting affidavit, the petitioner has contended that he is the President of RICA Employees Union, which is registered under the Trade Union Act, 1926, vide No.953/NAT (Application No.755/TND) and as such he is acquainted with the facts of the case. Though he has contended that he is the President of the Union, but writ petition No.21221/2016 has been filed only in the individual capacity and not in the representative capacity, for the union, which is admittedly, not recognised by the respondents. When W.P.No.17224/2016 has been dismissed on 04.05.2016 as withdrawn, no leave has been granted, to file a fresh writ petition, on the same cause of action. The only addition in the prayer made in the subsequent W.P.No.21221 of 2016, is to declare the rules, as unconstitutional. Prayer to set aside the order, dated 15.04.2016, passed by the 2nd respondent herein, rejecting the request of the petitioner, has not been included in the prayer made in W.P.No.21221 of 2016.

96. The prayer has also suppressed the factum of filing W.P.No.17224 of 2016, in the subsequent W.P.No.21221 of 2016. Insofar as the prayer in W.P.No.21221 of 2016, directing the 1st respondent herein, to implement G.O.Ms.No.147 Finance (HRM-IV) Finance Department dated 30.06.2014 passed by the Government of Andhra Pradesh to the members of petitioner union thereby fixing the retirement age as 60 years on superannuation with retrospective effect invoking the provisions of Rule Part II(i)-28 and Rule Part II (ix)-9 of APCA Service Rules, 1997 duly reinstating the members of the petitioner union those who were relieved from service at the age of 58 years into service and permit them to draw back wages, continuity of service with all other attended benefits thereon within a time frame, is concerned, as no leave has been granted by this Court to file a fresh writ petition, on the same cause of action, we are of the view that it is not open to the petitioner to file a fresh writ petition for the same prayer. Reference can be made to the few decisions,

(i) In *Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior* reported in AIR 1987 SC 88, the Hon'ble Supreme Court, while considering the point, as to whether, the petitioner after withdrawing the writ petition, filed under Article 226 of the Constitution of India, without permission to institute a fresh writ petition, can file another writ petition. At Paragraph 9, it held as follows:

"The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in *Daryao's case* (supra) is of no assistance. But we are of the view that the principle underlying rule 1 of Order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also,

not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Article 32 of the Constitution of India since such withdrawal does not amount to *res judicata*, the remedy under Article 226 of the Constitution of India should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Article 21 of the Constitution since such a case stands on a different footing altogether. We however leave this question open."

(ii) In *T. Sebastian v. The Regional Manager, India Tourism Development Corporation, Madras* reported in 1996 (II) MLJ 283, a learned single Judge of this Court, after considering *Sarguja Transport Service's* case (cited *supra*) and other decisions, held that the writ petition filed, challenging the very same impugned order, without disclosing the earlier writ petition, was a suppression of fact and that such a litigation, cannot be allowed to continue. It is worthwhile to consider the decisions in *T. Sebastian's* case (cited *supra*),

"18.a Full Bench decision of the Punjab and Haryana High Court reported in *Teja Singh v. Union Territory of Chandigarh* [AIR 1982 P&H 169], wherein the Full Bench has observed as follows:

"This brings me to the provisions of Order 23, Rule 1 of the Code. As has come to the contention of Shri Anand Swarup, the applicability of this provision was sought to be avoided solely on the plea that a petition which has been dismissed as withdrawn could not be a bar to the filing of the second petition as in a petition which is got dismissed as withdrawn, the merits of the controversy are not gone into; but this approach of the learned Counsel is without any merit. It is correct that in the petition which is dismissed as withdrawn, the merits of the controversy are not gone into but that fact by itself would not entitle a litigant to claim entertainment of his second petition in the wake of the provisions of Order 23, Rule 1 which become applicable to writ proceedings by virtue of Rule 32. It may be noticed that the applicability of the provisions of Order 23, Rule 1 shall have a very salutary effect as it would minimise to a great extent the chances of the abuse of the process of this Court. To elucidate the point further, I take an

example. A litigant files a petition in this Court which comes up for motion hearing. During the arguments an impression is gathered that the Bench is not agreeing and the petition is likely to be dismissed and on the basis of that impression, the petition is got dismissed as withdrawn. Thereafter, on the same facts and in respect of the same cause of action a second writ petition is filed. Now in such case, if the contention of Mr. Anand Swarup is accepted, then the second writ petition must be entertained and disposed of on merits one way or the other by passing a speaking order. Such a course, if adopted, would, in my opinion, not only result in the abuse of the process of the court, but would also give handle to a dishonest and unscrupulous litigant to harass his opponent. By the applicability of the provisions of Order 23, Rule 1, no constitutional right of a litigant is being taken away. A litigant has a right to withdraw his petition; but in case he wishes to file a fresh petition on the same cause of action, then permission of the court has to be taken, and for that purpose, proper legal foundation has to be laid."

19. The decision reported in *Kishori Singh v. State of Bihar* [AIR 1985 Pat. 298], is also a case of unconditional withdrawal of a writ petition. S.S. Sandhawalia, C.J., speaking for the Bench answered the question posed to the Bench in the affirmative and held that the unconditional withdrawal of a writ petition would operate as a bar to the filing of second writ petition on the same facts and in respect of the same cause of action by the same party. The Division Bench has also followed the Full Bench decision of the Punjab and Haryana High Court reported in *Teja Singh v. Union Territory of Chandigarh* [AIR 1982 P&H 169].

.....

21. In *K. Marappa Gounder v. The Central Road Traffic Board, Madras*, (1956) 1 M.L.J. 324, Rajagopalan, J., has held as follows: "It is a well-settled proposition of law that it is the duty of a person invoking the special writ jurisdiction of a court to make a full and true disclosure of all relevant facts. He should not suppress any facts. An applicant for a writ under Article 226 of the Constitution must come in the manner prescribed and must be perfectly frank and open with the court. If he makes a statement which is false or conceals something which is relevant from the court, the court will refuse to go into the matter. If the court comes to the conclusion that the affidavit in support of the application was not can did and did not fully state the facts, but either suppressed the material facts or stated them in such a way as to mislead the court as to the true facts, the court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits.

The reason for the adoption of this rule is not to arm the applicant's opponent with a weapon of technicality against the former, but to provide an essential safeguard against abuse of the process of the court.

Where the petitioner is clearly found to have suppressed material and relevant facts which, if brought to the notice of the court when applying for a rule nisi,

should certainly have influenced the court in deciding one way or the other, and such suppression was certainly calculated to deceive the court into granting the order of rule nisi, the petition should on that ground be dismissed. It is not enough to say that even had those facts been placed before the court, the court might first have issued the rule nisi pending a final adjudication. If the facts are relevant it is the duty of the applicant to have placed them before the court leaving it to the court to decide whether it was a case where the rule nisi that was asked for should issue. When that has not been done "the High Court should decline to interfere in the exercise of its jurisdiction under Article 226 of the Constitution. The court in an application for a writ under Article 226 should be reluctant to interfere with a finding of fact, unless the circumstances gathered from the material placed before it conclusively establish that no reasonably minded tribunal could have reached that conclusion, particularly when it cannot be said that the petitioner has made out the case he set out to prove."

22. In *Deptylal v. The Collector of Nilgiris* (1959)2 M.L.J. 208, Balakrishna Iyer, J., has observed as follows:

"A party invoking the special jurisdiction of the High Court under Article 226 of the Constitution is bound to make a full and true disclosure of all relevant facts. If the applicant has not been as frank and candid as he is under a duty to be, but is found to have suppressed material facts relevant to the issues involved and to have made misleading allegations, he is dis entitled to any relief from the court on that ground alone.".....

24. In *G. Narayanaswami Reddy v. Government of Karnataka* [(1991) 3 SCC 261], the Supreme Court has held as follows: The relief under Article 136 is discretionary and a petitioner who approaches the Supreme Court for such relief must come with frank and full disclosure of facts. If he fails to do so and suppresses material facts, his application is liable to be dismissed.

25. In *S.P. Chengalvaraya Naidu v. Jagannath* [1993 (6) SCC 331], the Supreme Court has observed as follows:

"The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on

the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

26. "Fraud avoids all judicial acts, ecclesiastical or temporal," observed Chief Justice Edward Coke of England about of few centuries ago. It is the settled proposition of law as laid down by our Supreme Court that the judgment or order obtained by playing fraud on the court is a nullity and non-est in the eyes of law."

(iii) In *Avinash Nagra v. Navodaya Vidyalaya Samiti* reported in 1997 (2) SCC 534, at Paragraph 13, the Hon"ble Supreme Court held as follows:

"13. The High Court also was right in its conclusion that the second writ petition is not maintainable as the principle of constructive res judicata could apply. He filed the writ petition in first instance but withdrew the same without permission of the Court with liberty to file the second writ petition which was dismissed. Therefore, the second writ petition is not maintainable as held by the High Court is applying the correct principle of law. Thus considered we find no merit in the appeal for interference."

(iv) In *Rev. Fr. J.G.Jesudas, etc., v. The Government of Tamil Nadu* reported in 1998 Writ. L.R. 756, at Paragraphs 9 and 10, a learned single Judge, held as follows:

"9. A reading of the present writ petition also shows that it is based on the same cause of action. Relief sought for is also the same. Even though there is no adjudication on merits, the question that arises for consideration is, whether a second writ petition on the same cause of action, is maintainable.

10. Similar question came for consideration in the decision reported in (1987) 1 SCC 5 (*Sarguja Transport v. S.T.A.T.*). Their Lordships said that withdrawal of an earlier writ petition is similar to withdrawal of a suit and it amounts to waiver of the relief sought for, and if a second writ petition is filed, that will amount to even abuse of process of Court. Then, finally, in paragraphs 8 and 9, Their Lordships have found thus:-

"The question for our consideration is whether it would or would not advance the cause of justice if the principle underlying rule 1 of Order 23 of the Code is adopted in respect of writ petitions filed under Articles 226/227 of the Constitution of India also. It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the Court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel, to permit the petitioner to withdraw from the writ petition without seeking permission to institute a fresh writ petition. A Court

which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition. It is plain that when once a writ petition filed in a High Court is withdrawn by the petitioner himself he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. He may as stated in *Daryao and Ors. v. The State of U.P. and Ors.*, [1962] 2 S.C.R. 575 in a case involving the question of enforcement of fundamental rights file a petition before the Supreme Court under Article 32 of the Constitution of India because in such a case there has been no decision on the merits by the High Court. The relevant observation of this Court in *Daryao's case* (supra) is to be found at page 593 and it is as follows:

"If the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32, because in such a case there has been no decision on the merits by the Court. We wish to make it clear that the conclusions thus reached by us are confined only to the point of *res judicata* which has been argued as a preliminary issue in these writ petitions and no other."

The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Article 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in *Daryao's case* (supra) is of no assistance. But we are of the view that the principle underlying rule 1 of Order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of *res judicata* but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again."

(Emphasis supplied)

Their Lordships also declared that this principle will not apply when a writ petition is filed involving personal liberty of an individual. In view of this declaration of law, I do not think that this writ petition is maintainable, and consequently, it is dismissed."

97. On the said aspect of suppression, we deem it fit to consider some more decisions,

(i) In *Arunima Baruah v. Union of India* reported in 2007 (6) SCC 120, the Hon"ble Supreme Court held as follows:

"12.It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would

still be denied is the question.

13. In *Moody v. Cox* [(1917) 2 Ch. 71: (1916-17) All ER Rep 548 (CA)], it was held: (All ER pp. 555 I-556 D)

"When one asks on what principle this is supposed to be based, one receives in answer the maxim that anyone coming to equity must come with clean hands. I think the expression "clean hands" is used more often in the textbooks than it is in the judgments, though it is occasionally used in the judgments, but I was very much surprised to hear that when a contract, obtained by the giving of a bribe, had been affirmed by the person who had a primary right to affirm it, not being an illegal contract, the courts of equity could be so scrupulous that they would refuse any relief not connected at all with the bribe. I was glad to find that it was not the case, because I think it is quite clear that the passage in *Dering v. Earl of Winchelsea* [(1787) 1 Cox Eq Cas 318: 2 Bos & P 270], which has been referred to, shows that equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for."

14. In *Halsbury's Laws of England*, 4th Edn., Vol. 16, pp. 874-76, the law is stated in the following terms:

"1303. He who seeks equity must do equity.?In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.

1305. He who comes into equity must come with clean hands.?A court of equity refuses relief to a plaintiff whose conduct in regard to the subject-matter of the litigation has been improper. This was formerly expressed by the maxim "he who has committed iniquity shall not have equity", and relief was refused where a transaction was based on the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits."

(ii) In *Udayami Evan Khadi Gramodyog Welfare Sanstha v. State of U.P.*, reported in 2008 (1) SCC 560, at Paragraph 16, the Hon"ble Supreme Court held as follows:

"15. A writ remedy is an equitable one. A person approaching a superior court must come with a pair of clean hands. It not only should not suppress any material fact, but also should not take recourse to the legal proceedings over and over again which amounts to abuse of the process of law. In *Advocate General, State of Bihar v. M/s.Madhya Death Khair Industries and Anr.* [1980 (3) SC 311, this Court was of the opinion that such a repeated filing of writ petitions amounts to criminal contempt."

98. Earlier, the age of the employees of Kerala was 55 years and the Board resolved to accept to enhance it, to 56. If the contention of the petitioner that the rules are retrospective in nature, if accepted, then the age of retirement of the employees from Kerala, would be 55. Such a contention cannot be accepted. On the aspect, as to whether, the rules are prospective or retrospective, few decisions are considered,

(i) In *Govinddas and others v. Income Tax Officer and another* reported in AIR 1977 SC 552, the Hon"ble Supreme Court held that,

"Now it is well settled rule of interpretation hallowed by time and sanctified by judicial decisions that unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general-rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn,) and reiterated in several decisions of this Court as well as English Courts is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

(ii) The Hon"ble Apex Court in *Zile Singh v. State of Haryana and others*,

reported in 2004 (8) SCC 1, held as follows:-

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only "nova constitutio futuris formam imponere debet non praeteritis" - a new law ought to regulate what is to follow, not the past. (See : Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition, 2004 at p.438).

14. The presumption against retrospective operation is not applicable to declaratory statutes. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect."

(iii) In *C. Gupta v. Glaxo-Smithkline Pharmaceuticals Ltd.*, reported in 2007 (7) SCC 171, has again held that every statute is prima facie prospective unless and until it is made clear in the statute itself that it will have retrospective effect.

(iv) The Hon'ble Apex Court in *J.S. Yadav v. State of Uttar Pradesh* and another, reported in 2011 (6) SCC 570, has once again held that unless and until it is provided in the statute itself, it cannot be made applicable with retrospective effect.

99. In the light of the above said decisions, the rules, regarding the age of retirement, are prospective in nature.

100. The contention of the petitioner that the Director, The Academy of Prisons & Correctional Administrations, Thorapadi, Vellore, 3rd respondent, an incompetent authority, has rejected the representations and therefore, vitiated, cannot be countenanced, for the reason that the respondent, in its counter affidavit, has categorically stated that the representations were placed in the Board of Management on 22.04.2016, along with the reply of the Director and that the Board has taken a conscious decision to reject the same. As stated supra, the same request has been rejected in the year 2010 and 2013 respectively.

101. As rightly contended by the learned counsel appearing for the 3rd respondent, an appointing authority has every jurisdiction to pass orders of retirement of employees. Added further, the Board, in its resolution, dated

20.10.2010, under Resolution No.15, has delegated the powers to the Director, as the appointing authority for all the posts, upto the Office Superintendent. As rightly contended by the learned counsel for the respondents, an appointing authority has every jurisdiction to pass orders of retirement. Rules of Central Government are not applicable to APCA, as it is neither a Central Government Department nor under the Control of Central Government.

102. It is also to be noted that earlier, when RICA Employees Union, represented by its Secretary, Thiru.K.Thulasivanan, filed W.P.No.11695 of 2000, for a Mandamus, directing the respondents therein to follow the reservation policy and roster point, by following the latest reservation policy norms of Government of India, for the recruitment of all categories in the RICA Employees Union, Vellore District, this Court, vide order, dated 13.07.2010, has dismissed the said writ petition, holding that RICA is not a government organisation. In W.P.No.17224/2016, the issue raised that RICA, now APCA, is a government organisation, has not been substantiated. As there is no challenge to the decision, it is binding on the petitioner. On the facts and circumstances of the case, the principles of constructive res judicata can also be made applicable. Few decisions on constructive res judicata are considered,

(i) In *Darayo v. State of U.P.*, reported in AIR 1961 SC 1457, the Supreme Court at paragraphs 9 and 10, held as follows:-

9. But, is the rule of res judicata merely a technical rule or is it based on high public policy? If the rule of res judicata itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of res judicata as indicated in Section 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive res judicata may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of res judicata they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Article 32.

10. In considering the essential elements of res judicata one inevitably harks back to the judgment of Sir William B. Hale in the leading *Duchess of Kingston* case. Said Sir William B. Hale "from the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true: First, that the judgment of a court of concurrent jurisdiction, directly upon the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question in another court; Secondly, that the judgment of a court of exclusive jurisdiction, directly upon the point, is in like manner conclusive upon the same matter, between the same

parties, coming incidentally in question in another court for a different purpose". As has been observed by Halsbury, "the doctrine of res judicata is not a technical doctrine applicable only to records;" it is a fundamental doctrine of all courts that there must be an end of litigation." Halsbury also adds that the doctrine applies equally in all courts, and it is immaterial in what court the former proceeding was taken, provided only that it was a Court of competent jurisdiction, or what form the proceeding took, provided it was really for the same cause" (p. 187, paragraph 362). "Res judicata", it is observed in Corpus Juris, "is a rule of universal law pervading every well regulated system of jurisprudence, and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation ? interest republicae ut sit finis litium; the other, the hardship on the individual that he should be vexed twice for the same cause ? nemo debet bis vexari pro eadem causa". In this sense the recognised basis of the rule of res judicata is different from that of technical estoppel. "Estoppel rests on equitable principles and res judicata rests on maxims which are taken from the Roman Law". Therefore, the argument that res judicata is a technical rule and as such is irrelevant in dealing with petitions under Article 32 cannot be accepted.

(ii) In *Devilal Modi v. State Tax Officer, Ratlam and others* reported in AIR 1965 SC 1150, the short question which arose in the appeal was whether the principle of constructive res judicata can be invoked against a writ petition filed by the appellant Devilal Modi, who is the Proprietor of M/s. Daluram Pannalal Modi, under Article 226 of the Constitution. The appellant therein had been assessed to sales-tax for the year 1957-58 under the Madhya Bharat Sales Tax Act, 1950. He challenged the validity of the said order of assessment by a writ petition filed by him (No. 114/1961) in the High Court of Madhya Pradesh on the 25th April, 1961. The High Court dismissed his writ petition and by special leave, the appellant came to this Court in appeal against the said decision of the High Court. On the 8th March, 1963, the appellant's appeal by special leave was also dismissed by this Court. Thereafter, the appellant filed the another writ petition in the same High Court on the 23rd April, 1963 (No. 129/1963). By this writ petition the appellant challenged the validity of the same order of assessment. The High Court considered the merits of the additional grounds urged by the appellant and rejected them. In the result, this second writ petition filed by the appellant has been dismissed by the High Court on the 29th April, 1963. It is against this decision that the appellant has come to this Court by special leave; and that raises the question as to whether it is open to the appellant to challenge the validity of the same order of assessment twice by two consecutive writ petitions under Article 226. In the above reported case, additional grounds were urged in the subsequent writ petition. Though the judgment was in respect of the same parties, yet the principles laid down by the Hon"ble Supreme Court on constructive res judicata, are worth reproduction,

"The present proceedings illustrate how a citizen who has been ordered to pay a

tax can postpone the payment of the tax by prolonging legal proceedings interminably. We have already seen that in the present case the appellant sought to raise additional points when he brought his appeal before this Court by special leave; that is to say, he did not take all the points in the Writ petition and thought of taking new points in appeal. When leave was refused to him by this Court to take those points in appeal, he filed a new petition in the High Court and took those points, and finding that the High Court had decided against him on the merits of those points, he has come to this Court; but that is not all. At the hearing of this appeal, he has filed another petition asking for leave from this Court to take some more additional points and that shows that if constructive res judicata is not applied to such proceedings a party can file as many writ petitions as he likes and take one or two points every time. That" clearly is opposed to considerations of public policy on which res judicata is based and would mean harassment and hardship to the opponent. Besides, if such a course is allowed to be adopted, the doctrine of finality of judgments pronounced by this Court would also be materially affected. We are, therefore, satisfied that the second writ petition filed by the appellant in the present case is barred by constructive res judicata."

(iii) In *State of U.P. v. Nawab Hussain*, reported in 1977 (2) SCC 806, the Supreme Court at paragraphs 3, 4 and 7, held as follows:-

"3. The principle of estoppel per rem judicatam is a rule of evidence. As has been stated in *Marginson v. Marginson Blackburn Borough Council*, reported in (1939) 3 KB 426, it may be said to be "the broader rule of evidence which prohibits the reassertion of a cause of action". This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of res judicata.

4. But it may be that the same set of facts may give rise to two or more causes of action. If in such a case a person is allowed to choose and sue upon one cause of action at one time and to reserve the other for subsequent litigation, that would aggravate the burden of litigation. Courts have therefore treated such a course of action as an abuse of its process and *Somervell, L.J.*, has answered it

as follows in *Greenhalgh v. Mallard*, reported in (1947) All F.R. 255:

"I think that on the authorities to which I will refer it would be accurate to say that *res judicata* for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them."

This is therefore another and an equally necessary and efficacious aspect of the same principle, for it helps in raising the bar of *res judicata* by suitably construing the general principle of subduing a cantankerous litigant. That is why this other rule has some times been referred to as constructive *res judicata* which, in reality, is an aspect or amplification of the general principle."

7.The question which specifically arose for consideration was whether the principle of constructive *res judicata* was applicable to writ petitions of that kind. While observing that the rule of constructive *res judicata* was "in a sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure", this Court declared the law in the following terms:

"This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive *res judicata* is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy to which we have just referred." While taking that view, Gajendragadkar, C.J., tried to explain the earlier decision in *Amalgamated Coalfields Ltd. v. Janapada Sdbha, Chhindwara* and categorically held that the principle of constructive *res judicata* was applicable to writ petitions also. As has been stated, that case was brought to the notice of the High Court, but its significance appears to have been lost because of the decisions in *Janakirama Iyer v. P.M. Nilakanta Iyer* reported in AIR 1962 SC 633 : Supp (1) SCR 206 and *Gulabchand* case. We have made a reference to the decision in *Janakirama Iyer* case which has no bearing on the present controversy, and we may refer to the decision in *Gulabchand* case as well. That was a case where the question which specifically arose for consideration was whether a decision of the High Court on merits on a certain matter after contest, in a writ petition under Article 226 of the Constitution, operates as *res judicata* in a regular suit with respect to the same matter between the same parties. After a consideration of the earlier decisions in England and in this country, Raghubar Dayal, J., who spoke for the majority of this Court, observed as follows:

"These decisions of the Privy Council well lay down that the provisions of Section 11 CPC are not exhaustive with respect to an earlier decision in a proceeding

operating as res judicata in a subsequent suit with respect to the same matter inter parties, and do not preclude the application to regular suits of the general principles of res judicata based on public policy and applied from ancient times."

He made a reference to the decision in *Daryao v. State of U.P.*, AIR 1961 SC 1457 : 1962 (1) SCJ 702, on the question of res judicata and the decisions in *Amalgamated Coalfields Ltd. v. Janapada Sabha Chhindwara* and *Devilal Modi* case 6 and summarised the decision of the Court as follows:

"As a result of the above discussion, we are of opinion that the provisions of Section 11 CPC are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a Court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the Court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. The nature of the former proceeding is immaterial."

He however went on to make the following further observation:

"We may make it clear that it was not necessary, and we have not considered whether the principles of constructive res judicata can be invoked by a party to the subsequent suit on the ground that a matter which might or ought to have been raised in the earlier proceeding was not so raised therein." It was this other observation which led the High Court to take the view that the question whether the principle of constructive res judicata could be invoked by a party to a subsequent suit on the ground that a plea which might or ought to have been raised in the earlier proceeding but was not so raised therein, was left open. That, in turn, led the High Court to the conclusion that the principle of constructive res judicata could not be made applicable to a writ petition, and that was why it took the view that it was competent for the plaintiff in this case to raise an additional plea in the suit even though it was available to him in the writ petition which was filed by him earlier but was not taken. As is obvious, the High Court went wrong in taking that view because the law in regard to the applicability of the principle of constructive res judicata having been clearly laid down in the decision in *Devilal Modi* case, it was not necessary to reiterate it in *Gulabchand* case as it did not arise for consideration there. The clarificatory observation of this Court in *Gulabchand* case was thus misunderstood by the High Court in observing that the matter had been "left open" by this Court."

(iv) In *Jaswant Singh and another v. Custodian of Evacuee Property, New Delhi*, reported in 1985 (3) SCC 648, at paragraph 14, the Hon"ble Supreme Court held as follows:-

"In order to decide the question whether a subsequent proceeding is barred by res judicata it is necessary to examine the question with reference to the (i)

forum or the competence of the court, (ii) parties and the representatives, (iii) matters in issue, (iv) matters which ought to have been made ground for defence or attack in the former suit and (v) the final decision. In order that a defence of *res judicata* may succeed it is necessary to show that not only the cause of action was the same but also that the plaintiff had an opportunity of getting the relief which he is now seeking in the former proceedings. The test is whether the claim in the subsequent suit or proceedings is in fact founded upon the same cause of action which was the foundation of the former suit or proceedings. A cause of action for a proceeding has no relation whatever to the defence which may be set up, nor does it depend upon the character of the relief prayed for by the plaintiff or the applicant. It refers entirely to the grounds set forth in the plaint or the application as the case may be as the cause of action or in other words to the media upon which the plaintiff or the applicant asks the court to arrive at a conclusion in his favour.

(v) In *Kesho Ram and Co. v. Union of India*, reported in 1989 (3) SCC 151, the Hon'ble Supreme Court at paragraph 10, held as follows:-

"10.Finality in litigation and public policy both require that a litigant should not be permitted to challenge validity of the provisions of the Act or notification at different times on different grounds. Once petitioners' challenge to Section 3 and the impugned notification was considered by the court and the validity of the same was upheld it must be presumed that all grounds which could validly be raised were raised and considered by the court. Learned counsel for the petitioners urged that the questions which are being raised in the present proceedings were neither raised nor considered by this Court in *Punjab Tin Supply Co.* case, therefore it is open to them to question the validity of Section 3 and the Notification dated 24-9-1974. This submission is contrary to the principles of *res judicata* and it further ignores the binding effect of a decision of this Court under Article 141 of the Constitution. The binding effect of a decision of this Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced subsequently was actually decided in the earlier decision, see *Somavanti v. State of Punjab* reported in 1963 (2) SCR 774 AIR 1963 SC 151, *T. Govindaraja Mudaliar v. Anil Kumar Neotia v. Union of India* reported in 1988 (2) SCC 587. It is therefore no longer open to the petitioner tenants to challenge the validity of Section 3 of the Act and the impugned Notification dated 24-9-1974 on the ground that some points had not been urged or considered in *Punjab Tin Supply Co.* case. On the principles of *res judicata*, and also in view of Article 141 of the Constitution, the law declared by this Court in *Punjab Tin Supply Co.* case 2 is binding on the petitioners. But even otherwise the submissions made on their behalf in impugning the validity of Section 3 and the Notification dated 24-9-1974 are devoid of any merit as we shall presently discuss the same."

(vi) In *Avinash Nagra v. Navodaya Vidyalaya Samiti and others*, reported in 1997 (2) SCC 534, at paragraph 13, the Hon'ble Supreme Court held as follows:-

13. The High Court also was right in its conclusion that the second writ petition is not maintainable as the principle of constructive res judicata would apply. He filed the writ petition in first instance but withdrew the same without permission of the Court with liberty to file the second writ petition which was dismissed. Therefore, the second writ petition is not maintainable as held by the High Court in applying the correct principle of law. Thus considered we find no merit in the appeal for interference.

(vii) In *Ferro Alloys Corporation Ltd., and another, v. Union of India and others*, reported in 1999 (4) SCC 149, at paragraphs 27 and 28, the Hon"ble Supreme Court held as follows:-

"27..... It is obvious that in order to attract the bar of Explanation IV to Section 11 CPC and before it can be held that any subsequent contention on the point can be treated to be hit by the bar of constructive res judicata, it has to be seen whether such a contention might and ought to have been made the ground of defence or attack in such former proceedings.

28. It is no doubt true that the principle of constructive res judicata can be invoked even inter se the respondents, but it is well settled that before any plea by the contesting respondents could be said to be barred by constructive res judicata in future proceedings inter se such contesting respondents, it must be shown that such a plea was required to be raised by the contesting respondents to meet the claim of the appellant in such proceedings. If such a plea is not required to be raised by the contesting respondents with a view to successfully meet the case of the appellant, then such a plea inter se the contesting respondents would remain in the domain of independent proceedings giving an entirely different cause of action inter se the contesting respondents with which the appellants would not be concerned. Such pleas based on independent causes of action inter se the respondents cannot be said to be barred by constructive res judicata in the earlier proceedings where the lis is between the appellants on the one hand and all the contesting respondents on the other.

(viii) In *Rajendra Kumar v. Kalyan (Dead) By LRS*, reported in 2000 (8) SCC 99, the Hon"ble Supreme Court at paragraphs, 14 and 16 to 22, held as follows:-

"14. The doctrine of res judicata has received a statutory sanction in the Code as a matter of prudence and to give due weightage to a finding or a decision so as to reach a finality in the matter of a dispute between the same parties or litigating under the same parties. The doctrine thus is to achieve finality of dispute between the parties being a principle of prudence so as to give efficacy to a finding of the court rather than permit the parties to go to trial more or less on the same issues over again and thus introducing a possibility of conflict of views. Judicial verdict has its special sanctity and cannot be the subject-matter of discussion at any future time involving identical or similar issues. The facts in issue is one where more than one attempt has been made to establish a fact and in every attempt that particular fact stands negated.

16. The 1976 amendment to the Code and the introduction of Explanations VII and VIII clarify the dual objective as noticed above. The objection howsoever technical it may be, ought not to outweigh the reasonableness of the doctrine. Raghubar Dayal, J. speaking for the majority view in off, cited Gulabchand case 1 (Gulabchand Chhotalal Parikh v. State of Gujarat, reported in AIR 1965 SC 1153 : 1965(2) SCR 547 in paras 60 and 61) observed:

"As a result of the above discussion, we are of opinion that the provisions of Section 11 CPC are not exhaustive with respect to an earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit and that on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. The nature of the former proceeding is immaterial.

We do not see any good reason to preclude such decisions on matters in controversy in writ proceedings under Articles 226 or 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest. We, therefore, hold that, on the general principle of res judicata, the decision of the High Court on a writ petition under Article 226 on the merits on a matter after contest will operate as res judicata in a subsequent regular suit between the same parties with respect to the same matter."

17. The doctrine of res judicata or constructive res judicata predominantly is a principle of equity, good conscience and justice. It would neither be equitable nor fair nor in accordance with the principles of justice that the issue concluded earlier ought to be permitted to be raised later in a different proceeding."

(ix) In K. Vidya Sagar v. State of U.P. and others, reported in 2005 (5) SCC 581, the Hon"ble Supreme Court at paragraphs 8 to 10, held as follows:-

"8. As mentioned earlier the petitioner had filed a writ petition under Article 226 of the Constitution before the Allahabad High Court seeking virtually the same reliefs, which have been sought in the present writ petition. The High Court dismissed the writ petition on the ground that the questions raised were all disputed questions of fact, which could not be adjudicated in a writ petition under Article 226 of the Constitution. The High Court further observed that the petitioner could approach the civil or criminal court or any other authority for this purpose. In the special leave petition preferred against the decision of the High Court it was observed in the order dated 13-8-1999 that it was not appropriate for this Court to examine the rival contentions which raised disputed questions of fact and the said questions were left open. It was further observed that whatever

other grievances remain in spite of the report of CBI, so far as the petitioner is concerned, he may ventilate the same in accordance with law.

9. In *Virudhunagar Steel Rolling Mills Ltd. v. Govt. of Madras* it was held that where a writ petition under Article 226 of the Constitution is disposed of on merits and the order of dismissal of the petition is a speaking order that would amount to *res judicata* and would bar a petition under Article 32 of the Constitution on the same facts irrespective of whether notice was issued to the other side or not before such a decision was given. In *T.P. Moideen Koya v. Govt. of Kerala* the entire law regarding bar of *res judicata* was reviewed and it was held that a decision rendered by this Court in proceedings under Article 136 of the Constitution, which has attained finality would bind the parties and the same issue cannot be reagitated or reopened in a subsequent petition under Article 32 of the Constitution.

10. This being the settled position of law, the reliefs claimed by the petitioner in the present petition under Article 32 of the Constitution cannot be granted as he had claimed the same reliefs in the writ petition, which was filed under Article 226 of the Constitution in the Allahabad High Court, which was dismissed and the special leave petition preferred against the said decision was disposed of by this Court with a direction that he may ventilate the same in accordance with law.

(x) In *Ramadhar Shrivastava v. Bhagwandas*, reported in 2005 (13) SCC 01, the Hon'ble Supreme Court, at paragraphs 19, and 20 to 22, held as follows:-

"19. In *Pawan Kumar Gupta v. Rochiram Nagdeo*, reported in 1999 (4) SCC 243, a suit filed by the plaintiff against the defendant was dismissed by the Court but the Court negatived the contention of the defendant that the plaintiff was not the real owner of the suit property. The Court recorded a finding that the plaintiff was the absolute owner. In a subsequent suit by the plaintiff against the defendant, this Court held that an issue as to the title of the property was "directly and substantially" in issue between the parties in a former suit and decided in favour of the plaintiff. Such finding, ruled this Court, would operate as *res judicata* in a subsequent suit against the defendant.

20. The Court observed [1999 (4) SCC 243]: (SCC p. 249, para 16)

"16. The rule of *res judicata* incorporated in Section 11 of the Code of Civil Procedure (CPC) prohibits the court from trying an issue which "has been directly and substantially in issue in a former suit between the same parties", and has been heard and finally decided by that court. It is the decision on an issue, and not a mere finding on any incidental question to reach such decision, which operates as *res judicata*. It is not correct to say that the party has no right of appeal against such a decision on an issue though the suit was ultimately recorded as dismissed."

21. In our opinion, the learned counsel for the appellant is also right in submitting that the rule of constructive *res judicata* applies to the present case.

The expression "matter in issue" under Section 11 of the Code of Civil Procedure, 1908 connotes the matter directly and substantially in issue actually or constructively. A matter is actually in issue when it is in issue directly and substantially and a competent court decides it on merits. A matter is constructively in issue when it "might and ought" to have been made a ground of defence or attack in the former suit. Explanation IV to Section 11 of the Code by a deeming provision lays down that any matter which "might and ought" to have been made a ground of defence or attack in the former suit, but which has not been made a ground of defence or attack, shall be deemed to have been a matter directly and substantially in issue in such suit.

22. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter, that should be taken to be the same thing as if the matter had been actually controverted and decided. The object of Explanation IV is to compel the plaintiff or the defendant to take all the grounds of attack or defence in one and the same suit. (Vide *Nirmal Enem Horo v. Jahan Ara Jaipal Singh* reported in 1973 (2) SCC 189 : AIR 1973 SC 1406 : ,*Jaswant Singh v. Custodian of Evacuee Property* reported in 1985 (3) SCC 648 : AIR 1985 SC 1096 : 1985 Supp (1) SCR 331, *Forward Construction Co. v. Prabhat Mandal (Regd.)*, (1986) 1 SCC 100 : AIR 1986 SC 391 : 1985 Supp (3) SCR 766, *Direct Recruit Class II Engg. Officers Assn. v. State of Maharashtra*, (1990) 2 SCC 715 : (1990) SCC (L&S) 339 : AIR 1990 SC 1607 and *Vijayan v. Kamalakshi* (1994) 4 SCC 53)."

(xi) In *State of Haryana v. M.P. Mohla*, (2007) 1 SCC 457, the Hon"ble Supreme Court held as follows:

"A judgment must be read in its entirety. The judgment of a court must also be implemented. But what would be the effect of a judgment must be considered from the reliefs claimed in the writ petition as also the implications thereof which has to be deciphered from reading the entire judgment. A judgment may also have to be read on the touchstone of pleadings of the parties. (Para 19) A dispute between the parties once adjudicated must reach its logical conclusion. If a specific question which was not raised and which had not been decided by the High Court the same would not debar a party to agitate the same at an appropriate stage, subject, of course, to the applicability of principles of *res judicata* or constructive *res judicata*. If a subsequent cause of action has arisen in the matter of implementation of a judgment, a fresh writ petition may be filed, as a fresh cause of action has arisen. (Paras 22 and 23)

(xii) In *Raghavendra Rao v. State of Karnataka*, reported in 2009 (4) SCC 635, at paragraph 13, the Hon"ble Supreme Court held as follows:-

13. As noticed hereinbefore, leave had been granted to avail any other remedy available only to those petitioners who had not been paid their salary for the period during which they worked as Accountants. The claim of the appellants is, thus, barred under the principles of *res judicata*/constructive *res judicata*, the

earlier judgment having attained finality. It is now a well-settled principle of law that the principle of res judicata applies also to the writ proceedings.

(xiii) In *M. Nagabhushana v. State of Karnataka* reported in 2011 (3) SCC 408, the Hon'ble Supreme Court has addressed the foundation and history of doctrine of res-judicata. Paragraphs 12, 13, 17, 19 to 24, held as follows:

"12. The principles of Res Judicata are of universal application as it is based on two age old principles, namely, 'interest reipublicae ut sit finis litium' which means that it is in the interest of the State that there should be an end to litigation and the other principle is 'nemo debet bis vexari, si constet curiae quod sit pro un aet eadem cause' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilised system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.

13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing Court for agitating on issues which have become final between the parties.

17. It may be noted in this context that while applying the principles of Res Judicata the Court should not be hampered by any technical rules of interpretation. It has been very categorically opined by Sir Lawrence Jenkins that:

"the application of the rule by Courts in India should be influenced by no technical considerations of form but by matter of substance within the limits allowed by law"

[See *Sheoparsan Singh v. Rammanandan Prasad Singh*, (1916) 1 I.L.R. 43 Cal. 694 at page 706 (P.C.)].

19. A Constitution Bench of this Court in *Devilal Modi v. Sales Tax Officer, Ratlam and Ors.*, AIR 1965 SC 1150, has explained this principle in very clear terms:

"But the question as to whether a citizen should be allowed to challenge the validity of the same order by successive petitions under Article 226, cannot be answered merely in the light of the significance and importance of the citizens' fundamental rights. The general principle underlying the doctrine of res judicata is ultimately based on considerations of public policy. One important

consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice (vide: *Daryao v. State of U.P.*, 1962-1 SCR 575; (AIR 1961 SC 1457))"

20. This Court in *All India Manufacturers Organisation (supra)* explained in clear terms that principle behind the doctrine of *Res Judicata* is to prevent an abuse of the process of Court. In explaining the said principle the Bench in *All India Manufacturers Organisation (supra)* relied on the following formulation of Lord Justice Somervell in *Greenhalgh v. Mallard* - (1947) 2 All ER 255 (CA):

"39.I think that on the authorities to which I will refer it would be accurate to say that *res judicata* for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them."

The Bench in *All India Manufacturers Organisation (supra)* also noted that the judgment of the Court of Appeal in "*Greenhalgh*" was approved by this Court in *State of U.P. v. Nawab Hussain*, (1977) 2 SCC 806 at page 809, para 4.

21. Following all these principles a Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra*, (1990) 2 SCC 715 laid down the following principle:

".....an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence. Thus, the principle of constructive *res judicata* underlying Explanation IV of Section 11 of the Code of Civil Procedure was applied to writ case. We, accordingly hold that the writ case is fit to be dismissed on the ground of *res judicata*."

22. In view of such authoritative pronouncement of the Constitution Bench of this Court, there can be no doubt that the principles of Constructive *Res Judicata*, as explained in explanation IV to Section 11 of the CPC, are also applicable to writ petitions.

23. Thus, the attempt to re-argue the case which has been finally decided by the Court of last resort is a clear abuse of process of the Court, regardless of the principles of *Res Judicata*, as has been held by this Court in *K.K. Modi v. K.N. Modi and Ors.*, (1998) 3 SCC 573. In paragraph 44 of the report, this principle has been very lucidly discussed by this Court and the relevant portions whereof

are extracted below:

"44. One of the examples cited as an abuse of the process of the court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re litigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as *res judicata*."

24. In coming to the aforementioned finding, this Court relied on the Supreme Court Practise 1995 published by Sweet and Maxwell. The relevant principles laid down in the aforesaid practise and which have been accepted by this Court are as follows:

"43.This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. ... The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

103. It is also to be noted that unlike in the case of government servants, where there is GPF, in the case on hand, EPF alone is contributed. Though the petitioner has quoted instances of TASMAL Ltd., and Corporations, they come under the category of a Company Ltd., or Corporation, formed or incorporated, under the Statutes and that the same cannot be applied to the case on hand, where RICA is a society formed under the Tamil Nadu Societies Registration Act, 1975.

104. In the Circular, dated 02.07.2014, of the Government of Andhra Pradesh has categorically stated that enhancement of age is not applicable to the State Public enterprises and other autonomous bodies. Even taking it for granted, the APCA is an autonomous body, audited by the Accountant General and Controller, on payment of fee, when the applicability of the circular, issued by the Andhra Pradesh Court, excludes, state public enterprises and autonomous bodies, the petitioner cannot compel APCA to adopt the age of retirement, as done on Andhra Pradesh.

105. From the averments of both the parties, it could be seen that Kerala has fixed 56 years, as the age of retirement for the government servants of both inferior and superior service, whereas, for the government servants, States of Karnataka and Andhra Pradesh, have fixed 60 years as the age of retirement for both the services, whereas, government servants in inferior service of Tamil Nadu would retire at 60 years and superior service, at 58 years. Thus, each of the participating States, have fixed the age of retirement, as per the service rules of the respective States, framed under Article 309 of the Constitution of India.

106. Contention of the petitioner that fixing different age for retirement of employees is discretionary, cannot be accepted and it is for the Board to take a decision, on the basis of the decision of all the participating States. At one stage, the petitioner himself has admitted that the APCA rules have not been framed under Article 309 of the Constitution of India and also contended that rules of Kerala and Government of India, have not been adopted by APCA, but the pay scales of the Government of Andhra Pradesh and other benefits, have been extended, with the exception of age of retirement. When the age of retirement of government servants of each of the participating States is different, it is not open to the petitioner to contend that APCA should adopt only the age of retirement, as fixed by the Andhra Pradesh Government. Contention of the petitioner that the action of the 3rd respondent is violative of Article 14 of the Constitution of India, cannot be countenanced. Mal-administration alleged is untenable.

107. Contentions of the petitioner that the clarificatory letter, dated 02.07.2014, is only an executive order and cannot prevail over the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 and whatever Andhra Pradesh Government has done to the State Government employees of Andhra Pradesh, has to be made adopted to the employees of RICA, cannot be countenanced. Nomenclature of has been changed to APCA and the contention to the contra, is rejected.

108. As regards prescription of categories, nomenclature of posts, cadres, etc., it is also useful to refer few decisions on that aspect.

(i) In *P.U. Joshi v. Accountant General* reported in 2003 (2) SCC 632, the Supreme Court, at Paragraph 10, held as follows:

"10. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to

claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

(ii) The Supreme Court in *Indian Drugs and Pharmaceuticals Ltd., v. Workmen* reported in 2007 (1) SCC 408, at paragraph 40 has held as follows:

"The Courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on these posts, regularisation, fixing pay scales, continuation in service, promotions etc., are all executive or legislative functions, and it is highly improper for judges to step into this sphere except in a rare and exceptional case."

109. Admittedly, APCA has not framed the Service rules, invoking Article 309 of the Constitution of India. Rules framed by the Board of Management, have been approved by the participating States. A Government Order issued by the Government of a State, in exercise of the executive powers will have effect only in that State, in which, it is issued. A person covered under the said Government Order, can seek for enforcement of the said order, within that State, in which it is issued. Merely because, APCA a body registered under the Societies Registration Act, has adopted other Government Orders issued by another state, with due approval of the other participating States, the petitioner cannot compel the society, to adopt all the orders issued by another State Government, in the case on hand, Government Order issued by Andhra Pradesh, in the matter of age of retirement, as a matter of right and on that score, seek for a mandamus.

110. It could be seen from the rules approved by the participating states, that as per rule 19 of APCA Rules, the Board of Management is the competent authority on all matters relating to the functions and administration of the society. Merely because, certain conditions of service, like adoption of pay scales applicable to the employees of Andhra Pradesh Government servants, including leave etc. are adopted by the Board of Management of APCA, a society registered under the Societies Registration Act, cannot be declared as a government organisation. APCA has not adopted the service rules of any particular participating state government. The Board has the powers to regulate the functions of the institute in any manner it may decide in the matters concerning the administration of the institute for which no provision is made in the rules. The Board of Management of the Society, in its meetings, has resolved to adopt the rules of the any of the participating states, in the matter of framing of conduct rules, adopting pay scales, privileges and such other matters, taking note of the service conditions, of its employees. Merely because APCA, a registered society, has adopted certain government orders, to its employees, it does not partake the character of a Public Sector Undertaking. The Society is bound by the rules and regulations, approved by the Board and not mandated to adopt all the rules or service

conditions of any particular State.

111. APCA, has framed its own conduct rules. But in APCA rules, it is stated that, where difficulties arise, conduct rules of Government of Tamil Nadu be referred. Therefore, it is clear that the Board of Management of APCA, has independently considered various issues and taken decisions, in the matter of adopting pay scales, privileges and age of retirement. A society registered under the Societies Registration Act, 1975, is empowered to take such decisions. Though on the facts and circumstances of the case, it could be deduced that APCA, has an element of discharging the duties of a Government, in imparting training to the Jailors and Superintendents of Correctional Institutions of the participating states, we cannot ignore the conscious decisions of the Board of Management, in the above matters, as to which of the rules, framed by any of the participating states, be taken as reference, in case of difficulty, or adopted, as the case may be. A society, like an educational institution, non-governmental organisation, or any other association, registered under the Societies Registration Act, may, in the discharge of its functions, perform public duties and on that score alone, it cannot be declared as a government organisation.

112. Admittedly, when service rules framed by the Central Government, have not been adopted by the Board of Management of APCA, petitioner cannot compel APCA, to adopt the age fixed for Central Government servants.

113. Service rules framed by the Governments of Andhra Pradesh, Kerala, Karnataka and Tamil Nadu have not been adopted by the Board of Management of APCA. But, after deliberation, the Board of Management, with the concurrence of the participating states, has approved APCA rules. While doing so, the Board of Management, has taken a decision to adopt the pay scales of the Andhra Pradesh Government; to have reference to the conduct rules, framed by the Government of Tamil Nadu; and not the conduct rules of the other participating states; decided to extend certain benefits given to the Central Government servants and decided to prescribe the age of superannuation, to the employees of APCA. At this juncture, it is seen from the rules and regulations of the Regional Institute of Correctional Administration set up at Vellore by the four participating states and registered as the society under Section 27 of the Tamil Nadu Societies Registration Act, 1975, clause 12, the appointment to various posts shall be made by selection from the services of the Correctional Departments including Prison Departments of the four Southern States. Where no suitable candidate is available for a particular post from the services, of the four States, the Board may select from open market or on deputation from Central/State Government or Universities or other Training or Research Institutions from any part of the country. The appointment to various posts shall be made in accordance with the recruitment rules to be framed by the Board. The personnel appointed to posts by deputation shall draw pay and allowances either as per the scales of their substantive posts in the Parent Department to which they belong to or as per the scales fixed for posts of the Institute

mentioned in the deputation orders. The personnel opting for the pay scales of their posts in the Parent Department shall be given special compensatory allowance at the rate of 15% of basic pay as prescribed for various posts. All personnel appointed in the Institute shall, however be entitled to rent free quarters or house rent allowance at the rate of 20% of their basic pay and other perquisites as provided by the Board (amended vide 54th meeting of the Board of Management of RICA held on 22.8.1998 and 23.8.1998).

114. From the above, it could be deduced that appointments to various posts in APCA shall be made the services of the Correctional departments including prison departments of the four participating states. Only in the case, where no suitable candidate is available for a particular post from the services of the few states, the Board may select candidates from open market or as stated supra. At one stage, the petitioner has admitted that, insofar as APCA Conduct Rules is concerned, reference can be made to Tamil Nadu Government Servant Conduct Rules but on the aspect of age of retirement, not accepting the contention of APCA, has sought for a prayer to adopt the age of retirement of Andhra Pradesh Servant Rules to the Tamil Nadu employees of the Academy of Prisons & Correctional Administrations. Unless there is a unanimous decision or decision by majority, there cannot be any change in any of the service conditions, of the employees of APCA. On more than occasion, the Board has turned down the request to enhance the age of retirement, to 60 years, for all the employees of the participating states.

115. In the light of the rules, approved by the participating states, it is our considered view that, the Board of Management, is empowered to decide, as to which of the service conditions, followed in each of the participating state should be adopted. APCA is a society registered under the Societies Registration Act, 1975. If the condition of the petitioner is accepted, then the age of superannuation, 56 years, as fixed by Government of Kerala, both for inferior and superior service, could have been accepted by APCA, but that is not the case on hand. Even taking it for granted, there is a disparity in the age of retirement for superior or inferior service, as the case may be, the petitioner cannot be said to be the person aggrieved, by the order, relieving some of the employees from service, on attaining the age of retirement at 58 years, and hence, cannot maintain a writ petition. At this juncture, it is worthwhile to consider a decision in *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed* reported in 1976 (1) SCC 671, as to who is an aggrieved person. In *Jasbhai Motibhai Desai's* case (cited supra), the Hon"ble Supreme Court has carved out the meaning for the words, "person aggrieved" or "aggrieved person", from English Judgements and other Apex Court judgments and the same are extracted hereunder:

"12. According to most English decisions, in order to have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and, in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfil that character, and is a

"stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances.

13. This takes us to the further question: Who is an "aggrieved person" and what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of rigid, exact and comprehensive definition. At best, its features can be described in a broad, tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or "standing" to invoke certiorari jurisdiction.

14. We will first take up that line of cases in which an "aggrieved person" has been held to be one who has a more particular or peculiar interest of his own beyond that of the general public, in seeing that the law is properly administered. The leading case in this line in *Queen v. Justices of Surrey* [(1870) 5 QB 466] decided as far back as 1870. There, on the application by the highway board the Justices made certificates that certain portions of three roads were unnecessary. As a result, it was ordered that the roads should cease to be repaired by the parishes.

15. E, an inhabitant of one of the parishes, and living in the neighbourhood of the roads, obtained a rule for a certiorari to bring up the orders and certificates for the purpose of quashing them on the ground that they were void by reason of the notices not having been affixed at the places required by law. On the point of locus standi (following an earlier decision *Hex v. Taunton St. Mary* [(1815) 3 M & S 465 : 105 ER 685], the Court held that though a certiorari is not a writ of course, yet as the applicant had by reason of his local situation a peculiar grievance of his own, and was not merely applying as one of the public, he was entitled to the writ *ex debito justitiae*.

16. It is to be noted that in this case was living in the neighbourhood of the roads were to be abandoned as a result of the certificates issued by the Justices. He would have suffered special inconvenience by the abandonment. Thus had shown a particular grievance of his own beyond some inconvenience suffered by the general public. He had a right to object to the grant of the Certificate. Non-publication of the notice at all the places in accordance with law, had seriously prejudiced him in the exercise of that legal right.

17. The ratio of the decision in *Queen v. Justices of Surrey* (supra) was followed in *King v. Groom and ors. Ex Parte* [(1901) 2 KB 157 : 70 LJKB 637]. There, the parties were rivals in the liquor trade. The applicants (brewers) had persistently

objected to the jurisdiction of the justices to grant the ` license to one J. K. White in a particular month. It was held that the applicants had a sufficient interest in the matter to enable them to invoke certiorari jurisdiction.

18. A distinguishing feature of this case was that unlike the appellants in the present case who did not, despite public notice, raise any objection before the District Magistrate to the grant of the No-objection Certificate, the brewers were persistently raising objections in proceedings before the Justices at every stage. The law gave them a right to object and to see that the licensing was done in accordance with law. They were seriously prejudiced in the exercise of that right by the act of usurpation of the jurisdiction on the part of the Justices.

19. The rule in *Groom's* case was followed in *The King v. Richmond Confirming Authority, Ex parte Howitt* [(1971) 1 KB 248]. There, also, the applicant for a certiorari was a rival in the liquor trade. It is significant that in coming to the conclusion that the applicant was a "person aggrieved", Earl of Reading C.J. laid stress on the fact that he had appeared and objected before the Justices and joined issue with them, though unsuccessfully, "in the sense that they said they had jurisdiction when he said they had not".

20. In *R. Toames Magistrate Court Ex parte Greenbaum* [(1957) 55 LGR 129, 135 & 136 extracted in *Yardley's* book of English Administrative Law. 2nd Edn. at p. 228.] there were two traders in Goulston St., Stepney. One of them was Gritzman who held a license to trade on pitch No.4 for 5 days in the week and pitch No.8 for the other two days. The other was Greenbaum, who held a licence to sell on Pitch No.8 for two days of the week, and pitch No. 10 for the other days of the week. A much better pitch, pitch No.2, in Gulston St. became vacant. Thereupon, both Gritzman and Greenbaum applied for the grant of a licence, each wanted to give up his own existing licence and get a new licence for pitch No.2. The Borough Council considered and decided in favour of Greenbaum and refused Gritzman who was left with his pitches 4 and 8.

21. Gritzman appealed to the magistrate. He could not appeal against the grant of a licence to Greenbaum, but only against the refusal to grant a licence to himself. Before the magistrate, the Borough Council opposed him. The magistrate held that the Council were wrong to refuse the licence of pitch No. 2 to Gritzman. The Council thereupon made out a licence for Gritzman for pitch No. 2 and wrote to Greenbaum saying that his licence had been wrongly issued. Greenbaum made an application for certiorari to court . The court held that the magistrate had no jurisdiction to hear the appeal. An objection was taken that Greenbaum had no locus standi. Rejecting the contention, Lord Denning observed:

"I should have thought that in this case Greenbaum was certainly a person aggrieved, and not a stranger. He was affected by the magistrate's orders because the magistrate ordered another person to be put on his pitch. It is a proper case for the intervention of the court by means of certiorari."

22. It is to be noted that the Council had duly allotted pitch No. 2 to J"" Greenbaum in the exercise of their administrative power. The Magistrate's order pursuant to which the Council cancelled the allotment. and re-allotted that pitch to Gritzman, was without jurisdiction by this illegal cancellation and reallocation Greenbaum's interest to trade on pitch No. 2, which had been duly licensed out to him was directly and prejudicially affected by the impugned action.

23. *R. v. Manchester Legal Aid Committee* [1952] 2 W.B.D. 413], is another case belonging to this group. It was held that the applicants therein were "persons aggrieved" because they were grieved by the failure of the Legal Aid Committee to give them prior notice and hearing to which they were entitled under Regulation 15(2). Thus it could be said that they had suffered a legal wrong.

24. In *Regina v. Liverpool Corporation, Ex parte Liverpool Taxi Fleet operators' Association* [[1972] 2 Q.B.299.], the City Council in exercise of its powers under the Town Police Clauses Act, 1847, limited the number of licences to be issued for hackney carriages to 300. The Council gave an undertaking to the associations representing the 300 existing licence holders not to increase the number of such licence holders above 300 for a certain period. The Council, disregarding this undertaking, resolved to increase the number. An Association representing the existing licence-holders moved the Queens' Bench for leave to apply for orders of Prohibition, Mandamus and Certiorari. The Division Bench refused. In the Court of Appeal, allowing the Association's appeal, Lord Denning M. R. Observed at pp. 308, 309:

"The taxicab owners" association come to this Court for relief and I think we should give it to them. The writs of prohibition and certiorari lie on behalf of any person who is a "person aggrieved" and that includes any person whose interests may be pre judicially affected by what is taking place. It does not include a mere busybody who is interfering in things which do not concern him; but it includes any person who has a genuine grievance because something has been done or may be done which affects him: See *Attorney-General of Gambia v. N' Jie* [1961] A.C. 617 and *Maurice v. London County Council* [1964] 2 Q.B. 362, 378. The taxicab owners" association here have certainly a locus standi to apply for relief."

25. It may be noted that in this case, the whole question turned on the effect in law of the undertaking, and whether the applicants had been treated fairly.

26. Emphasising the "very special circumstances" of the case, the court read into the statute, a duty to act fairly in accordance with the principles of natural justice. Thus, a corresponding right to be treated fairly was also imported, by implication, in favour of the" applicants. Viewed from this standpoint, the applicants had an interest recognised in law, which was adversely affected by the impugned action. They had suffered a wrong as a result of the unfair treatment on the part of the corporation.

27. In *Regina v. Paddington Valuation Officer, Ex Parte Peachy Property Corporation Ltd.*, [1966]1 Q.B. 880, ratepayers were held to have the locus

standi to apply for certiorari, notwithstanding the fact that it could not be said that the actual burdens to be borne by the applicants fell more heavily on them than on other members of the local community.

28. In *Bar Council of Maharashtra v. M.V. Dabholkar* [(1975) 2 SCC 702], Bench of seven learned Judges of this Court considered the question whether the Bar Council of a State was a "person aggrieved" to maintain an appeal under section 38 of the Advocates' Act, 1961. Answering the question in the affirmative, this Court, speaking through Ray C.J., indicated how the expression "person aggrieved" is to be interpreted in the context of a statute, thus:

"The meaning of the words "a person aggrieved" may vary according to the context of the statute. One of the meanings is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him. The meaning of the words "a person aggrieved" is sometimes given a restricted meaning in certain statutes which provide remedies for the protection of private legal rights. The restricted meaning requires denial or deprivation of legal rights. A more liberal approach is required in the back ground of statutes which do not deal with property rights but deal with professional conduct and morality. The role of the Bar Council under the Advocates' Act is comparable to the role of a guardian in professional ethics. The words "person aggrieved" in Sections 37 and 38 of the Act are of wide import and should not be subjected to a restricted interpretation of possession or denial of legal rights or burdens or financial interests.

29. In *Rex v. Butt and anr. Ex Parte Brooke* [Vol. XXXVIII(1921-22) Times Law Reports 537], a person who was merely a resident of the town, was held entitled to apply for certiorari. Similar is the decision in *Regina v. Brighton Borough Justices Ex Parte Jarvis* (1954)1, Weekly Law Reports 203.

30. Typical of the cases in which a strict construction was put on the expression "person aggrieved", is *Buxton and ors. v. Minister of Housing and Local Government* [1961] 1 Q.B.D. 278]. There, an appeal by a Company against the refusal of the Local Planning Authority of permission to develop land owned by the Company by digging chalk, was allowed by the Minister. Owners of adjacent property applied to the High Court under section 31(1) of the Town and Country Planning Act, 1959 to quash the decision of the Minister on the ground that the proposed operations by the company would injure their land, and that they were "persons aggrieved" by the action of the Minister. It was held that the expression "person aggrieved" in a statute meant a person who had suffered a legal grievance; anyone given the right under section 37 of the Act of 1959 to have his representation considered by the Minister was a person aggrieved, thus, Section 31 applied, if those rights were infringed; but the applicants had no right under the statute, and no legal rights had been infringed and therefore they were not entitled to challenge the Minister's decision. Salmon J. quoted with approval

these observations of James T.J. in *In Re Sidebotham* [1880] 14 Ch.D.458, at p.465.

"The words "person aggrieved" do not really means a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrong fully refused him something, or wrongfully affected his title to something."

31. *Ex Parte Stott* [1916] 1 K B.7, is another illustration of a person who had no legal grievance, nor had he sufficient interest in the matter. A licensing authority under the Cinematography Act, 1901, granted to a theatre proprietor a licence for the exhibition of cinematograph films at his theatre. The licence was subject to the condition that the licensee should not exhibit any film if, he had notice that the licensing authority objected to it. A firm who had acquired the sole right of 1 exhibition of a certain film in the district in which the theatre was situated entered into an agreement with the licensee for the exhibition of the film at his theatre. The licensing authority having given notice to the licensee that it objected to the exhibition of the film, the film applied for a writ of certiorari to bring up the notice to be quashed on the ground that the condition attached to the licence was unreasonable and void, and that they were aggrieved by the notice as "being destructive of their property. It was held that whether the condition was unreasonable or not, the applicants were not persons who were aggrieved by the notice and had no locus standi to maintain the application.

32. Similarly, *King v. Middlesex Justices* (1832) 37 R. R. 594-(1832) 3 & Ad. 938, it was held that the words "person who shall think himself aggrieved" appearing in the statute governing the grant of licences to innkeepers mean a person immediately aggrieved as by refusal of a licence to himself, and not one who is consequently aggrieved, and that though the Justices had granted a licence to a party to open a public house, not before licensed, within a very short distance of a licensed public house, the occupier of the latter house could not appeal against such grant.

33. Other instances of a restricted interpretation of the expression "person aggrieved" are furnished by *R. v. Bradford on-Avon Urban District Council Ex Parte Boulton* (1964) 2 All. E. R. 492; *Gregory v. Camden London Borough Council* [(1966) 1 WLR 899]; *R. v. London O.S. Ex parte West-Minister Corporation* [(1951) 2 KB 508]; *Regina v. Cardiff Justices Ex parte Cardiff Corporation* [(1962) 2 QB 436]."

116. On the contention that RICA Employees Union has been registered under the Trade Union Act, 1926 and therefore, the petitioner or the Union has every locus to prefer this writ petition, it could be seen that it is the specific case of the respondents that APCA, being an institution for the officers of Prison Department, no trade union is recognised by the society. When the Board of Management of

APCA, has adopted to frame rules in accordance with the conduct rules of the Prison Department of Tamil Nadu, and taken a decision not to recognise any union, the petitioner cannot compel APCA, a society to recognise the Union contrary to the rules. It is also to be noted that when a reply to that effect was given to the petitioner, the same has been challenged, but subsequently abandoned. It is also to be noted that APCA is a correctional and training institute for the officers in the ranks of Assistant Jailors and Superintendent of Prisons and equivalent ranks and above, Supervisory officers of allied department of the States of Andhra Pradesh, Karnataka, Kerala and Tamil Nadu and also from non-participating States and other countries at the charges determined by the Board of Management from time to time and therefore, as rightly contended, discipline has to be maintained, though APCA is a Registered Society under Tamil Nadu Societies Registration Act, 1975. In the light of the above discussion and decisions, petitioner has no locus to question the competence of APCA to fix the age of retirement.

117. In the light of the discussion and decisions, there is no merit in this writ petition, warranting a writ of Declaration and hence, writ petition is dismissed. No costs. Consequently, the connected writ miscellaneous petition is also closed.