

(2002) 04 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 14903 and 24420 of 1997, 20707 and 24842 of 2000 and 14689, 22926 and 25322 of 2001

S. Ramkumar Naik and Others

APPELLANT

Vs

The Principal Secretary to Government, Environment,
Forests, Science and Technology Department, Hyderabad and
Others

RESPONDENT

Date of Decision : 05-04-2002

Acts Referred:

Andhra Pradesh Forest Service Rules, 1965 — Rule 2, 3, 4, 4(2), 6
Constitution of India, 1950 — Article 14, 16, 16(1), 309, 311
Mysore Service Regulations — Rule 294
State and Subordinate Services Rules — Rule 12

Citation : (2002) 2 ALT 675

Hon'ble Judges : V. Eswaraiah, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : P.V. Ramana, M.S. Ramachandra Rao, J.R. Manohar Rao and P.V. Subrahmanya Sarma, for the Appellant; P. Naveen Rao, for the Respondent

Final Decision : Dismissed

Judgement

B.Sudershan Reddy, J.—This batch of seven writ petitions may be disposed of by a common order since the subject matter and the issues that arise for consideration and to be resolved are one and the same.

W.P.Nos.14903, 24420 of 1997; 20707 and 24842 of 2000 are directed against the common order dated 28-4-1997 passed by the Andhra Pradesh Administrative Tribunal at Hyderabad dismissing the O.A.Nos.3079, 5790, 1717 and 3104 of 1995 respectively filed by the petitioners. W.P.No.14689 of 2001 is directed against the order passed by the Tribunal dismissing O.A.No.2506 of 2001, dated 18-6-2001 following its own order dated 28-4-1997 passed in O.A.No.3079 of 1995 and Batch. Likewise, W.P.No.22926 of 2001 is directed against the order passed by the Tribunal in O.A.No.7982 of 2001, dated 2-11-2001 and W.P.No.25322 of 2001 is directed against the order dated

17-9-2001 in O.A.No.6362 of 2001.

2. In all these writ petitions, the constitutional validity of the amendment issued in G.O.Ms.No.35, Environment, Forests, Science & Technology (For.IV) Department, dated 29-5-1995 as further modified in G.O.Ms.No.51, Environment, Forests, Science & Technology (For.IV) Department, dated 3-7-1995 to Rule 2 of the Andhra Pradesh Forest Service Rules, 1965 is challenged. According to the petitioners, the said amendment is arbitrary, discriminatory, illegal and void ab initio being violative of Articles 14 and 16 of the Constitution of India.

3. The petitioners in W.P.Nos.14903, 24420 of 1997; 20707 and 24842 of 2000 were directly recruited as Forest Rangers in the A.P. Forest Subordinate Services after a due process of selection by the Andhra Pradesh Public Service Commission on regular basis. Later on, they were promoted as Assistant Conservators of Forests in the A.P. Forest Service. All the unofficial respondents - numbering 14 were also directly recruited as Forest Rangers. There is no dispute whatsoever that all of them were recruited as Forest Rangers into the A.P. Forest Subordinate Service much later to that of the petitioners herein. It is not necessary to notice the details of the inter se seniority amongst the petitioners either in the cadre of Forest Rangers or in the cadre of Assistant Conservators of Forests. The fact remains that in the state-wide seniority list of Forest Range Officers as on 15-12-1988 the unofficial respondents were shown at much lower places than that of the petitioners.

4. The next higher post from that of the Forest Ranger is the post of Assistant Conservator of Forests (hereinafter referred to as "ACF"), which is a state-wide post governed by the Andhra Pradesh Forest Service Rules, 1965 (for short "the Forest Service Rules").

5. The subject matter that arises for consideration in this batch of writ petitions relates to the issue of recruitment to the post of ACF from the post of Forest Ranger.

Rule 2 of the Forest Service Rules as it originally stood before the impugned amendments is as follows:

Rule 2 - Appointment:-

Appointment to several categories should be made as follows:

CATEGORY

METHOD OF APPOINTMENT

Category 4 : Asst. Conservators Director recruitment or recruitment by transfer from Rangers of the A.P. Subordinate Service.

6. Proviso to Rule 2 of the Forest Service Rules envisages that subject to availability of qualified and suitable candidates, the proportion of persons

appointed by direct recruitment to those recruited by transfer to the post of ACF shall be 5:5 provided that the subsisting vacancies in the category of ACF shall be filled in the order of seniority of approved probationers. Sub-rule (2) of Rule 4 of the Forest Service Rules declares that no person shall be eligible for appointment by transfer as Assistant Conservator, unless he is an approved probationer in the category of rangers and has put in a minimum period of eight years service in that category and has passed the departmental test in law, office procedure and accounts; accounts test for executive officers and departmental tests in land revenue, provided that in the case of Rangers directly recruited, the training period spent by them in any of the colleges run by the Government of India shall be counted for calculating the eight years of service.

7. The petitioners in W.P.Nos.14903, 24420 of 1997; 20707 and 24842 of 2000 were approved probationers in the category of Forest Range Officers having eight years of minimum service and also have passed all the departmental tests. All of them were entitled for consideration of their cases for appointment as ACFs by transfer from Rangers in accordance with the then existing rules.

8. It appears that the Government of India as a matter of policy conveyed its approval for deputation of rangers who passed the Ranger's Course with honours for admission to the second year of the State Forest Service Course (Diploma Course) in Forestry being conducted at various State Forest Service Colleges and accordingly requested the State Governments to consider to depute such of the deserving eligible candidates to the said colleges. The said decision is communicated to all the State Governments by the Director of Forest Education, Forest Research Institute & Colleges, Dehradun in his reference dated 28th July, 1983 and accordingly requested the State Governments to give wide publicity and consider and recommend the cases of deserving trained Forest Rangers for admission in the State Forest Service Course.

9. The Government of Andhra Pradesh having considered the matter in consultation with the Principal Chief Conservator of Forests decided that the Range Officers who secured first and second ranks in their batches with honours be deputed to join the second year course of State Forest Service Colleges treating them as direct recruits pending issue of amendments to the A.P. Forest Service Rules on par with those who are deputed to State Forest Service College on their appointment as Assistant Conservator of Forests and accordingly issued orders in G.O.Ms.No.167, dated 8-4-1986. The government agreed to the proposals of the Principal Chief Conservator of Forests for deputing two unofficial respondents, viz., B.Narayana Reddy and T.P. Thimma Reddy to join the second year course of State Forest Service College as they have secured second and first ranks in their batches during 1971-73 and 1977-79 respectively. They were accordingly deputed to undergo Diploma Course in Forestry at State Forest Service College, Burnihat where the training commenced from 1-11-1986. There is no dispute whatsoever that both of them have secured second and first ranks respectively in their batches during 1971-73 and 1977-79.

10. Thereafter, the unofficial respondents - Mohd. Jalaluddin Akbar and G.Narsaiah, Forest Range Officers who secured honours with first and second ranks in the Rangers Training Course in 1986 batch of Southern Forest Rangers College, Coimbatore have submitted representations for their deputation to undergo Diploma Course in Forestry at State Forest Service College on the ground that they have also secured first and second ranks in 1986 Batch with honours. The Government having considered the proposals issued G.O.Rt.No.844, dated 26-12-1988 deciding to depute them to join second year course in State Forest Service College by treating them as direct recruits on par with those who are deputed to State Forest Service College on their appointment as Assistant Conservator of Forests.

11. In the meanwhile, the unofficial respondents - T.Sudhakar and D.Nagabhushanam, Forest Range Officers who secured 4th and 7th ranks respectively at State Forest Service Colleges (1980-81 batch) have filed R.P.No.19 of 1986 in the Andhra Pradesh Administrative Tribunal, Hyderabad seeking appropriate directions as against the State Government to consider their cases also to depute them to the second year Forest Service (Diploma Course) in Forestry to one of the State Forest Service Colleges and appoint them as Assistant Conservators of Forests. The Tribunal while disposing of the said R.P. by its order dated 24-6-1986 observed that the petitioners therein have not been accommodated since they did not secure first and second places in Honours. But, however, clarified that the "Government of India's" letter does not restrict only two persons for the State Forest Service Colleges. It could be that for reasons of administrative exigencies all the four candidates who had secured Honours during last ten years could not be sent at the same time. But the remaining two persons could also be sent for such training in any subsequent course that may be available." The Government did not implement the same, but challenged the said order unsuccessfully in various forums and the details thereof need not be noticed at this stage. The Government finally issued G.O.Ms.No.124, dated 20-2-1989 deputing the said two unofficial respondents to undergo Diploma Course in State Forest Service College, Coimbatore during 1988-90 course.

12. Thereafter, another batch of seven unofficial respondents who were working as Forest Range Officers have represented that they have also secured Honours in Ranger's Course in different ranks on par with others who were sent to undergo Diploma Course and accordingly requested to consider their cases to depute them as was done in the cases of T.Sudhakar and D.Nagabhushanam. The Government after examination of the matter and keeping in view the vacancies available have issued orders in G.O.Rt.No.574, dated 7-7-1989 deciding to depute the first three Forest Range Officers amongst the applicants to join the second year Diploma Course in Forestry by treating them as directly recruited Assistant Conservators of Forests in relaxation of the orders issued in G.O.Ms.No.167, dated 8-4-1986.

13. The remaining four of the applicants filed R.P.Nos.9937 and 9595 of 1989 in

the Andhra Pradesh Administrative Tribunal. The Tribunal disposed of the said R.Ps., directing the State government to consider the cases of the petitioners therein for their deputation to the College before any person who has passed in the subsequent year is deputed. Similar orders were passed in various other R.Ps., and the details thereof need not be noticed.

14. The Government having considered and examined the whole issue, issued similar orders resulting in deputation of all the unofficial respondents who secured Honours at Forest Rangers College in different batches to undergo Diploma Course in Forestry by treating all of them as directly recruited Assistant Conservators of Forests. All of them are deemed to have commenced their probation in the category of Assistant Conservator of Forests with effect from their respective dates of joining at the State Forest Service Colleges and accordingly their seniority was fixed in the Assistant Conservators of Forests.

15. In the meanwhile, some of the petitioners approached the Andhra Pradesh Administrative Tribunal challenging the various orders of the Government deputing the unofficial respondents for training treating them as directly recruited Assistant Conservators of Forests even though they are only the directly recruited Forest Range Officers, in O.A.No.3258 of 1994. It was contended that such deputation was illegal. It was the case of the petitioners therein that just because the unofficial respondents have passed the Forest Ranger's Course with Honours is no ground for treating them as directly recruited Assistant Conservators of Forests. The governmental action, according to the petitioners therein, was contrary to the statutory rules framed under the proviso to Article 309 of the Constitution of India, i.e. the A.P. Forest Service Rules, 1965. The Tribunal allowed the said Original Application filed by the petitioners by its judgment dated 13th November, 1994 in the following manner:

"Thus, if a directly recruited Ranger has to become Assistant Conservator of Forests, he should have been an approved probationer and also put in a minimum period of 8 years. In the instant case the applicants are candidates by direct recruitment and as such they will be governed by this rule. Any special dispensation conferring on them the status of "deemed promotion" to the rank of Assistant Conservator of Forests will be clearly violative of Rule 4 of the A.P. Forest Service Rules."

16. The Tribunal accordingly quashed the very G.O.Ms.No.167, dated 8-4-1986, which constituted the basis for deputing all the unofficial respondents to the training for the post of Assistant Conservator of Forests.

17. Thereafter, the petitioners filed various Original Applications challenging the continuation of the unofficial respondents as Assistant Conservators of Forests and for other consequential reliefs. The validity of the appointment of the unofficial respondents by the State Government by way of executive orders has been challenged. Their appointment as Assistant Conservators of Forests, according to the petitioners, is contrary to the statutory rules, i.e. A.P. Forest

Service Rules, 1965 framed under proviso to Article 309 of the Constitution of India. During the pendency of the Original Applications filed by the petitioners, the rule making authority made the amendments to Rule 2 of the Forest Service Rules vide G.O.Ms.No.35, dated 29-5-1995 providing that the Forest Range Officers who secured first or second ranks in their batches with honours in the Rangers' Training course shall be eligible for appointment as Assistant Conservators of Forests. The amendment reads as follows:

"Provided that Forest Range Officers who secured first or second ranks in their batches with Honours in the Ranger's training course shall be eligible for appointment as Assistant Conservators. They shall be deputed to join the two years course of State Forest Service Colleges run by the Government of India, treating them as direct recruits to the post of Assistant Conservators. The terms and conditions of training prescribed under clauses (a) and (b) of Rule 6 of the said rules for a probationary Assistant Conservator of Forests appointed by direct recruitment, shall apply to the persons mentioned above. Such appointment to the post of Assistant Conservator of Forests shall be counted against direct recruitment quota."

18. The rule making authority vide G.O.Ms.No.51, dated 3-7-1995 made further amendment to Rule 2 of the Forest Service Rules, which is to the following effect:

"In rule 2, under the heading "Method of Appointment" against the entry "Category 4: Assistant conservators" in the proviso for the words "provided that Forest Range Officers who secured first and second ranks in their batches with Honours in the Ranger's training course shall be eligible for appointment as Assistant Conservators" the words "provided that Forest Range Officers who secured Honours in their batches in the Ranger's training Course shall be eligible for appointment as Assistant Conservators" shall be substituted."

The said amendment is given retrospective effect as the same shall be deemed to have come into force with effect from 8-4-1986. It is further provided that the amendment shall cease to be in force on and from the date of issue of the notification, i.e. up to 3-7-1995.

19. The petitioners filed necessary applications seeking amendment of prayers and seeking permission to challenge the said amendments made to Rule 2 of the Forest Service Rules. The Tribunal after an elaborate consideration of the matter dismissed the Original Applications filed by the petitioners. Hence, these writ petitions.

20. The main grievance of the petitioners is that in the final seniority list prepared in the category of ACFs on 1-1-1995 they were shown as temporary candidates against the posts of ACFs, whereas the unofficial respondents were shown as probationers and permanent members in the category of ACFs, though they are nearly 20 years juniors to the petitioners in the category of Forest Range Officers. It is under those circumstances, the petitioners challenge the very appointment of the unofficial respondents as ACFs. The appointment of the

unofficial respondents as ACFs, according to the learned counsel for the petitioners, is contrary to the statutory rules made under proviso to Article 309 of the Constitution of India. They were appointed on the basis of the executive instructions issued by the government from time to time and the said instructions run counter to the statutory rules.

21. It is further contended that the proviso to rule 2 of the Forest Service Rules issued in G.O.Ms.No.35, dated 29-5-1995, as amended in G.O.Ms.No.51, dated 3-7-1995, is liable to be struck down as the same is arbitrary, discriminatory, illegal and void ab initio being violative of Articles 14 and 16 of the Constitution of India. The retrospectivity given to the amendment to Rule 2 of the Forest Service Rules suffers from incurable legal infirmities, according to the learned counsel for the petitioners. Such retrospectivity is given to the amended rules only in order to protect the illegal appointment of the unofficial respondents as Assistant Conservators. Such a course is not permissible in law.

22. It is further contended that securing higher rank in the training does not mean recruitment to higher cadre as such, which has a separate process. Securing higher ranks in training course after selection as Rangers would not make one eligible to be appointed to a higher cadre in different service. All the Rangers form a homogenous class. No further distinction can be made on the basis of ranking secured in training course. Securing ranks with Honours cannot be the rational basis for creating two categories amongst the homogenous class of Rangers for the purpose of conferring a right to be appointed as Assistant Conservator.

23. It is contended that the impugned rule destroys the vested rights of the petitioners, inasmuch as the juniors, i.e., Rangers of later years who secured 1st or 2nd rank with Honours, who are ranked below their seniors of earlier batches get appointed to higher category bypassing the seniors.

24. It is further contended that if at all such a procedure was to be there all the trainees must have been informed in the beginning of the training itself about the consequence of acquiring ranks with Honours, viz., that one would be deemed to be an Assistant Conservator of Forests and sent for training. Then all the trainees would have the opportunity of making efforts to secure those ranks. It is submitted that long after the training and after years of appointment as Rangers and fixation and publication of seniority list it would be illegal and arbitrary to announce that those who got ranks with Honours in the past would be deemed to be Assistant Conservator of Forests.

25. The learned Government Pleader and as well as the learned counsel appearing for the unofficial respondents contend that the impugned amendments do not suffer from any legal or constitutional infirmity. It is submitted that even before the amendment, the recruitment rules do not deal with as to how the direct recruitment can be made. The recruitment and appointment of the unofficial respondents as ACFs by way of sending them to the training on the

strength of the ranks secured with Honours is nothing but an aspect of the direct recruitment. Such a recruitment and appointment has been done to select the best available persons to man the posts of Assistant Conservator of Forests. The decision of the Government is in the best interest of the administration and for the better management of the forest resources. It is submitted that the said decision of the Government is having a historical background and is based on a policy decision taken at All India Level and the same was followed uniformly in all States. In nutshell, it is submitted that the method of filling up of the quota meant for the direct recruitment by appointing the Forest Range Officers (Trainees) who have secured ranks with Honours is based on the policy decision.

26. It is also submitted that the petitioners herein have no locus and vested right to claim appointment against the direct recruitment quota and, therefore, they cannot question the legality and validity of the amendments contained in G.O.Ms.No.35, dated 29-5-1995 and G.O.Ms.No. 51, dated 3-7-1995.

27. It is also contended that the petitioners' case deserves dismissal on the ground of laches. Before we proceed further to consider as to whether the impugned amendments made to the Forest Service Rules suffer from any legal or constitutional infirmity, it may be necessary to notice some factual aspects which may have a bearing upon the question relating to the validity of the rules.

28. The following particulars of the petitioners and the unofficial respondents may have to be noticed:

Particulars of Petitioners:

Name of the Petitioner	W.P.No.	Year of first appointment as FRO/ACF	Date of Promotion as ACF	Status as ACF
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1.S.Ramkumar Naik				
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2.G.Santosh Kumar				
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3..Narasimha Reddy				
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4. S.Ashaiah				
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14903/1997;				
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24420/1997				
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14903/1997;				
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24420/1997				
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20707/2000;				
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24842/2000				
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20707/2000				
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1968 (FRO)				
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1974 (FRO)

1976 (FRO)

1976 (FRO)

22-07-1992

09-09-1991

29-04-1997

31-07-2000

Working as Asst. Conservators of Forests on temporary basis and yet to be appointed in ACF cadre on regular basis against substantial vacancies.

5. T.Narasimhulu

6. P.Ram Mohan Rao

7.C.P.Vinod Kumar

14689/2001

14689/2001

14689/2001

1990 (ACF)

1990 (ACF)

1990 (ACF)

Does not arise

Does not arise

Does not arise

Direct recruit ACFs and are shown in the seniority list of ACFs (issued during 1998) at Sl.Nos.62, 61 & 57 respectively below all the respondents except in case of B.Gandhi Reddy, one of the respondents, who is shown below Sri C.P. Vinod Kumar (3rd petitioner in W.P.No.14689/2001) due to ranking assigned by SFS College.

8. I.K.Viswanadha RaJ.

9. K.Bal Reddy

22926/2001

25322/2001

1993 (ACF)

1979 (FRO)

Does not arise

rect recruit ACF and is shown in the seniority list of ACFs (issued during 1998) as probationer.

ot yet promoted as ACF Particulars of the unofficial Respondents:

P.Nos.14903/1997, 24420/1997, 20707/2000, 14689/2001, 22926/2001 & 25322/2001)

Name of the Respondent Year of appointment as FRO Govt. orders for deputation of ACF training (G.O.Ms.No. & date) Date of first appointment as ACF Date of declaration of probation Date of appointment as full member (and date of arising of vacancy) Seniority No. in 1998 Seniority List.

1.T.PThimma Reddy

1977 167/8-4-1986 07-11-1986 09-03-1991 07-11-1985 (01-01-1985
36 2. M.J.Akbar 1986 844/26-12-1988 06-03-1989 28-02-1994
06-03-1989 (01-08-1985)

3. T.Sudhakar 1980 124/28-2-1989 27-03-1989 26-03-1993 27-03-1989
(01-09-1985 45 4. Dr.G.Narsa- iah 1986 844/26-12-1988 06-03-1989
06-09-1993 06-03-1989 (01-09-1985 46 5. D.Naga- bhushanam 1980
124/28-2-1989 27-03-1989 26-03-1993 27-03-1989 (01-01-1986 47 6.
K.Lohita- syudu 1986 574/7-7-1989 31-07-1990 30-07-1994 31-07-1990
(01-01-1986 51 7. B.Srinivas 1986 540/3-7-1990 01-08-1990 31-07-1994
01-08-1990 (01-01-1986 52 8. N.Chandra- mohan Reddy 1986 540/3-7-1990
02-08-1990 01-08-1994 02-08-1990 (01-01-1986 53 9. P.S.Srini- vasa Sastry
1986 540/3-7-1990 01-08-1990 31-07-1994 01-08-1990 (01-01-1986 54 10.
P.Subba Raghavaiah 1986 540/3-7-1990 02-08-1990 01-08-1994 02-08-1990
(01-04-1986 55 11. M.Subra- manyam 1986 574/7-7-1989 31-07-1990
30-07-1994 31-07-1990 (04-04-1986 56 12. B.Gandhi Reddy 1986
574/7-7-1989 01-08-1990 31-07-1994 01-08-1990 (01-08-1986 58 13.
S.Krishna- iah 1989 450/18-6-1991 02-07-1991 09-09-1995 02-07-1991
(28-05-1987 66 14. T.V.Subba Reddy 1989 450/18-6-1991 02-07-1991
01-07-1995 02-07-1991 (01-06-1987 67

29. It is evident that the petitioners in W.P.Nos.14903 of 1997; 24420 of 1997, 20707 of 2000 and 25322 of 2001 are directly recruited Rangers in the A.P. Forest Subordinate Service after due selection process by the Andhra Pradesh Public Service Commission on regular basis much prior to the unofficial respondents who were all directly recruited as Forest Rangers initially. The unofficial respondents were recruited much later to the petitioners. There is also no dispute whatsoever that in the State-wide seniority list of Forest Range Officers as on 15-12-1988 all the unofficial respondents were shown much below to that of the petitioners herein.

30. It is also required to notice that Rule 3 of the Forest Service Rules provides that the appointment to the posts of Assistant Conservators shall be made on grounds of merit and ability, seniority being considered only where merit and ability are approximately equal. Rule 4 of the Forest Service Rules prescribes the qualifications according to which no person shall be eligible for appointment by direct recruitment as Assistant Conservator, unless he possesses the following qualifications:

(a) Must not be less than nineteen years of age nor more than twenty-six years on the date of which the course of training starts. The upper age limit shall be relaxed in the case of Departmental candidates, i.e., trained Rangers in Government service by not more than five years..... Note: The age concessions in clauses (e), (f) and (h) to (j) of General Rule 12 of the State and Subordinate Services Rules are not admissible for appointment of Assistant Conservator of Forests by direct recruitment.

(b)

(c)

Rule 6 of the Forest Service Rules requires the probationary Assistant Conservator of Forests appointed by direct recruitment to undergo a special course of study for a period of two years at Forest College, Dehra Dun. Rule 8 of the Forest Service Rules provides that the seniority of directly recruited Assistant Conservators of Forests be determined with reference to the date of commencement of the course of study at the Forest College, to which they are deputed. The inter-seniority of the direct recruits Assistant Conservators trained in the same batch shall be determined with reference to the rank in the pass list issued by the College. We are not concerned with the rest of the details.

31. The main question that falls for consideration is as to whether the impugned amendments made to Rule 2 of the Forest Service Rules suffer from any legal and constitutional vice?

There is no dispute whatsoever that as on the date when the unofficial respondents were deputed to join the second year course of State Forest Service Colleges run by the Government of India treating them as direct recruits to the posts of Assistant Conservators there was no provision as such in the rules providing for such recruitment as Assistant Conservators by such method of identifying some of the Forest Range Officers who secured Honours in the Rangers training course. In the appointment orders of the unofficial respondents itself it is stated that they will be treated as directly recruited Assistant Conservators pending issue of amendments to the A.P. Forest Service Rules. The condition that they were to be treated on par with those who are deputed to State Forest Service College on their appointment as Assistant Conservators, as on the date of their appointment, was not stipulated by any authority of law. The government's decision vide G.O.Ms.No.167, dated 8-4-1986 for deputing such of those Range Officers who secure first and second ranks in their batches with Honours to join

the second year course of State Forest Service Colleges treating them as direct recruits itself was set aside by the Tribunal vide its judgment dated 13-11-1994 in O.A.No.3258 of 1994.

32. That order has become final. There is absolutely no difficulty whatsoever to hold that the appointment of the unofficial respondents treating them as direct recruits in the category of Assistant Conservators on the basis of the honours secured by them is contrary to the statutory rules framed under the proviso to Article 309 of the Constitution of India. Precisely for that reason, it appears that necessary amendments were made to the rules retrospectively with effect from 8-4-1986 (On 8-4-1986 G.O.Ms.No.167 was issued by the Government, which has been set aside by the Tribunal in O.A.No.3258 of 1994, dated 13-11-1994). In fact, in the preamble to the notification, it is stated that the Government have decided to issue necessary amendments with retrospective effect in the Andhra Pradesh Forest Service Rules to validate the orders issued by the government from 8-4-1986 deputing the Forest Range Officers who secured 1st and 2nd ranks with Honours at Forest Range Officers course for State Forest Service Course, treating them as directly recruited Assistant Conservator of Forests.

33. It is under those circumstances, the learned counsel contends that the appointments of the unofficial respondents, which were invalid when they were made, cannot be validated by bringing necessary amendments to the statutory rules with retrospective effect. Reliance is placed upon the judgment of the Supreme Court in *State of Mysore V. Padmanabhacharya*¹. In the said case, certain trained teachers who had completed the age of 55 years in 1958 were ordered to be retired from service on the ground of superannuation. The teachers filed writ petitions challenging the validity of the orders passed and the main contention was that rule 294 (a) of the Mysore Service Regulations which prescribed the age of retirement of Government servants was amended with respect to trained teachers from April, 1955 providing the normal age of superannuation in case of such teachers to be at 58 years instead of 55 and that the illegal order of retirement cannot be validated by the notification of the Governor of Mysore dated 25th March, 1959 purporting to be issued under Article 309. It would be appropriate to notice the notification dated 25th March, 1959 impugned in the said case:

"Notwithstanding anything contained in note 4 to Article 294 of the Mysore Service Regulations (8th Edn.), Government servants who have been retired from service on the attainment of the age of 55, during the period between 7 June 1957 and 28 October 1958 shall be deemed to have been validly retired from service on superannuation."

The Supreme Court having adverted to the said notification held:

"We are of opinion that such a rule cannot be made under the proviso to Art.309 of the Constitution. We are expressing no opinion as to the power of the legislature to make a retrospective provision under Art.309 of the Constitution where

in the appropriate legislature has been given the power to regulate the recruitment and conditions of service of persons appointed to public service and posts in connection with the affairs of the Union or of any State by passing Acts under Art.309 of the Constitution read with item 70 of List I of Sch.VII or item 41 of List II of Sch.VII. The present rule has been made by the Governor under the proviso to Art.309. That proviso lays down that it shall be competent for the Governor or such person as he may direct in the case of services and posts in connection with the affairs of the State to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act by the appropriate legislature. Under the proviso the Governor has the power to make rules regulating the recruitment and conditions of service of persons appointed to such services and posts in connection with the affairs of the State. The question is whether the notification of 25 March 1959 can be said to be such a rule. We are of opinion that this notification cannot be said to be a rule regulating the recruitment and conditions of service of persons appointed to the services and posts in connection with the affairs of the State. All that the rule does is to say in so many words that certain persons who had been, in view of our decision on the first point, invalidly retired should be deemed to have been validly retired from service on superannuation. It would, if given effect, contravene Art.311 of the Constitution. Such a rule, in our opinion, is not a rule contemplated under the proviso to Art.309. Under the proviso, the Governor can make rules regulating the recruitment and conditions of service of persons appointed to services and posts in connection with the affairs of the State. But all that this notification or rule does is to say that certain persons who had been wrongly retired must be treated to have been rightly retired. This power of validating an order which was invalid when it was made does not, in our opinion, flow from the power conferred on the Governor to make rules regulating recruitment and conditions of service of persons appointed to services and posts in connection with the affairs of the State. It is certainly not a rule regulating recruitment of such persons; nor can it be said to be a rule regulating conditions of services of such persons. The rules relating to recruitment and conditions of service contemplated by the proviso to Art.309 are general in operation, though they may be applied to a particular class of Government servants. But what this notification or rule does is to select certain Government servants who had been illegally required to retire and to say that even if the retirement had been illegal, that retirement should be deemed to have been properly and lawfully made. We are of opinion that such a declaration made by the Governor - and that is all that the notification or the rule does - cannot in any sense be regarded as a rule made under the proviso to Art.309 governing the conditions of service of persons appointed to services and posts in connection with the affairs of the State. In this view of the matter, it is not necessary to decide whether a rule of this kind which is purely retrospective could be made as a rule governing conditions of service of persons appointed in connection with the affairs of the State." (Emphasis is of ours).

34. It is thus clear that the Supreme Court in the said decision was not concerned with the question as to whether a rule of that particular kind could have been made with retrospective effect as a rule governing the conditions of service of persons appointed in connection with the affairs of the State. The Supreme Court noted that the notification issued by the Governor in purported exercise of the power under proviso to Article 309 was not an amendment to any statutory rule, but a mere declaration, which could not have been made by the Governor in purported exercise of the power under proviso to Article 309 of the Constitution of India.

35. But, in the instant case, the rule making authority, viz., Governor in exercise of the power conferred by proviso to Article 309 of the Constitution of India made amendments to Rule 2 of the Forest Service Rules with retrospective effect. The rules made under proviso to Article 309 of the Constitution of India are legislative in character. No doubt, the rules made by the Governor in exercise of the power under proviso to Article 309 of the Constitution of India are required to be in conformity with the other provisions of the Constitution of India and subject to Articles 14, 16, 311 and 312 of the Constitution of India. The power of the Governor "to legislate", in exercise of the power under proviso to Article 309 of the Constitution of India, is only subject to the other provisions of the Constitution of India, Acts of the appropriate legislature. Therefore, the test to determine the constitutionality of any provision of the Rules framed under Article 309 of the Constitution of India is, whether the legislature could have enacted such a provision.

36. The decisions of the Supreme Court in *Dr. M.A. Haque V. Union of India*² and *State of Orissa V. Sukanti Mohapatra*³ upon which reliance is placed by the learned counsel for the petitioners, Sri P.V. Ramana, would not be of any help to the petitioners. No doubt, in *Dr. M.A. Haque* (2 *supra*) the Supreme Court observed that "the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and the bypassing of the Public Service Commissions are permitted, it will open a back-door for illegal recruitment without limit." The Supreme Court observed that "some governments and authorities have been increasingly resorting to irregular recruitments, as a result of which, the recruitment rules and the Public Service Commissions have been kept in cold storage and candidates dictated by various considerations are being recruited as a matter of course." In *Sukanti Mohapatra* (3 *supra*), the Supreme Court cautioned that the rule conferring power to relax any of the requirements of the recruitment rules does not confer blanket power and cannot be understood to empower Government to throw the Rules. Such rules have a limited role to play and proper foundation must be laid in the exercise of the power under such rule, which enables the Government to grant relaxation from the purview of the rules.

37. In the instant case, we are concerned with the competency of the Governor to frame rules regulating the conditions of service of civil servants of the State

with retrospective effect.

38. In *State of Gujarat V. Raman Lal Keshav Lal Soni*⁴, Justice Chinnappa Reddy speaking for the Constitutional Bench while holding that the legislature is undoubtedly competent to legislate with retrospective effect observed that "we have to conform to the "dos" and "don'ts" of the Constitution; neither prospective nor retrospective laws can be made so as to contravene the fundamental rights." The Supreme Court in the said decision held that the Gujarat Panchayats (Third Amendment) Act, 1978 was arbitrary, unreasonable and unconstitutional on the following reasoning:

"The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history. It was pointed out by a Constitution Bench of this court in *B.S. Yadav and Others Vs. State of Haryana and Others*, Chandrachud, C.J. speaking for the Court held: (SCC head note) "Since the Governor exercises the legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case." Today's equal cannot be made unequal by saying that they were unequal 20 years ago and we will restore that position by making a law today and making it retrospective. Constitutional rights, constitutional obligations and constitutional consequences cannot be tampered with that way. A law which if made today would be plainly invalid as offending constitutional provisions in the context of the existing situation cannot become valid by being made retrospective. Past virtue (constitutional) cannot be made to wipe out present vice (constitutional) by making retrospective laws. We are, therefore, firmly of the view that the Gujarat Panchayats (Third Amendment) Act, 1978 is unconstitutional, as it offends Articles 311 and 14 and is arbitrary and unreasonable."

39. The Supreme Court in *Union of India V. Tushar Ranjan Mohanty*⁵ after adverting to its earlier decisions in *S.B. Patwardhan V. State of Maharashtra*⁶; *T.R. Kapur V. State of Haryana*⁷; *P.D. Aggarwal V. State of U.P.*⁸ and *B.S. Vadera V. Union of India*⁹ observed:

"The legislatures and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or unconstitutional

acts of the Executive. When a person is deprived of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation."

40. It is true that whenever any Act or amendment is brought in force retrospectively or any provision of the Act or Rule is deleted retrospectively, in this process rights of some are bound to be affected one way or the other. In every case, it cannot be urged that the exercise by the legislature while introducing a new provision or deleting an existing provision with retrospective effect per se shall be violative of Article 14. If that stand is accepted, then the necessary corollary shall be that legislature has no power to legislate retrospectively, because in that event a vested right is effected.

41. In *K. Narayanan V. State of Karnataka*¹⁰ the Supreme Court while considering the validity of Karnataka Public Works Engineering Department Service (Recruitment) (Amendment) Rules, 1985 observed:

"Rules operate prospectively. Retrospectivity is an exception. Even where the statute permits framing of rule with retrospective effect the exercise of power must not operate discriminately or in violation of any constitutional right so as to affect vested right. The rule-making authority should not be permitted normally to act in the past. The impugned rule made in 1985 permitting appointment by transfer and making it operative from 1976 subject to availability of vacancy in effect results in appointing a Junior Engineer in 1986 with effect from 1976. Retrospectivity of the rules is a camouflage for appointment of Junior Engineers from a back date. In our opinion the rule operates viciously against all those Assistant Engineers who were appointed between 1976 to 1985. In *Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others*, and *P.D. Aggarwal and Others Vs. State of U.P. and Others*, it was held by this Court that the President or Governor cannot make such retrospective rules under Article 309 of the Constitution as contravene Articles 14, 16 or 311 and affect vested right of an employee.

Even in *B.S. Yadav V. State of Haryana* (1980 Supp SCC 524) where the power to frame rules retrospectively was upheld it was observed: (SCC P.557, p 76)

"Since the Governor exercises a legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case."

As seen earlier there is no nexus between framing a rule permitting appointment by transfer and making it retrospective with effect from 1976. Appointing a person to a higher post in a different cadre in which he has never worked is violative of constitutional guarantee of those who are working in the cadre. It is

against basic principle of recruitment to any service. Even in Mohammad Shujat Ali and Others Vs. Union of India (UOI) and Others, where the Constitution Bench while reiterating that distinction in qualification was valid criterion for determining eligibility for promotion except where both held the same post and perform same duty did not strike down the rules as the differentiation in same class of persons was not brought about for the first time but existed from before and the two were treated as distinct and separate class. The retrospective operation of the impugned rule attempts to disturb a system which has been existing for more than twenty years. And that too without any rationale. Absence of nexus apart no rule can be made retrospectively to operate unjustly and unfairly against other (sic). In our opinion the retrospective operation of the rule with effect from January 1, 1976 is discriminatory and violative of Articles 14 and 16."

An analysis of the judgments referred to hereinabove would make it clear that the Governor has got the power under proviso to Article 309 of the Constitution of India to make rules and amend the rules giving retrospective effect. However, such retrospective amendments cannot take away the vested rights. The amendments must be reasonable, not arbitrary or discriminatory violating Articles 14 and 16 of the Constitution of India. The well-recognised principle is that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect. Such rules, laying down qualifications for selection, made with retrospective effect must necessarily satisfy the test of Articles 14 and 16(1) of the Constitution of India.

But the question that falls for consideration in the instant writ petitions is as to whether any of the "accrued" or "vested" rights of the petitioners are violated?

42. The Supreme Court in *Chairman, Railway Board V. C.R. Rangadhamaiah*¹¹ while explaining as to the meaning of expressions "vested rights" or "accrued rights" observed:

"In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution."

43. It cannot be said that no right of the petitioners as such is affected by the impugned amendments to the Rule 2 of the Forest Service Rules. The seniority of the petitioners and their right for consideration to the next higher post is

adversely effected. The learned counsel for the respondents and as well as the learned Government Pleader made an attempt to justify the amendments on the ground that they sub-serve the public interest. It is submitted that such amendments were made to the rule by the State in order to be in conformity with the prevailing situation through out the country recognising the distinction secured by the unofficial respondents, and the Government in order to select the best available persons to man the posts of ACFs amended the Rules. The decision of the Government is in the best interest of the administration and for the better management of the forest resources.

44. It is contended that similar appointments made in the State of Karnataka are upheld by the Supreme Court in *S.Ramesha V. State of Karnataka*¹². The said judgment of the Supreme Court, in no manner, supports the case of the respondents. It was not a case where any retrospective amendment as such was made to any of the rules. The Supreme Court interpreted the proviso to Note relating to the provision of recruitment of Assistant Conservators of Forests in the Schedule to Rule 2 of the Rules.

The Supreme Court observed:

"The Note, therefore, undoubtedly enables the Range Forest Officers in the lower cadre, who are not qualified to be promoted as Assistant Conservators of Forests for want of the required minimum eight years of service, to become Assistant Conservators of Forests, if they are selected by the Public Service Commission or being sent for Diploma in Forestry in a Forest Research Institute or College either established or recognised by the Government of India, and they secure the required Diploma in Forestry from such College or Institution. Such selection, if has to be made by the Public Service Commission, it has to be in accordance with the Rules laid down for admission to Diploma courses as provided for in the Note, cannot also be doubted. Hence, the Note could be regarded, as a general provision which enables the Range Forest Officers in the lower cadre, who are already in the service of the State to get selected through Public Service Commission along with outsiders for being directly recruited to the higher cadre of Assistant Conservators of Forests. However, if the proviso to that Note is seen, it becomes clear therefrom that a Range Forest Officer, who had stood first in the Forest Rangers College, is not required to go through the process of selection by the Public Service Commission and is entitled to be deputed for Diploma Course in Forestry on the basis of his having stood first in the Forest Rangers College. Indeed, the proviso to the Note requires the Government, without selection by the Public Service Commission, to send a Forest Ranger Officer, who has stood first in the Rangers Forest Training Course in the concerned Forest Rangers College, for Diploma Course in Forestry in any college or institution, as and when a seat becomes available if he is otherwise eligible under the rules of the concerned College or Institute for admission to such Diploma Course. When the proviso is seen, the object which is sought to be achieved by it becomes apparent, i.e., to make Range Forest Officers, who are sent from Karnataka to

undergo Rangers Forest Training Course to compete with other candidates of their batch who will have come from all over India, by fully involving themselves in such training course and achieving top position among them when all of them complete such training course. Therefore, if the proviso provides for sending for Diploma Course in Forestry a Ranger Forest Officer, who stood first in his College, without selection by the Public Service Commission, it cannot be challenged on the ground of arbitrariness. If by the proviso a Range Forest Officer, who has stood first in the Rangers Forest Training Course in a college is preferred to others who have not taken such first place, the matter of sending him for Diploma in Forestry cannot offend Article 14 of the Constitution as had been thought by the Tribunal while deciding *Rajashekharan* case (1990 KSLJ 161), since it is based on reasonable classification which has nexus to the object sought to be achieved by making candidates of the State, sent to a College for Rangers Forest Training Course, evince keen interest in getting the first place in such training, so that the training got by them could improve their efficiency in performance of their duties when they return for work."

45. The Supreme Court in the said decision was not concerned with any retrospective amendment as such made to any of the rules.

But the question that falls for consideration is as to whether the petitioners are entitled for any relief as such in this batch of writ petitions?

46. However, it is required to notice that as of today, the Government itself had given up the policy of deputing such of those Forest Range Officers who secured honours in the Rangers Course to the second year course of State Forest Service College by treating them as directly recruited ACFs. There are no such rules as on today. The rules ceased to have their operation with effect from the date when they were published. In the circumstances, it is not necessary to go into the constitutional validity of the amended rules, since, as of now the question has become an academic one.

47. The State government as early as on 8-4-1986 vide G.O.Ms.No.167 agreed with the proposal of the Principal Chief Conservator of Forests and accordingly decided to depute the Range Officers who secured first and second ranks in their batches with Honours to join the second year course of State Forest Service Colleges treating them as direct recruits pending amendment to the A.P. Forest Service Rules on par with those who are deputed to State Forest Service College on their appointment as Assistant Conservators of Forests. The said decision appears to have been taken in response to the Government of India's approval for deputation of Rangers who pass Rangers course with Honours for appointment to the second year of State Forest Service Course (Diploma Course in Forestry) being conducted by various State Forest Service Colleges. The Government of India requested the State Government to consider the cases of such of those deserving eligible candidates for deputation to the said College. It is evident from the record that even the Andhra Pradesh Forest Range Officers' Association through its letter dated 27-8-1984 requested the Principal Secretary

to Government, Forests & Rural Development Department to sponsor the four Range Officers named therein from amongst the unofficial respondents to State Forest Service College, Coimbatore at least for the course which is due to commence from 1st January, 1985 to avoid discouragement among the Andhra Pradesh Forest Apprentices who got Honours during their training at Rangers College. The decision taken by the State Government to depute the unofficial respondents to join the second year course of State Forest Service College by treating them as direct recruits is not a sudden decision taken by the Government in any secretive manner in order to confer any benefit as such upon the unofficial respondents. The Association of Forest Rangers itself made a demand and requested the State Government for such deputation. The petitioners were not only aware of the same but as members of the Association were also sponsoring the cause of their own colleagues who secured Honours while undergoing Rangers Course. The petitioners did not challenge the decision of the Government in deputing B.Narayan Reddy and T.P. Thimma Reddy who secured second and first ranks in their batches during the years 1971-73 and 1977-79 respectively vide G.O.Ms.No.167, dated 8-4-1986 until they have filed O.A.No.3258 of 1994 in the Andhra Pradesh Administrative Tribunal. For eight long years, the Forest Range Officers' Association as well as the petitioners have kept quiet in the matter. Even in the said Original Application, they did not challenge the deputation of the individuals named hereinabove and, therefore, the Tribunal did not interfere with their deputation to undergo training by treating them as ACFs.

The Supreme Court in Bhoop Singh V. Union of India¹³ observed:

"It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim..... Inordinate and unexplained delay or laches is by itself a ground to refuse relief....., irrespective of the merit of the claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly."

48. It is further observed by the Supreme Court that "Article 14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept." The Supreme Court further observed that "grant of the relief to the petitioner would be inequitable instead of its refusal being discriminatory." In our

considered opinion, the same principle would be applicable in the instant case.

We are of the considered opinion that any interference of this court at this stage would result in disruption of vested rights which had accrued to the unofficial respondents during the period of more than ten years that had intervened between passing of the impugned orders of appointment of the unofficial respondents and institution of proceedings by the petitioners.

49. It needs no reiteration in our hands that this court's power to issue an appropriate writ under Article 226 of the Constitution of India is discretionary and in exercise of its discretion the court does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. This court is entitled to decline to intervene and grant relief in exercise of its writ jurisdiction in cases where the delay is not satisfactorily explained.

50. The petitioners in W.P.Nos.14689, 22926 and 25322 of 2001 filed Original Applications in the A.P. Administrative Tribunal in the year 2001 challenging the amendments made to Rule 2 of the Forest Service Rules. They have raised the dispute for the first time in 2001. They did not raise any objection whatsoever for the deputation of the unofficial respondents to undergo the course at State Forest Service Colleges by treating them as ACFs. The G.Os., issued by the Government in 1986 and 1988 onwards are sought to be impugned by the petitioners at a very belated stage. Some of the unofficial respondents have already put in more than 16 years of service as ACFs. It would be inappropriate to interfere at this stage and any such interference may result in drastic consequences adversely affecting the settled rights.

51. However, the learned counsel appearing on behalf of the petitioners, Sri P.V.Subrahmanya Sarma, contended that the notification issued by the Government notifying the impugned amendments did not mention categorically about the retrospectivity of the said amendments. It is contended that in the absence of such specific notification, the rules cannot be given retrospective effect. G.O.Ms.No.35, dated 29-5-1995 and as well as G.O.Ms.No.51, dated 3-7-1995 issued by the Government clearly indicate that the amendments shall be deemed to have come into force on and from 8-4-1986. However, while issuing the notification and notifying the amendments that portion is missing in the print copy of the Gazette. In our considered opinion, it is not fatal, since there are no rules prescribing as to in what manner the rules framed in exercise of the power under proviso to Article 309 of the Constitution are to be published and notified. The petitioners and others who are likely to be effected by the said amendments are aware about the retrospectivity of the amendments. At any rate, we do not propose to make any further enquiry and observations in this regard, since we do not propose to interfere in the matter at the instance of the petitioners herein on account of laches on their part.

52. For the aforesaid reasons, we do not find any merit in these writ petitions. The same shall accordingly stand dismissed. No order as to costs.