

(2016) 02 GUJ CK 0032

In the Gujarat High Court

Case No : Special Civil Application No. 17826 of 2011

S.D. Patel and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Constitution of India, 1950 — Article 12, Article 13(3)(a), Article 14, Article 16, Article 226

Citation : (2016) LIC 3117 : (2016) 1 LLN 623 : (2017) 1 RSJ 176 : (2016) 2 SCT 459 : (2016) 6 SLR 569

Hon'ble Judges : J.B. Pardiwala, J.

Bench : Single Bench

Advocate : N.K. Majmudar, Advocate, for the Appellant; Prakash K. Jani, Addl. Advocate General and AGP, for the Respondent

Final Decision : Disposed off

Judgement

J.B. Pardiwala, J.—1. By this writ application under Article 226 of the Constitution of India, the petitioners Nos. 1 to 36 serving as Junior Scientific Assistants and the petitioners Nos. 37 to 52 serving as Senior Scientific Assistants have prayed for the following reliefs:

"19A) Be pleased to allow this petition;

B) Be pleased to issue appropriate writ, order or direction, quashing and setting aside the order passed by respondent No. 1 dated 8/7/2011 whereby the representation made by the petitioners raising their grievance with regard to not granting them status of Temporary Establishment w.e.f. 16/11/1996 as well as not extending the benefit of higher pay scale has been rejected and be pleased to hold that the petitioners had become entitled for conversion to Temporary Establishment from Work Charge Establishment w.e.f. 16/11/1996 i.e. the date on which other similarly situated 42 Junior Scientific Assistants and Senior Scientific Assistants have been granted status of Temporary Establishment and even considering the provisions of Government Resolution dated 16/8/1973 and

considering the recommendations made by the respondent No. 3 in this regard;

C) Be pleased to issue appropriate writ, order or direction, directing the concerned respondent authorities to reconsider the case of the petitioners for granting them status of Temporary Establishment w.e.f. 16/11/1996 as well as all consequential benefits flowing therefrom and to consider their case for granting the benefit of higher pay scale by treating them on Temporary Establishment w.e.f. 16/11/1996 in the aforesaid peculiar facts and circumstances of the case;

D) Pending admission and till final disposal of the petition, be pleased to issue appropriate writ, order or direction, directing the concerned respondent authorities to reconsider the case of the petitioners for granting them status of Temporary Establishment w.e.f. 16/11/1996 as well as all consequential benefits flowing therefrom and to consider their case for granting the benefit of higher pay scale by treating them on Temporary Establishment w.e.f. 16/11/1996 till the aforesaid petition is finally heard and decided;

E) pass such orders as thought fit in the interest of justice."

2. The case of the petitioners may be summarized as under:

2.1 The petitioners came to be appointed as Junior Scientific Assistants and Senior Scientific Assistants by the State Government in the Gujarat Engineering Research Institute (for short, "G.E.R.I."). It is their case that they were appointed by way of a regular recruitment process prescribed under the relevant rules and regulations adopted by the respondents authorities. At the time of their appointments, they possessed the necessary qualifications and had fulfilled the eligibility criteria prescribed under the rules.

2.2 The details of the date of appointment, their designation, educational qualifications, etc are to be found at page No. 34 of the paper-book at Annexure: "A". Some of the appointment orders are annexed at Annexure: "C" and those appointment orders indicate that the names of some of the petitioners were sent through the Employment Exchange, and after subjecting them to the recruitment procedure, they were appointed as "work charged" i.e. in the work charged establishment.

2.3 The petitioners have placed strong reliance on the Government Resolution dated 16th August, 1973, more particularly, Clause 2, which provides that permanent status should be conferred upon the work charged employee on completion of minimum five years of service in the work charged establishment.

2.4 It is their case that on the strength of the Government Resolution dated 16th August, 1973, many other similarly situated work charged employees were conferred the status of temporary / permanent employees vide office order dated 7th October, 1996. The work assistant employees working in the Kutch Irrigation Circle under the Executive Engineer were also given the temporary status / permanent status on the basis of the said Government Resolution.

2.5 The principal grievance of the petitioners herein is that although they completed five years of service in the work charged establishment long time back and were fulfilling all other necessary requirements, yet they were not conferred with the status of temporary / permanent employees despite preferring number of representations in that regard.

2.6 It is the case of the petitioners that they were conferred with the status of being temporary employees only in the year 2007 vide order dated 19th October, 2007.

2.7 The State of Gujarat introduced a scheme for the grant of higher pay scales on competition of 9, 18 and 27 years of service. Such scheme came to be introduced vide Government Resolution dated 16th August, 1994. According to Clause 3 (31) of the said Government Resolution, the said benefit is not available to a work charged employee. Later on, the said Government Resolution came to be substituted by another Government Resolution dated 2nd July, 2007, which provides for the grant of 12 and 24 years of service. The same has also not been made applicable to the employees serving in the work charged establishment.

2.8 A bunch of writ applications was filed in this regard by the petitioners herein being the Special Civil Applications Nos. 15762 of 2010 and allied petitions before this Court. Those writ applications were disposed of by a learned Single Judge vide order dated 28th December, 2010 in the following terms:

"4. It is the case of the petitioners that they are working as Scientific Assistants in respondent No. 3 Institute and possess high technical qualifications and degrees in Engineering and Science. As per Government Resolution dated 16.8.1973, the work-charge posts against which the petitioners were working were required to be converted into temporary posts, after completion of five years, as on the work-charge posts. The petitioners have completed five years on the work-charge posts on different dates, before the year 1997. In the year 1997, respondent No. 3 made a proposal to the State Government for conversion of the work-charge posts of the petitioners into temporary posts. The said proposal remained pending till 9.10.2007, on which date the posts of the petitioners were converted into temporary posts.

5. It is the case of the petitioners that due to the late conversion of the posts of the petitioners into temporary posts, the benefit of higher pay scale for the years during which the proposal remained pending has not been conferred upon them. The petitioners made representations for being granted retrospective dates of temporary status and removal of the pay anomaly by giving higher pay scale for the said period. The cases of the petitioners were recommended by respondent No. 3 by communication dated 8.9.2009 as also by the Pay Anomaly Committee by communication dated 10.5.2000.

6. The petitioners have also made several representations to respondents Nos. 1 and 2 on 19.9.2007, 22.2.2008, February/March, 2008, 14.4.2008, 20.8.2008, 22.11.2008, 2.3.2009, 23.6.2009, and 8.9.2009, which have not been

considered so far by the respondent authorities.

7. Mr. N.K. Majmudar, learned counsel for the petitioners has submitted that the petitioners deserve to be granted the benefits of higher pay scale, as they have served for more than 24 years as Scientific Assistants and have remained in one particular cadre, as there are no additional promotional avenues available to them. It is further submitted that the proposal for grant of temporary status was moved in the year 1997 by the competent authority, however the same has been approved only in the year 2007, thereby depriving the petitioners of the benefits of temporary status in the interregnum. If the services of the petitioners are reckoned in the year 2007, the petitioners would very likely retire from services before they become eligible to get the higher pay scale on completion of 12 years of services, which would cause great miscarriage of justice to them.

8. Mr. N.K. Majmudar, learned counsel for the petitioners further states that the interest of justice would be met, if respondent No. 1 is directed to consider and decide the representations of the petitioners in right perspective, keeping in view the representations of respondent No. 3 as well as the Pay Anomaly Committee, within the stipulated period of time.

It is further submitted that the interest of justice would also be met, if respondent No. 1 is directed to grant an opportunity of personal hearing to the authorized representatives of the petitioners.

10. Upon the above statements being made by the learned counsel for the petitioners, the following order is passed:

Respondent No. 1 is directed to consider and decide representations dated 19.9.2007, 22.2.2008, February/March, 2008, 14.4.2008, 20.8.2008, 22.11.2008, 2.3.2009, 23.6.2009, and 8.9.2009, in the light of the recommendations made by respondent No. 3 and the Pay Anomaly Committee, as expeditiously as possible and preferably within a period of three months from the date of receipt of a copy of this order.

Respondent No. 1 is directed to give an opportunity of personal hearing to the authorized representatives (not more than five in number) of the petitioners.

It is clarified that while passing the order, this Court has not entered into the merits of the case.

The petitions are disposed of, in the above terms."

2.9 The petitioners preferred a detailed representation dated 16th May, 2011 at Annexure: "W" to this petition (page: 174) requesting for grant of the benefits from the date of completion of five years of service from the initial date of appointment in the work charged establishment. However, such request was turned down and they were conferred with the status of temporary employees only in October / November, 2007, and by that time, each of the petitioners herein had completed more than twenty five years of service and were on the

verge of retirement. In such circumstances, they became ineligible for the grant of the higher pay scales as before completion of the prescribed period of service, they attained the age of superannuation.

2.10 It is the case of the petitioners that they remained in one particular cadre and pay scale all through out without there being any promotion, any advancement opportunity and single higher pay scale. The petitioners seek to rely on one judgment and order passed by a learned Single Judge of this Court dated 21st October 2011 in the Special Civil Application No. 7464 of 1996, wherein the learned Single Judge directed the State Government to confer the benefits of temporary status immediately on completion of five years of service in the work charged establishment. The petitioners have further pointed out that the said judgment and order passed by the learned Single Judge was challenged by the State of Gujarat in the Letters Patent Appeal No. 1360 of 2011 and the said challenge failed. It has also been pointed out that the order passed by the learned Single Judge as well as the order passed in appeal were challenged before the Supreme Court and the challenge before the Supreme Court also failed.

2.11 The petitioners have also placed reliance on the Government Resolution dated 25th May, 1989 which provides for grant of the various benefits to the employees serving under the different panchayats.

2.12 The petitioners have pointed out that recently, the State Government cancelled its earlier Government Resolution of 1973 by a resolution of the year 2014. According to the petitioners, the cancellation of the earlier Government Resolution of 1973 would not affect their vested / accrued rights and the resolution of 2014 otherwise also cannot be made applicable with retrospective effect.

2.13 In such circumstances referred to above, the petitioners have prayed that appropriate directions be issued to the respondents authorities for grant of the higher pay scales in the case of each of the petitioners having completed 9 / 18 / 27 years of service or 12 / 24 years of service, as the case may be, in accordance with the Government Resolution dated 16th August, 1994 and 2nd July, 2007 respectively with 12% interest. They have also prayed that even in the case of the retired employees, the pension and other retirement dues may be ordered to be revised by addition of the higher pay scales and difference with 12% interest.

? STANCE OF THE STATE GOVERNMENT:

3. This writ application has been vehemently opposed by the respondents by filing an affidavit-in-reply duly affirmed by one Shri P.B. Chaudhary, Research Officer, Narmada Hydraulic Division (G.E.R.I., Vadodara). The following averments have been made in the affidavit-in-reply:

"6. The deponent submits that as per the Government Resolution dated

16.08.1973 clarifies that at the time of conversion of posts from work charge to temporary status, the number of posts already existing may also be taken into account. In that way, after careful consideration, the petitioners posts were converted into temporary posts from work charge posts. There is no provision to convert the posts with retrospective effect.

7. The deponent submits that in para 1 of the Resolution dated 16.08.1973, it is mentioned that the various posts in workcharged establishment in respect of only maintenance and repairs of any works or irrigation management which are either required permanently or on a very long time basis be converted into temporary posts. Even though Government considered the representation of the petitioner and converted the posts from work charge to temporary. There is no provision to convert the post with retrospective effect.

8. The deponent submits that government held a meeting with the president of the association of scientists and scientific staff on 10.07.1996 and in that meeting it was decided to send some JSAs and SSAs to SSNNL as per Nigam's requirement. Posting in SSNNL is made by deputation. As work charge staff cannot be sent on deputation. So, as per the decision taken in the aforesaid meeting, the work charge JSAs and work charge SSAs who were willing for deputation, were converted into temporary and deputed to SSNNL. So, the case in GR dated 07.10.1996 is totally different from that of petitioners. The employees who were accepted the deputation unconditionally were deputed to SSNNL, but those who conditionally accepted the deputation, did not depute to SSNNL. These reasons were clearly mentioned in Finance Department order dated 08.07.2011.

9. The deponent submits that according to the provision of Government Resolution dated 16.08.1973 government converts the work charge posts into temporary posts after considering the sanctioned posts. The petitioners posts were also converted into temporary posts accordingly. There is no provision to convert the post with retrospective effect. Hence retrospective effect cannot be granted.

10. The deponent submits that Government held meeting with president of the association of scientist and scientific staff on 10.07.1996 and in that meeting it was decided to send some JSAS and SSAS to SSNNL. Posting in SSNNL in made by deputation. Hence, work charge staff cannot be sent on deputation. So as per the decision taken in the aforesaid meetings, the work charges JSAS and work charges SSAS who were willing for deputation, were converted into temporary and deputed to SSNNL. So, the case in Government Resolution dated 07.10.1996 is totally different from that of the petitioner.

11. The deponent submits that no retrospective effect has been given to any cadre, Government filed Letters Patent Appeal in a similar case No. Misc. Civil Application No. 1607 of 2008 in Special Civil Application No. 22301 of 2007 to 22339 of 2007. Shri R R Nakum and ors (38 v. Government of Gujarat). When

similar case is pending with Hon''ble High Court, petitioners plea to convert that posts with retrospective effect cannot be considered at this juncture.

12. The deponent submits that higher pay scale scheme is implemented for the temporary employees appointed on sanction post according to State Government norms and regulation while work charge employees are appointed for some particular works and the seniority of the cadre is different. The rules for conversion of work charge posts into temporary posts and the higher pay scale scheme both are different. Hence cannot be combined.

13. The deponent submits that there is no difference in pay scale of work charged employees and regular temporary employees. Both get the same pay scale sent some JSAs and SSAs to SSNNL as per Nigam''s requirement. Posting in SSNNL is made by deputation. As work charge staff cannot be sent on deputation. So, as per the decision taken in the aforesaid meeting, the work charge JSA and work charge SSAs who were willing for deputation, were converted into temporary and deputed to SSNNL. So, the case in GR dated 07.10.1996 is totally different from that of the petitioners.

14. The deponent submits that State Government issued an order on 07.10.1996 to convert work charge posts into temporary status for the purpose of deputation and SSNNL issued detailed order accordingly with effect from 16.11.1996. It cannot be considered with retrospective effect. They also gave the status of temporary from the date of issue of the order.

15. The deponent submits that the policies of Higher Pay Scale and conversion of workcharged employees into R & B's work area and NWRWS's work area is totally different. Also educational qualifications, job criteria of AAE cannot be compared with junior scientific assistant and senior scientific assistant because the work area/type of work seniority, recruitment, promotional chart everything is different. So, the cadre of JSA/SSA not be compared with AAE.

16. The deponent submits that GERI, Vadodara recommended to convert work charge employees into temporary posts with retrospective effect vide letter dated 08.02.2009, as per para 7 above, it is clarified that retrospective effects has not been given to any cadre and a similar case is pending with Hon''ble High Court, Gujarat as mentioned in para 7.

17. The deponent submits that Government held a meeting with the president of the association of scientists and scientific staff on 10.07.1996 and in that meeting it was decided to temporary posts, both are different. Hence, cannot be compared.

18. The deponent submits that there is no provision in 16.08.1973 that the work charge should be given temporary status after completion of five years. Government Resolution dated 16.08.1973 clarify that at the time of conversion of posts from work charge to temporary status, the No. of posts already existing may also be taken into account. In that way, after careful consideration, the

petitioners posts were converted into temporary posts from work converted into temporary posts from work charge posts. There is no provision to convert the posts with retrospective effect."

? SUBMISSION ON BEHALF OF THE PETITIONERS:

4. Mr. N.K. Majmudar, the learned counsel appearing for the petitioners vehemently submitted that this petition is squarely covered by the judgment and order rendered by a learned Single Judge referred to above in the Special Civil Application No. 7464 of 1996. He laid much stress on the fact that the judgment of the learned Single Judge was affirmed by the Division Bench in the Letters Patent Appeal No. 1360 of 2011 and further affirmed by the Supreme Court in the Special Leave Petition (Civil) (CC) No. 17221 of 2012. Mr. Majmudar submitted that his clients have been serving with G.E.R.I. for past 25 years and by the time, they were conferred with the status of temporary employees in the year 2007, they had already completed on an average 25 years of service. According to Mr. Majmudar, if the State Government thought fit to take service of the petitioners for a period of 25 years at a stretch, then it could be said that the nature of the work was permanent. According to him, such is the reason why the Government thought fit to introduce the Government Resolution of the year 1973.

5. Mr. Majmudar submitted that way back in the year 1996, vide order dated 7th October, 1996, 42 identically situated work charged (Scientific Employees) i.e. Junior Scientific Assistants and Senior Scientific Assistants were sent on deputation to the Sardar Sarovar Narmada Nigam and before sending them on deputation, they were conferred with the status of being temporary employees. He further pointed out that all those 42 identically situated employees have been given the consequential benefits, including the higher pay scales considering their status as the temporary employees with effect from 7th October 1996.

6. Mr. Majmudar submitted that the service rendered by 42 employees was counted and considered for the higher pay scales with effect from 7th October, 1996, but so far as the petitioners are concerned, they have been discriminated and granted the status of the temporary employees only in the year 2007. According to Mr. Majmudar, it is just an eye wash as the State Government has ignored the length of service of almost 25 years put in by the petitioners.

7. Mr. Majmudar submitted that the cancellation / revocation of the Government Resolution dated 16th August, 1973 has no bearing in the present case.

8. Mr. Majmudar has placed strong reliance on the following decisions in support of his submissions:

"(i) Kusumam Hotels (P) Ltd. v. Kerala State Electricity Board, , (2008) 13 SCC 213;

(ii) Gulf Goans Hotels Company Limited and another v. Union of India and other, , AIR 2015 SC 2032;

- (iii) MGB Gramin Bank v. Chakrawarti Singh , (2014) 13 SCC 583;
- (iv) State of Rajasthan v. Ucchab Lal Chhanwal , (2014) 1 SCC 144;
- (v) The decision rendered by a learned Single Judge of this Court vide judgment dated 21st January, 2011 in the Special Civil Application No. 7464 of 1996;
- (vi) The decision rendered by a Division Bench of this Court dated 17th October, 2011 in the Letters Patent Appeal No. 1360 of 2011;
- (vii) State of Tripura v. K.K. Roy, [, 2004 (9) SCC 65 : AIR 2004 SC 1249]."

? SUBMISSIONS ON BEHALF OF THE STATE GOVERNMENT:

9. Mr. Prakash K. Jani, the learned Additional Advocate General assisted by the learned Assistant Government Pleader appearing for the respondent - State of Gujarat submitted that the entire claim put forward by the petitioners is untenable in law. The principal argument of Mr. Jani is that the Government Resolution dated 16th August, 1973 clarifies that at the time of conversion of post from work charged to temporary, the number of posts already existing are also to be taken into consideration. Accordingly, the posts of the petitioners were converted from work charged to temporary. According to Mr. Jani, there is no provision to convert the post with retrospective effect.

10. Mr. Jani submitted that having regard to the length of the service, the Government did consider the case of the petitioners and converted the posts from work charged to temporary in the year 2007, but the claim of the petitioners that they should be given the benefits of the conversion from the date they completed five years of service as work charged employees is not tenable in law.

11. Mr. Jani submitted that the petitioners herein have not been discriminated in any manner with the 42 employees who were sent on deputation to the Sardar Sarovar Narmada Nigam. The case of those 42 employees was altogether different and they had unconditionally accepted the deputation.

12. Mr. Jani submitted that the higher pay scale scheme is being implemented for the temporary employees appointed on the sanctioned posts in accordance with the norms fixed by the State Government, whereas the work charged employees are appointed for a particular work and the cadre is also different.

? ANALYSIS:

13. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the applicants herein are entitled to the reliefs prayed for in this petition.

14. Before adverting to the rival submissions canvassed on either sides, let me look into the Government Resolution of the year 1973, which is the basis of filing this writ application. The Government Resolution dated 16th August, 1973 reads

as under:

"Conversion of work-charged posts of Maintenance repairs and Irrigation management under P.W.D. Into temporary establishment

Government of Gujarat, Public Works Department, Resolution EC-WCE-1272(2)-G, Dated the 16th August, 1973.

Read: Govt. Resolution P.W.D. No. WCE-1270-G-90/(8)/G, dated 29-12-1972.

RESOLUTION:--

Under Govt. Resolution, Public Works Deptt, No. WCE-1270-G-99(8)-G dated 29th December, 1971 referred to above, it was decided that conversion of work charged posts into temporary posts should not be considered in view of the improvement in service conditions of the persons working on work charged establishment. The question of conversion of work charged posts has been reconsidered by Govt. After reconsideration Govt. has accepted in principle that the various posts on work charged establishment in respect of only maintenance and repairs of any works or irrigation management which are either required permanently or on a very long term basis be converted into temporary posts and work charged posts to that extent should be abolished.

2. The Heads of department under P.W.D. are therefore requested to please ensure that work charged posts in respect of maintenance and repairs of any works or irrigation management which are proposed for conversion to temporary establishment should have been continuously in existence for a minimum period of five years and are required either permanently or on very long term basis say 10 to 15 years.

3. Separate proposals should be submitted for each division in the enclosed performa giving justification for conversion of each individual post and indicating the existing norms or standard for such posts or the norms which could be fixed. The number of temporary/permanent posts already existing may also be motioned in the Performa and taken into account while submitting the proposals.

4. All previous proposals pending at govt. level should be treated as disposed off and fresh proposals should be submitted in accordance with the instructions contained in this resolution.

5. This issues with the concurrence of Finance Department vide its note, dated 10-7-73 on this Department's file of even number.

By order and in the name of the Governor of Gujarat.

P.H. Parekh, Deputy Secretary to Govt., Public Works Department."

15. The terms "temporary establishment" and "work charged establishment" have been provided and explained under the Gujarat Public Works Department Manual. The definitions figure under the Chapter II, Class IV at page 47 of the Gujarat Public Works Department Manual. I may quote the two definitions as

under:

"(a) Temporary Establishment:

(i) In order to meet the demand for extra supervision which may arise from time to time as well as to ensure that the Public Works establishments shall be capable of contraction as well as of expansion at the expenditure on works diminishes or increases the permanent establishments may be supplemented by temporary establishments to such extent as may be necessary and varying in strength from time to time according to the nature of the work to be done. Temporary establishment will include all such non-permanent establishment no matter under what titles employed as is entertained for the general purposes of a Division or Sub-division or for the purpose of the general supervision as distinct from the actual execution of a work or works.

(ii) If member of temporary establishment are engaged for a special work, their engagement lasts only for the period during which the work last. All the temporary appointments should always be made "until further order" and the persons so appointed should clearly be given to understand that they are liable to be discharged at any time without any reasons being given. The conditions should be clearly explained to the persons and a written declaration obtained from them that the term have been clearly understood by them.

Note : 1 : Pretty establishments and establishments whose pay is charged to works are exempted from submitting temporary service declaration.

Note-2: Junior Engineer, Supervisors and Overseers recruited after the 16th December, 1958 should be required to give an advance notice of minimum 3 notice of their intention to resign the post and Government should, on its part give them similar advance notice of minimum 3 months if their services are to be terminated. The condition regarding giving advance notice of minimum three month, which will be binding on both the sides, should be specified in appointment orders.

(iii) Power of Chief and Superintendent Engineer and the Executive Engineers to sanction temporary establishment are given at Sr. No. 2(1) in Appendix XXVII.

(iv) The leave, travelling and other allowances of temporary establishment are regulated by the relevant rules in the Bombay Civil Services Rules. They have ordinarily no claims to pensions.

(v) Superintendent Engineers are authorized to grant conveyance allowance to member of temporary revenue establishment at the rates and on the condition mentioned in the case of the members of the work charged establishment and in sub-clauses (iv) of clause (c) of Paragraph 92.

(vi) Transfers of temporary person ordered by local officer should be restricted within the divisions as far as possible.

(b) Work-charged Establishment:

89. Work-charged posts are just any posts whose pay is directly debited to the work, and work-charged staff are those employed in such posts without having any position in the regular establishment.

Works establishment will include such establishment as is employed upon the actual execution, as distinct from the general supervision of a specific work or of sub-works of a specific project or upon the subordinate supervision of a specific work or of sub-works of a specific project, of the departmental labor, stores and machinery in connection with such a work or sub-works. When employees borne on the permanent or temporary establishment are employed on work of this nature their pay, etc. should, for the time being be charged direct to the work; the pay etc, of their substitutes on the regular establishment being charged to the minor head "Establishment". At Establishment can be incurred is 2 per cent of Expenditure to be incurred on works.

Note-1: The establishment provided for surveying drawing, tracing etc. in estimates for preparation of projects should be regarded as engaged on the execution of the work and should therefore be treated work-charged.

Note-2: Competent authority may waive the rule, which prescribes that work establishments must be employed upon a specific work, and determine in such cases the proportions in which the cost of such establishment shall be allocated between the works concerned vide serial No. 5 in Appendix XXVII.

Exception - In the case of work-charged establishment employed on various maintenance and repairs works and occasionally on original minor works, the names of works on which such establishment is employed need not be specially mentioned while according sanction to such posts, the cost being allocated by the Executive Engineers between the works concerned in proportion to the time spent on those works.

The Executive Engineers except those of Electrical Divisions should maintain a proper record of the data for distributing the cost of such establishment charged to various works for scrutiny at the time of local audit inspections.

Note-3: The work-charged establishment should be discontinued when works on which they are employed are temporarily stopped or suspended and re-employed as soon as works are resumed.

Note-4: Employees borne on the permanent establishment should be employed on the actual execution of work, only in the case of important major works.

Note-5: Transfers of work-charged persons ordered by local officers should be restricted within the Divisions as far as possible.

Note-6: If employees on permanent and temporary establishment transferred to work-charged establishment are followed the house-rent allowance and compensatory local allowance on the condition that they continue drawing pay and allowance as admissible to them while on regular establishment, the

substitutes appointed against these posts on regular establishment should not be granted house - rent allowance and compensatory local allowance as these persons would have been appointed on the work-charged establishment but for the deputation of the employees on regular establishment to work charged establishment.

90. The cost of works establishment must be shown as a separate sub-head of the estimate.

Note-1: In the case of estimates for modernization of road surfaces, the provision for work-charge establishment should be made at 2 per cent of the estimated cost.

Note-2: When provision for works establishment is made in an estimate on a percentage basis it should be invariably be calculated on the estimated cost of work inclusive of contingencies so that the provision may be adequate even when the amount for contingencies has to be utilized.

91. In all cases previous sanction of competent authority to the employment of work-charged establishment is necessary which should specify in respect of each appointment (1) the consolidated rate of pay, (2) the period of sanction and (3) the full name (as given in the estimate) of the work and the nature of duties on which the person engaged would be employed, powers of Chief and Superintendent Engineer and Executive Engineer to sanction work-charged establishment are detailed at Senior No. 2(2) in Appendix XXVII of P.W.D. Manual Volume II.

91-A. The Superintending Engineers of Circles, the Director of Ports, the Director of Engineering Research Institute, the Electrical Engineer to Government and the Executive Engineers of Divisions are authorized to employ subordinates (Junior Engineer, Supervisors and Overseers) and Khalasis under them on work-charged establishment where necessary for detailed supervision of works provided their cost is met from the provisions for the work-charged establishment in the estimates of works and subject to the limits laid down at senior No. 2 in Appendix XXVII of P.W.D. Manual Volume II."

16. The status of an employee in the work charged establishment has come for consideration in different judgments before the Hon''ble Supreme Court as well as before this Court. There are two types of establishment, one general establishment and the other work charged establishment. The workers of work charged establishment means an establishment of which the expenses, including wages and allowances of the staff, are chargeable against the work. A work charged establishment differs from the regular establishment which is permanent in nature.

17. The setting up and continuation of the work charged establishment is dependent upon the Government undertaking, project or a scheme of the work and the availability of the fund for executing it. The employees engaged in the

work charged establishment, their nature of work and duties performed by them, their recruitment and condition of services are different than those employed in the regular establishment. The regular establishment and the work charged establishment, both are two separate types of establishment and the employees employed on those establishments, thus form two separate and distinct classes.

18. In the case of *Jaswant Singh and Others v. Union of India and Others*, , (1979) 4 SCC 440, the Hon"ble Supreme Court has examined with a bird's eye view and held that a work charged establishment broadly means an establishment of which expenses including wages and allowances of staff are chargeable to the work. The pay and allowance of the employees who are borne on the work charged establishment are generally shown as a separate sub-head of the estimated cost of the work. The work charged employees are engaged on temporary basis and their appointments are made for execution of specified work. From the very nature of their employment, their services automatically come to an end on the completion of the work for the sole purpose of which they are employed.

19. The status of employees of the work charged establishment came up for consideration in the case of *State of Rajasthan v. Kunji Raman*, , (1997) 2 SCC 517 and the Supreme Court has taken a view that the employees employed in the work charged establishment constitute a different class, cannot claim to be at par with the employees employed in the regular establishment and further held that framing of two sets of Rules, one for the employees of the work charged establishment and another for the employees of the regular establishment cannot be said to be illegal, arbitrary and discriminatory, as the Court has held that the appointment of the employees of the regular establishment is quite different and distinct to the employees employed in the work charged establishment. In the case of the employees employed in the regular establishment, the cost is borne from the general fund whereas in the case of employees employed as work charged establishment the cost including wages are borne on the Project. It will be relevant to quote Para 6, 7 and 8 of the judgment which is as follows:

"6. A work-charged establishment as pointed out by this Court in *Jaswant Singh v. Union of India* broadly means an establishment of which the expenses, including the wages and allowances of the staff, are chargeable to "works". The pay and allowances of employees who are borne on a work-charges establishment are generally shown as a separate sub-head of the estimated cost of the works. The work charged employees are engaged on a temporary basis and their appointments are made for the execution of a specified work. From the very nature of their employment, their services automatically come to an end on the completion of the works for the sole purpose of which they are employed. Thus a work-charged establishment is materially and qualitatively different from a regular establishment.

8. A work-charged establishment thus differs from a regular establishment which

is permanent in nature. Setting up and continuance of a work-charged establishment is dependent upon the Government undertaking a project or a scheme or a "work" and availability of funds for executing it. So far as employees engaged in work-charged establishments are concerned, not only their recruitment and service conditions but the nature of work and duties to be performed by them are not the same as those of the employees of the regular establishment. A regular establishment and a work-charged establishment are two separate types of establishments and the persons employed on those establishments thus form two separate and distinct classes. For that reason, if a separate set of rules are framed for the persons engaged in the work-charged establishment and the general rules applicable to persons working on the regular establishment are not made applicable to them, it cannot be said that they are treated in an arbitrary and discriminatory manner by the Government. It is well settled that the Government has the power to frame different rules for different classes of employees. We, therefore, reject the contention raised on behalf of the appellant in Civil Appeal No. 653 of 1993 that clauses (g), (h) and (i) of Rule 2 of RSR are violative of Articles 14 and 16 of the Constitution and uphold the view taken by the High Court".

20. The Supreme Court in the case of *State of Haryana v. Piara Singh*, AIR 1992 SC 2130, after considering the decision in the case of *Jaswant Singh* (supra) observed that so far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell -- say two or three years -- a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by the Supreme Court, security of tenure is necessary for an employee to give his best to the job.

21. Let me now look into the decision of this Court rendered by a learned Single Judge referred to above on which strong reliance has been placed on behalf of the petitioners. In the Special Civil Application No. 7464 of 1996, 54 employees prayed for extending the benefits of the higher pay scales on completion of 9, 18 and 27 years of service from their respective date of appointment. In that case, the grievance redressed was that the Government had issued the Government Resolution dated 7th July, 1993, and accordingly, the persons who had completed five years of service in the work charged establishment were required to be converted into the employees on the temporary establishment. However, the persons, who were recruited on the work charged establishment in 1973, 1975 and 1977 respectively, were converted into the temporary establishment in 1990, though the benefits ought to have been granted to them on completion of five years of service on the work charged establishment. The learned Single Judge, while allowing the petition, observed as under:

"1. The present petition is filed by a group of 54 employees praying for extending the benefits of higher pay-scale on completion of 9-18-27 years of service from their respective date of appointment. The prayer in para 14 (B) of the petition is for setting aside the Government Resolution dated 16th August, 1994 (Annexure-D). It is prayed in para 14 (BB) that the order dated 7th June, 1999 rejecting the claim of petitioners be also quashed. Prayer in para 14 (BBB) seeks direction to convert the petitioners from employees on Work-Charge Establishment to Temporary Establishment on completion of five years of service and grant the relief of higher pay-scale from the respective due dates.

2. Learned Assistant Government Pleader could not dispute that the benefit of converting the work-charge employees to Temporary Establishment was available to the petitioners. In fact, the petitioners have, vide Annexure-E, placed on record details about the dates of their respective appointments and dates from which they were taken on the Temporary Establishment.

3. The short grievance made in the present petition is that the Government has issued G.R. dated 7th July, 1993 (Annexure-B) and accordingly the persons who have completed five years of service in Work-Charge Establishment are required to be converted into employees on Temporary Establishment. But, in the present case, as could be seen from Annexure-E, the persons who were recruited on Work-Charge Establishment in 1973, 1975 and 1977 respectively, were converted into Temporary Establishment in 1990, though the benefit ought to have been granted on completion of five years of service on Work-Charge Establishment. To quote an example, petitioner No. 1 Shri T.P. Patel was appointed on 15th March, 1973 and he was taken on Temporary Establishment on 4th August, 1990. According to the G.R. which has been placed on record, the petitioners ought to have been taken from Work-Charge Establishment to Temporary Establishment on completion of five years of service. This benefit was not granted, as a result of which the benefit of higher pay-scales on completion of 9-18-27 years of service have also been inordinately delayed. The petitioners have placed on record the G.R. dated 17.01.2000 which states that employees who have completed five years of service on Work-Charge Establishment are required to be converted into employees on Temporary Establishment.

4. The petitioners have also relied upon the order dated 22.9.1998 of this Court (Coram: K.R. Vyas, J.) in another Special Civil Application No. 2549 of 1998. Learned A.G.P. fairly conceded that the issue in the present petition is covered by that earlier order. Reliance is also placed on G.R. No. WCE-1272/(2)/G dated 16th August, 1973 of which relevant para 2 reads as under:

"The head of the department under PWD are therefore requested to please ensure that work charge posts in respect of maintenance and repairs of any works or irrigation management which are proposed for conversion to Temporary Establishment should have been continuously in existence for a minimum period of five years and are required either permanently or on very long term basis; say 10 to 15 years."

5. The petitioners have placed on record G.R. dated 5th July, 1991, wherein it is mentioned that "the benefit shall be available even to the employees of Panchayat and Primary Teachers with necessary modification". That resolution is directly applicable to the petitioners who are working under the Executive Engineer, Roads and Buildings Department in its workshop at Ahmedabad.

6. The prayer in para 14 (B) of the petition is not pressed by learned advocate for the petitioners as the Government Resolutions directing conversion of work-charge employees as temporary employees on completion of five years of service are not disputed by learned A.G.P.

7. In view of undisputed facts about due conversion of the petitioners from Work-Charge Establishment to Temporary Establishment on the date they completed five years of service, the natural consequences would be that on completion of nine years of service from the date they are deemed to have been converted from Work-Charge Establishment to Temporary Establishment, the benefit of higher pay-scale under the scheme of 9-18-27 years of service would be available to the petitioners.

8. Therefore, the respondents are directed to grant the benefit of conversion of the petitioners from Work-Charge Establishment to Temporary Establishment on completion of five years as work-charge employees from the date of their initial appointment which is indicated in column-4 of the statement (Annexure-E to the petition) and accordingly further directed to grant higher pay-scales from the date the petitioners have completed nine, eighteen and twenty seven years of service on Temporary Establishment.

9. During the course of hearing of the petition, it was submitted by learned advocate for the petitioners that out of 54 petitioners, few of them have retired and few of them have expired. It is, therefore, directed that those petitioners who have retired and/or expired will also be entitled to the benefit of higher pay-scale and they or their legal heirs, as the case may be, shall be paid the amounts falling due by virtue of this order, within two months from the date of receipt of a copy of this order.

Rule is made absolute accordingly to the aforesaid extent, with no order as to costs."

22. The above referred judgment and order passed by the learned Single Judge was challenged by the State of Gujarat by filing the Letters Patent Appeal No. 1360 of 2011. The said Letters Patent Appeal was ordered to be dismissed vide judgment dated 17th October, 2011, which reads as under:

"By way of this Intra-Court Letters Patent Appeal, the appellants - original respondents have challenged the judgment and order dated 21.01.2011 passed by the Learned Single Judge in Special Civil Application No. 7464 of 1996.

2. We have heard Mr. N.J. Shah, learned Assistant Government Pleader appearing for the appellants and Mr. T.R. Mishra, learned counsel appearing for

the respondents.

3. Learned Assistant Government Pleader on the basis of instructions received has submitted that after the judgment passed by the Learned Single Judge, the issue is pending with the State Government and no decision is taken.

3. In our view, while considering the case of the respondents herein, the Learned Single Judge has observed in impugned judgment and order in paragraphs 7 to 9 as under:--

"7. In view of undisputed facts about due conversion of the petitioners from Work-Charge Establishment to Temporary Establishment on the date they completed five years of service, the natural consequences would be that on completion of nine years of service from the date they are deemed to have been converted from Work-Charge Establishment to Temporary Establishment, the benefit of higher pay-scale under the scheme of 9-18-27 years of service would be available to the petitioners.

8. Therefore, the respondents are directed to grant the benefit of conversion of the petitioners from Work-Charge Establishment to Temporary Establishment on completion of five years as work-charge employees from the date of their initial appointment which is indicated in column-4 of the statement (Annexure-E to the petition) and accordingly further directed to grant higher pay-scales from the date the petitioners have completed nine, eighteen and twenty seven years of service on Temporary Establishment.

9. During the course of hearing of the petition, it was submitted by learned advocate for the petitioners that out of 54 petitioners, few of them have retired and few of them have expired. It is, therefore, directed that those petitioners who have retired and/or expired will also be entitled to the benefit of higher pay-scale and they or their legal heirs, as the case may be, shall be paid the amounts falling due by virtue of this order, within two months from the date of receipt of a copy of this order."

4. In the above view of the matter, in our view, no error is committed by the Learned Single Judge. No interference is called for. The appeal is devoid of any merits and deserves to be dismissed. It is accordingly dismissed. It is made clear that this order may not be treated as precedent.

5. In view of dismissal of appeal, the Civil Application for stay also stands dismissed."

23. It appears that the State of Gujarat being dissatisfied with the above two referred judgments preferred a Special Leave Petition before the Supreme Court and the Special Leave Petition was also ordered to be dismissed vide order dated 5th October, 2010.

24. Let me now look into the other judgments on which strong reliance has been placed by Mr. Majmudar, the learned counsel appearing for the applicants.

25. In *Kusumam Hotels (P) Limited (supra)*, the Government of Kerala announced a new policy of concession. The benefit of one of the concessions made available to the appellant by reason of G.O. dated 11th July, 1996 was taken away. The issue before the Supreme Court was whether the said G.O. dated 26th September, 2000 was reasonable having been given retrospective effect and retroactive operation. The Supreme Court, while holding that the Electricity (supply) Act, 1948 did not authorize the State to issue a direction with retrospective effect and holding the impugned G.O. dated 27th June 2000 to be prospective in operation, made the following observations:

"17. It is now a well settled principle of law that the doctrine of promissory estoppel applies to the State. It is also not in dispute that all administrative orders ordinarily are to be considered prospective in nature. When a policy decision is required to be given a retrospective operation, it must be stated so expressly or by necessary implication. The authority issuing such direction must have power to do so. The Board, having acted pursuant to the decision of the State, could not have taken a decision which would be violative of such statutory directions.

15.5.1999 was fixed as the cut-off date by the Board. It, by itself, could not have done so. But the State for issuing the GO dated 26.9.2000 could have fixed the said cut-off date on its own. We although do not agree that by granting retrospectivity to the said order, the entirety of the Government Order should be set aside the same or per se would be held to be unreasonable, but what we mean to say is that it could be given effect to only from the date of the order, i.e., prospectively and not from an anterior date, i.e., retrospectively.

26. The law which emerges from the above discussion is that the doctrine of promissory estoppel would not be applicable as no foundational fact therefor has been laid down in a case of this nature. The State, however, would be entitled to alter, amend or rescind its policy decision. Such a policy decision, if taken in public interest, should be given effect to. In certain situations, it may have an impact from a retrospective effect but the same by itself would not be sufficient to be struck down on the ground of unreasonableness if the source of power is referable to a statute or statutory provisions. In our constitutional scheme, however, the statute and/or any direction issued thereunder must be presumed to be prospective unless the retrospectivity is indicated either expressly or by necessary implication. It is a principle of rule of law. A presumption can be raised that a statute or statutory rules has prospective operation only."

26. In *MGB Gramin Bank (supra)*, the Supreme Court explained the meaning of the word "vested". The following was observed by the Supreme Court in paras 11, 12 and 13:

"11. The word "vested" is defined in Black's Law Dictionary (6th Edition) at page 1563, as

""vested", Fixed; accrued; settled; absolute; complete. Having the character or

given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are "vested" when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights."

12. In Webster's Comprehensive Dictionary (International Edition) at page 1397, "vested" is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: Mosammat Bibi Sayeda v. State of Bihar , AIR 1996 SC 1936 : (1996 AIR SCW 2283); and J.S. Yadav v State of Uttar Pradesh , (2011) 6 SCC 570) : (AIR 2011 SC (Supp) 659 : 2011 AIR SCW 3078).

13. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/ scheme could be changed. (Vide: Kuldeep Singh v. Government, NCT Delhi, , AIR 2006 SC 2652)"

27. In State of Rajasthan (supra), the Supreme Court was called upon to consider the respective applications of impugned circular affecting the promotional policy. The impugned circular was dated 26th July, 2006, whereas the controversy regarding promotion pertained to the year 1996-97. The Supreme Court observed in paras 8 and 9 as under:

"8. Learned counsel for the respondents in both the appeals submitted that censure which is a minor punishment cannot be an impediment for the entire service career and it has to be restricted to a specified period of time and when there is consideration on the base of seniority-cum-merit, seniority has to be given due weightage. For the aforesaid purpose they pressed into service the decisions which have been relied upon by the High Court. It is also canvassed by them that the High Court has correctly opined that the circular cannot be made applicable retrospectively having been issued in the year 2006 to a promotional matter pertaining to the year 1996- 97.

9. There can be no scintilla of doubt that the finding recorded by the High Court pertaining to the circular is absolutely correct and unassailable. The said circular could not have been placed reliance upon by the State to contend that the respondents could have been deprived of promotion. However, the said circular is totally inconsequential for the present case, for what we are going to hold."

28. In Gulf Goans Hotels (supra), the Supreme Court explained the principle that so long as the policy remains in the realm of even rules framed for the guidance of executive and administrative authorities it may bind those authorities as declarations of what they are expected to do under it. I may quote the observations made in paras 11, 12 and 13 as under:

"11. The cases of the respective parties having been noticed the necessary discourse may now commence. In *Bennett Coleman & Coleman & Co. v. Union of India*, a "Newsprint Policy", notified by the Central Govt. for imposing conditions on import of newsprint came to be challenged on the ground of violation of fundamental rights. Beg, J., in a concurring judgment, observed:

"What is termed "policy" can become justiciable when it exhibits itself in the shape of even purported "law". According to Article 13(3)(a) of the Constitution, "law" includes "any Ordinance, order, bye-law, rule, [pic]regulation, notification, custom or usage having in the territory of India the force of law". So long as policy remains in the realm of even rules framed for the guidance of executive and administrative authorities it may bind those authorities as declarations of what they are expected to do under it. But, it cannot bind citizens unless the impugned policy is shown to have acquired the force of "law".

(para 93 - emphasis added)

12. The question "what is "law"? has perplexed many a jurist; yet, the search for the elusive definition continues. It may be unwise to posit an answer to the question; rather, one may proceed by examining the points of consensus in jurisprudential theories. What appears to be common to all these theories is the notion that law must possess a certain form; contain a clear mandate/explicit command which may be prescriptive, permissive or penal and the law must also seek to achieve a clearly identifiable purpose. While the form itself or absence thereof will not be determinative and its impact has to be considered as a lending or supporting force, the disclosure of a clear mandate and purpose is indispensable.

13. It may, therefore, be understood that a Govt. policy may acquire the "force of "law"" if it conforms to a certain form possessed by other laws in force and encapsulates a mandate and discloses a specific purpose..."

29. I am of the view that the Government Resolution dated 16th August, 1973 was issued with a definite object. The object was to see that the persons who complete five years of service in the work charged establishment are converted into the employees on the temporary establishment. It is very unfortunate to note that the petitioners herein, despite such policy in force and having represented continuously in that regard, continued as work charged employees in the work charged establishment for years together. The fact that they continued almost for a period of more than two decades itself is suggestive of the fact that they could not have been treated as work charged employees for these many years. According to the Government Resolutions, the petitioners ought to have been absorbed from the work charged establishment to the temporary establishment on completion of five years of service. As this benefit was not granted, they were not given the benefits of the higher pay scales on completion of 9, 18 and 27 years of service. It is not in dispute that they were all appointed in accordance with the rules and regulations and that too, after a regular

recruitment process. It is very unfortunate to note that they continued to work in the work charged establishment as work charged employees for years together without any promotional avenue. It also appears from the materials on record that the respondent No. 3 had recommended to the State Government long time back i.e. immediately on completion of five years of service in the work charged establishment to consider the case of the petitioners and put them or rather confer upon them the status of being temporary employees. It appears that such recommendation was very conveniently ignored.

30. The Supreme Court in the case of Council of Scientific and Industrial Research and another v. K.G.S. Bhatt and another reported in , (1989) 4 SCC 635 held:

"...It is often said and indeed, adroitly, an organization public or private does not "hire a hand" but engages or employees a whole man. The person is recruited by an organization not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organization. It is an incentive for personnel development as well. Every management must provide realistic opportunities for promising employees to move upward. "The organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both no managerial employees and their supervisors". There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions..."

31. The very same issue came up for consideration again wherein the Supreme Court in Dr. Ms. O.Z. Hssain v. Union of India, , 1990 (Supp) SCC 688 laid down the law:

"...Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other Ministries would have the benefit of promotion, the non-medical "A" Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers..."

32. In the State of Tripura (supra), the Supreme Court observed in para 6 as under:

"6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its

constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue of promotion, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India, Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the Appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the Appellant should have followed the said principle."

33. In *Food Corporation of India v. Parashotam Das Bansal*, , (2008) 5 SCC 100, the Supreme Court observed in paras 12 and 13 as under:

"12. When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that he fell within a category of employees excluded from promotional prospect, the Superior Court will have the jurisdiction to issue necessary direction.

13. If there is no channel of promotion in respect of a particular group of officers resulting in stagnation over the years, the Court although may not issue any direction as to in which manner a scheme should be formulated or by reason thereof interfere with the operation of existing channel of promotion to the officers working in different departments and officers of the Government but the jurisdiction to issue direction to make a scheme cannot be denied to a Superior Court of the country."

34. Mr. Majmudar the learned counsel appearing for the applicants is justified in making the submission that appointing the petitioners from the work charged establishment to the temporary establishment with effect from the year 2007 is not going to benefit them in any manner as most of them have retired from service without any benefits. This is nothing but unfair labour practice and exploitation. The very essence and concept of unfair labour practice in the angle and anvil of the provisions of the Industrial Disputes Act is that in the industrial sector, there is complete bar to appoint the casual appointees for a continuous period with the object to deprive their status and privileges of permanent workmen, and as a coercive measures to avoid such contingency, the law has been framed in a negative angle restraining / prohibiting such unfair labour

practice. The petitioners cannot be kept in the work charged establishment through out their life when the nature of work is perennial, whatever the circumstances be in that regard.

35. The date which has been fixed seems to be without any understanding. Although the Government is not obliged to assign reasons to fix a particular date, but if the Court finds it to be illogical or arbitrary, then it can certainly take the view that the action of the State Government is not in accordance with law or fair.

36. In *U.P. State Electricity Board v. Pooran Chandra Pandey and others*, , 2007 (7) Supreme Today 374, the Supreme Court observed in paras 18 and 19 as under:

"18. We may further point out that a seven-Judge Bench decision of this Court in *Maneka Gandhi v. Union of India & Anr.* , AIR 1978 SC 597 has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. *Maneka Gandhi's* case (supra) is a decision of a seven-Judge Bench, whereas *Uma Devis* case (supra) is a decision of a five-Judge Bench of this Court. It is well settled that a smaller bench decision cannot override a larger bench decision of the Court. No doubt, *Maneka Gandhi's* case (supra) does not specifically deal with the question of regularization of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application.

19. In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years service and it will surely not be reasonable if their claim for regularization is denied even after such a long period of service. Hence apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularization and are made to face the same selection which fresh recruits have to face."

37. In *State of Jharkhand and another v. Harihar Yadav and others*, , (2014) 2 SCC 114, the Supreme Court, while explaining the role of the State as a model employer and its responsibility to sustain social and economic security, observed in paras 52, 53, 54, 55, 56 and 57 as under:

"52. Having regard to the position that has emerged, we are compelled to dwell upon the role of the State as a model employer. In *Som Prakash Rekhi v. Union of India* , (1981) 1 SCC 449 : (AIR 1981 SC 212), Krishna Iyer, J., has stated thus:--

"70. Social justice is the conscience of our Constitution, the State is the promoter of economic justice, the founding faith which sustains the Constitution and the country is Indian humanity. The public sector is a model employer with a social

conscience not an artificial person without soul to be damned or body to be burnt."

53. In *Gurmail Singh and others v. State of Punjab and others* , (1991) 1 SCC 189 : (AIR 1993 SC 1388) it has been held that the State as a model employer is expected to show fairness in action.

54. In *Balram Gupta v. Union of India and another* (, 1987 (Supp) SC 228 : AIR 1987 SC 2354), the Court observed that as a model employer the Government must conduct itself with high probity and candour with its employees.

55. In *State of Haryana v. Piara Singh* , (1992) 4 SCC 118 : (AIR 1992 SC 2130 : 1992 AIR SCW 2315) the Court has ruled that the main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16.

56. In *Bhupendra Nath Hazarika and another v. State of Assam and others.*, (2013) 2 SCC 516 : (AIR 2013 SC 234 : 2013 AIR SCW 401), while laying emphasis on the role of the State as a model employer, though in a different context, the Court observed:

"65...It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretised."

57. If the present factual matrix is tested on the anvil of the aforesaid principles, there can be no trace of doubt that both the States and the Corporations have conveniently ostracized the concept of "model employer". It would not be wrong to say that they have done so with Pacific calmness, sans vision, shorn of responsibility and oblivious of their role in such a situation. Their action reflects the attitude of emotionlessness, proclivity of impassivity and deviancy with cruel impassibility. Neither of the States nor the Corporations have even thought for a moment about the livelihood of the employees. They have remained totally alien to the situation to which the employees have been driven to. In a State of good governance the Government cannot act like an alien. It has an active role to play. It has to have a constructive and progressive vision. What would have ordinarily happened had there not been bifurcation of the State and what fate of the employees of BHALCO would have faced is a different matter altogether. The tragedy has fallen solely because of the bifurcation. True it is, under the law there has been bifurcation and the Central Government has been assigned the role to settle the controversies that had to arise between the two States. But the

experimentation that has been done with the employees as if they are guinea pigs is legally not permissible and indubitably absolutely unconscionable. It hurts the soul of the Constitution and no one has the right to do so."

38. I may also look into the reasons assigned by the State Government for rejecting the claims of the petitioners herein. The free English translation of the reasons assigned vide order dated 8th July, 2011 is as under:

"3. Demands of the applicant cannot be accepted on the following reasons:

1) The State Government has converted the applicants into Temporary Establishment w.e.f. 1/11/2007 and on that basis the applicants are demanding that their work-charge services should also be considered as continuous service for the purpose of Higher Pay Scale. In connection with the aforesaid issue at higher level the meeting was convened on 31/12/1997 for taking decision for conversion of the Workcharge Establishment into Temporary Establishment. The minutes of the said meeting have been circulated dated 5/1/1998 being No. WCE/1097/M-84/4/G2 And it has been clarified that the benefits are to be given from the dates of orders or of conversion of Workcharge Establishment into Temporary Establishment and the implementation is also to be done from the date of the orders and the services rendered prior to conversion of Workcharge Establishment to Temporary Establishment cannot be considered as continuous one for the purpose of Higher Pay Scale.

2) Considering the demands of the applicants as per G.R. dated 16/8/1973 and considering the respective posts as required on long term basis, the period of 5 years be treated as Work-charge services and deducting the aforesaid period of 5 years from the total length of services, the remaining period of services be requested to be considered for Higher Pay Scale. The decision is taken and the applicants have already been conferred the status of Temporary Establishment as per the G.R. dated 16/8/1973 and thus the demands of the applicants are already satisfied and, therefore, the said issue cannot be co-related to Higher Pay Scale issue.

3) As per the demands of the applicants the other similarly situated temporary employees who are placed in the same cadre, there is a huge difference in the pay band and pay grade of the applicants and other similarly situated Temporary employees, though their cadre is equivalent and, therefore, as contended by the applicants due to huge difference in the pay band and the pay grade, the applicants are sustaining economic loss. In this context it is to be clarified that in respect of the aforesaid point Nos. 1 and 2 and in respect of the issues raised herein above, which have been considered and on consideration it has been stated that the services rendered before the conversion of Work-charge Establishment into Temporary cannot be considered as continuous one for higher pay scale and accordingly the grievance of the applicants to the effect that there is huge difference in grade pay and pay band and as a resultant effect there is economic loss to the applicants, however, the said grievance is out of place and

comparing with the afore-mentioned situation the said benefits cannot be granted/extended to the applicants. The cadre of temporary employees as well as the cadre of work-charge employees both are different cadres and different cadres cannot raise any claim by undertaking comparison with each other.

4) The applicants have contended that despite the applicants possess prescribed degrees and educational qualifications, the other employees serving in lower cadres i.e. as temporary employees e.g. Lab Assistant, Work Assistant, Junior Clerk, Senior Clerk, Driver, the applicants are getting less pay band and pay grade compared to the lower cadre temporary employees as contended by the applicants, so far as the aforesaid grievance of the applicant is concerned. Here in the above issue No. 3 was also considered and comparison of the applicants with other incumbents having degrees and educational qualification like the applicants, but forming different cadres, the said comparison is out of place and the applicants cannot be granted any benefit accordingly and thus, the said demand also cannot be accepted.

5) The demands of the applicants to convert the applicants into Temporary Establishment with retrospective effect i.e. w.e.f. 16/11/1996, the said demand cannot be accepted. The applicants have made representations on the foundation that 42 Senior Scientific Assistants/Junior Scientific Assistants have been converted into Temporary Establishment on the basis of their giving of option on the basis of order dated 7/10/1996 passed by Government of Gujarat, Narmada Water Resources, Water Supply and Kalpsar Department and those 42 Deputationists on the basis of their options, they have been converted into Temporary Establishment w.e.f. 7/10/1996 and as contended by the present applicants, though the applicants had also given the same option, the Work-charge period of the applicants came to be prolonged and as a resultant effect the applicants could not get higher pay scale and therefore, the applicants had contended that they may be given Temporary Status with retrospective effect w.e.f. 16/11/1996. So far as the aforesaid demands of the applicants is concerned, the same cannot be considered as, in each and every case, on the basis of specific information as well as on the basis of the proposal of the concerned department and considering the respective merits, the decision is being taken at appropriate time on merits and, therefore, the applicants cannot resort to the particular benefits given to other employees from particular dates. At the relevant time those employees who had given conditional consent for going on deputation, their demand was not accepted.

6) As stated by the applicants in issue No. 6, considering the applicants average service period as that of 27 years there is no possibility of consideration of promotion and, therefore, as contended by the applicants, the services as Work-charge be considered and accordingly request has been made for granting higher pay scale to the applicants. In this context it is stated that the orders of Higher Pay Scales are granted on the basis of provisions of respective resolutions and, therefore, the aforesaid demands of the applicants for higher pay scale from

particular date cannot be accepted.

7) It has been stated that in respect of the similar another case of one Shri R.R. Nakum i.e. the case No. Misc. Civil Application No. 1607/2008 and it has been provided in the order dated 22/10/2007 and as provided in the order of said Shri R.R. Nakum, it has been stated that as per the resolution of erstwhile Public Construction Department dated 16/8/1973 the applicants may also be granted benefit of Temporary Status after 5 years Work-charge Services from initial date of appointment. Against the aforesaid order the Government has preferred Letters Patent Appeal wherein by order dated 8/2/2011 when the posts were not in existence, whether the post could be brought into existence with retrospective effect or not, in this context the case is referred to the Hon''ble Single Judge and it has been informed to undertake the procedure on the basis of final outcome of Special Civil Application No. 22301/2007 to 22339/2007. That no date is fixed by the Hon''ble Court in this regards and, therefore, as the matter has remained subjudice before the Hon''ble High Court, it is desirable to wait till the matter is being disposed of or order is being given by the Hon''ble High Court.

In the order dated 28/12/2010, the Hon''ble High Court has issued directions to the respondent No. 1 Finance Department to grant personal hearing to the applicants. The applicants were heard in person on 22/5/2011. Considering the resolution dated 16/8/1973 published by Roads & Building Department, considering the provisions of various resolutions pertaining to Higher Pay Scales which have been published from time to time, considering the conditions of services of Work-charge employees, considering the past decisions for conversion of Work-charge Establishment into Temporary Establishment, considering the conditional/unconditional options given for going on deputation and considering the Letters Patent Appeal which has remained pending in similar cases, considering all the aforesaid aspects, the demands/representations of the applicants for giving temporary status with retrospective effect is being disallowed."

39. I am not convinced with any of the grounds referred to above. To reject this petition by upholding the grounds referred to above on which the claim of the petitioners has been turned down by the Government will amount to nothing but mockery of justice. It is very depressing to note that not even once in last 30 years the State Government thought fit to consider the case of the petitioners for being absorbed on the temporary establishment.

40. To take any view other than the one I have taken in this matter, would be opposed to common sense or would offend the common man''s sense of justice. Chandrachud, J. (as His Lordship then was), in Smt. Indira Gandhi v. Shri Raj Narain [, 1975 (Suppl.) SCC 1] made a very significant observation in para 681 as under:

"It is the common man''s sense of justice which sustains democracies and there is a fear that the 39th amendment by its impugned parts may outrage that sense

of justice."

A Judge must, therefore, take note of the common man's sense of justice and not merely be a slave of logic and the letter of the law.

41. Thus, in view of the above, this writ application is allowed. I direct the respondents to grant the benefits of conversion of the petitioners from the work charged establishment to temporary establishment on completion of five years as work charged employees from the date of their initial appointment which is indicated in the chart at Annexure: "A" (page - 34 to the petition), and accordingly, I further direct the respondents to grant the higher pay scales from the date the petitioners completed 9, 18 and 27 years of service, as the case may be, on the temporary establishment.

42. If any of the petitioners have retired/expired, then those petitioners shall also be entitled to the benefits of the higher pay scales, and they or their legal heirs, as the case may be, shall be paid the amount falling due by virtue of this order within a period of two months from the date of receipt of a copy of this order.

43. With the above observations and directions, this application is disposed of. Rule is made absolute to the aforesaid extent.