

(1999) 01 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : CWP No's. 664 of 1998 and 730 of 1998

Sher Singh and Others

APPELLANT

Vs

State of H.P. and Others
 Padam Dev and Others Vs
State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 06-01-1999

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 15, 19
Constitution of India, 1950 — Article 12, 14, 16, 226, 309

Citation : (1999) 2 ShimLC 194

Hon'ble Judges : Surinder Sarup, J; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Shrawan Dogra, for the Appellant; B.P. Sharma, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : State of Himachal Pradesh and Another Vs. Padam Devi and Others, AIR 2002 SC 2477 : (2002) 4 JT 426 : (2002) 3 SCALE 672 : (2002) 4 SCC 510 : (2002) 3 SCR 90 : (2002) 2 SCT 746 : (2002) AIRSCW 2769 : (2002) 4 Supreme 43

Kamlesh Sharma, J.—Both these writ petitions (W.P. No. 664 of 1998 and 730 of 1998) are being disposed of by a common judgment as these involve identical questions of law and fact. In W.P. No. 664 of 1998, there are sixty-two Petitioners whereas in W.P. No. 730 of 98, there are fifty-five Petitioners. They are aggrieved by , the letter dated 21.9.1998 (Annexure P-12) whereby the Government has given its approval to the proposal of the Director, Animal Husbandry, inter alia, that Gopal Sahayaks who are desirous of completing the training of Veterinary Pharmacists be allowed to join the training which is compressed to nine months from its usual duration of two years. It is further decided that each trainee will get stipend of Rs. 250/- per month during the period of training. The Petitioners claim that they are similarly situated as Gopal

Sahayaks, having been trained under another Scheme with regard to the training in Dairying and Animal Husbandry but they have been discriminated against by not sending them for training of Veterinary Pharmacists like Gopal Sahayaks. Hence, the action of the Government in sending only Gopal Sahayaks for the training of Veterinary Pharmacists is arbitrary, unjust, unreasonable and offends Article 14 of the Constitution of India.

2. The Petitioners have, inter alia, prayed for the following reliefs.

(i). That the decision contained in letter dated 21.9.1998 (Annexure P-12) may be quashed and set aside;

(ii) That Respondents may be directed to consider the claims of the Petitioners and other similarly situated persons, who have been trained in Dairying and Animal Husbandry in different batches in consequence of the Scheme framed in the year 1981, along with the Gopal Sahayaks for further training as Veterinary Pharmacists ;

(iii) That the Respondents may be directed to frame a just and reasonable policy to select candidates out of trained Dairying and Animal Husbandry Trainees and Gopal Sahayaks on the basis of batch of training or by some other just and reasonable method and thereafter to train them as Veterinary Pharmacists in phased manner;

(iv) That in case the Respondents send the Gopal Sahayaks for training as Veterinary Pharmacists, ignoring the claim of the category of Petitioners, the same may be quashed and set aside and or in the alternative, the Respondents may be directed to send the candidates of the category of the Petitioners also for the said training....

3. It is not in dispute that the Government had framed a Scheme with regard to training of Rural Educated Unemployed youths in Dairying and Animal Husbandry (hereinafter called the "Scheme with regard to training in Dairying and Animal Husbandry") in the year 1981 and large number of rural, educated, unemployed youths, including the Petitioners, have been trained under this scheme in different batches till the year 1996. The first batch under this Scheme passed out in July 1981 and the 18th batch in the year 1996. In the year 1993, another scheme known as Gopal Sahayak Yojna was framed under which also a large number of rural educated unemployed youths were given training in the year 1993. As per the allegations made in the writ petition, the scheme with regard to training in Dairying and Animal Husbandry was prepared during the Congress Government in the year 1981 whereas the Gopal Sahayak Yojna was framed by the B.J.P. Government in the year 1993. After coming into power of the B.J.P. Government in the year 1998, the Hon"ble Chief Minister made a statement in the Assembly on 3.7.1998 that the Gopal Sahayaks who were trained in the year 1992-93 for six months and who have not been absorbed till date would be given training of Veterinary Pharmacists and thereafter, they would be absorbed. In order to give effect to the declaration made by the Hon"ble Chief Minister, notice

of training of Veterinary Pharmacists for Gopal Sahayaks was published in the newspapers on 3.8.1998 (Annexure P-8) whereby Gopal Sahayaks were directed to contact the office of Assistant Director, Animal Husbandry before 10.8.1998 for the training of Veterinary Pharmacists with all their certificates. When the Petitioners came to know about the said notice, they submitted representations (Annexure P-9) to the Hon"ble Chief Minister and also to the Minister of Animal Husbandry concerned that their cases may also be considered for imparting training of Veterinary Pharmacists as they are also trained in dairying and animal husbandry for a period of six months like the Gopal Sahayaks. However, they were told by the Respondents that their cases could not be considered as the Government has taken a decision with regard to Gopal Sahayaks only as per the statement made by the Hon"ble Chief Minister wherein nothing has been said about those candidates who have been trained under the scheme with regard to training in Dairying and Animal Husbandry. Despite this, some of the Petitioners made applications for being considered as candidates for training as Veterinary Pharmacists and one of them, namely, Suresh Kumar, has received reply to his application (Annexure P-10) from the Assistant Director, Mandi District Mandi, that training as per the decision of the Government is only for the trained Gopal Sahayaks. The candidates trained in respect of Dairy are not eligible for this. Only those Gopal Sahayaks who have obtained training for 6 months in the year 1992-93 are eligible for this training...". Thereafter, on 9.9.1998, a cabinet decision was taken to impart training of Veterinary Pharmacists to 383 Gopal Sahayaks as per the news cutting (Annexure P-11) published in the Tribune on 10.9.1998. Consequent to the said decision, the impugned letter dated 21.9.1998 (Annexure P-12) was sent to the Director of Animal Husbandry by the Financial Commissioner-cum-Secretary ((AH) to the Government of H.P. As per this letter, the proposal of the Director of Animal Husbandry was approved in the following manner:

- (i) The written test conducted for 700 vacancies by the Animal Husbandry Department during the years 1997 and 98 may be scrapped ;
- (ii) Gopal Sahayaks who are desirous of completing the training of vety. Pharmacists be allowed to join the training. 12 Gopal Sahayaks who could not qualify the examination earlier will also be considered for vety, pharmacists training course;
- (iii) The prescribed 2 years training course of vety, pharmacists be compressed to 9 months.

It was also decided that each trainee would be given stipend of Rs. 250/- per month.

4. The Respondents in their reply affidavits have raised the preliminary objection that the controversy raised in the writ petition is a service matter for which jurisdiction lies with the H.P. State Administrative Tribunal and the writ petitions are not maintainable in this Court. It is also stated that the scheme with regard

to training in Dairying and Animal Husbandry, under which the Petitioners were trained, was not to provide jobs to them but to engage them in self-employment activities in dairy farming whereas under the Gopal Sahayak Yojna training was given to provide veterinary aid at the door step of the farmers in each Panchayat. It has been pointed out that these schemes are not comparable, as such, there is no discrimination in imparting training of Veterinary Pharmacists to Gopal Sahayaks. The main emphasis of the Respondents in their reply is that the Gopal Sahayaks are being given training of Veterinary Pharmacists as a result of the Policy decision of the Government which is not justiciable in these writ petitions.

5. In rejoinder, the Petitioners have denied that the dispute raised in their writ petitions is service matter for which they should file petitions before the HP. State Administrative Tribunal. The challenge laid by the Petitioners in these writ petitions is to the arbitrary action of the Respondents to confine the selection for Veterinary Pharmacist's training to Gopal Sahayaks only ignoring the Petitioners and others who have also undergone similar training in the field of dairy farming, on the basis of nomenclature, which cannot be termed as a matter concerning recruitment or conditions of service of persons appointed to public service or post under the State of H.P. as envisaged u/s 15 of the Administrative Tribunals Act for which filing of the writ petitions under Article 226 of the Constitution of India is the appropriate remedy. They have further reiterated that the training imparted to them under the scheme with regard to training in Dairying and Animal Husbandry is superior to the training imparted to the Gopal Sahayaks under the Gopal Sahayak Yojna and there is no justification to pick up only the Gopal Sahayaks for Veterinary Pharmacist's training.

6. Before appreciating the respective contentions of the parties and the submissions made by their learned Counsel on merits, we will first deal with the preliminary objection, whether these writ petitions are maintainable in this Court or the Petitioners should be relegated to the State Administrative Tribunal. No doubt, it is mentioned in the notice published in the newspapers (Annexure P-11) that on completion of training the Gopal Sahayaks would be appointed on a regular basis but there cannot be any dispute that the appointment would be under the relevant recruitment and promotion rules under Article 309 of the Constitution, if any, or in the alternative under the executive instructions and simply by successfully undergoing the training they would not be entitled to appointment. This has been made clear as per condition No. 6 mentioned in the letter dated 30.11.1998 (Annexure P-15) whereby they were nominated for the training of Veterinary Pharmacist, which is as under:

6. The candidate shall not claim for Government service in Animal Husbandry Department in any manner. Government job in the Department of Animal Husbandry would be provided only on the availability of the posts of vety. Pharmacits and keeping in view the terms and conditions fixed by the Government from time to time in R & P Rules and on the recommendations of

Subordinate Service Selection Board established by the Government on qualifying the interview held by it.

7. In view of this, it is clear that by undergoing training of Veterinary Pharmacists, the Gopal Sahayaks would not have any right whatsoever to seek employment simply because they are trained as such. Therefore, the dispute raised by the Petitioners that they have been discriminated against vis-a-vis the Gopal Sahayaks by not sending them for training of Veterinary Pharmacists is not a matter concerning recruitment to a civil service or a post under the State of Himachal Pradesh. In this regard, we are guided by the law laid down by a Full Bench of this Court in Padma Sharma and Ors. v. State of H.P. and Ors. 1990 (1) Sim. L.C. 1, wherein the Petitioners had come to this High Court seeking direction that they be also admitted to one year Junior Basic condensed course on the basis of their qualification as diploma-holders in Nursery and Infant Training Course. After examining the scheme for training and the provisions of the Administrative Tribunals Act, the Full Bench held that the J.B.T. Condensed course only enables a person admitted to it to acquire eligibility for being considered for recruitment to a service or civil post and no more and the acquisition of eligibility for appointment does not amount to recruitment as understood in service law. In the present case also, we are dealing with almost identical situation where Veterinary Pharmacist's training would enable a person to acquire eligibility for being considered for recruitment to the post of Veterinary Pharmacist which does not amount to recruitment. Padma Sharma's case (supra), it was also held that acquisition of eligibility for being considered for recruitment is also not "a matter concerning recruitment." It was observed in Para 12 as under:

12. Before a matter can be treated to be one concerning recruitment, it should be shown to be related with the act or process of recruitment or an act of offering inducement to a qualified person to enter a particular job or profession. In other words, it should be a part of a step for enlistment, acceptance, selection or approval for appointment to a service or a civil post. Unless, the employer initiates a process towards enlistment, selection or approval for appointment, it is difficult to say that he has taken any step towards recruitment to a service or a post. Till the process is so initiated, the mere fact of affording facility to an ineligible person to acquire eligibility for consideration for appointment to a service or a civil post cannot be characterized as a matter concerning recruitment.

The law laid down in Padma Sharma's case (supra) was not touched by later Full Bench of five Judges in C.W.P. No. 1665 of 1996 titled Arti Gupta v. State of Himachal Pradesh and Ors. decided on 16.10.1996.

8. Another point raised by the learned Additional Advocate-General that since the representations of the Petitioners have been rejected by the competent authority, they fall within the definition of "person aggrieved" and that they should approach the State Administrative Tribunal, as envisaged u/s 19 of the

Administrative Tribunals Act is also misconceived. In the latest judgment of the Supreme Court in *Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc.*, the learned Judges of the Supreme Court have, in para 19, approved the following observations of the Orissa Administrative Tribunal in *Amitarani Khuntia v. State of Orissa* (1996) 1 OLR (CSR) 2, to hold that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal:

...A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a "person aggrieved" within the meaning of the Act....

Tribunals are constituted under Article 323-A of the Constitution of India. The above Article empowers Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any State or any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned and controlled by the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well defined in the Act. It does not enjoy any plenary power."

The law laid down in *Dr. Duryodhan Sahu's* case (supra) has impliedly overruled the findings of the Full Bench of five Judges in *Arti Gupta's* case (supra) on question No. 2 that even if a person has not applied for the post he can move the Administrative Tribunal for appropriate reliefs on complaint as against the action taken by the Respondents in the matter of selection and recruitment. The view taken by the Full Bench that the jurisdiction of the Tribunal in relation to the matters set out in Sections 14 and 15 does not depend upon the status or otherwise of the applicant before it and even an utter stranger can move the Tribunal with reference to the matters set out in those sections is contrary to the observations approved by the Supreme Court in *Dr. Duryodhan Sahu's* case (supra).

9. Therefore, we reject the preliminary objections raised by the learned Additional Advocate General and hold that the dispute arising in these writ petitions is neither recruitment nor a matter concerning recruitment nor a matter in respect of conditions of service of persons appointed to public service and post under the State of H.P. and hold that this Court the jurisdiction.

10. On merits, to decide whether the impugned action of the Respondents is arbitrary, unjust, unreasonable and violative of Article 14 of the Constitution, we

have to compare the Gopal Sahayak Yojna with the Scheme with regard to training in Dairying and Animal Husbandry under which the Petitioners and others were trained.

----- Gopal
Sahayak Yojna Scheme with Regard to Training in Dairying and Animal
Husbandry

OBJECTIVES To provide veterinary aid at the door 1. To provide self-employment to of farmers in each Panchayat. educated unemployed and under employed rural youths.

2. To raise the socio-economic standard of weaker section of the society. 3. To increase the production of milk for meeting the requirements of the consumers in general and milk plants of the State in particular.

4. To meet the requirements of quality dairy products and of balanced diet to all sections of people both in urban and rural areas for adequate nutrition.

5. To enhance employment potential to ex-servicemen. DURATION OF TRAINING Six months Six months.

ELIGIBILITY AND QUALIFICATION The candidate should be a male and 1. The training would be open to unemployed. persons permanently residing in the milk-shed areas. 2. He should be a permanent resident of the concerned 2. The candidate shall have to Panchayat. produce a proof of possessing one 3. The age of the candidate should hectare irrigated or two hectare be between 18 and 40 years. unirrigated land either in their own name or in the name of their 4. He should be a matriculate. parents/guardian. They will have to give an undertaking to set apart 1/2 acre of irrigated land for growing fodder. 3. They should have passed minimum Matric standard education. 4. They should have no inhibition in handling dead animals, viscera or undertaking such activity connected with the training specially cleaning of sheds and milking of animals, etc.

5. They should have aptitude of raising cattle which will be judged during training and any trainee not exhibiting/developing aptitude can be removed from the training after one month of training period.

6. Preference will be given to those who are above 27 years of age.

7. Due representation will be given to Ex-servicemen.

8. They should be physically fit to handle cattle.

9-A. Candidate imparted training shall have to give an undertaking that he will take up cattle rearing and this training would not in any way entitle him to get any Govt. job.

10-A. Candidate should be from the village located within 5 to 10 K.Ms radius

of chilling plants or 5 K.Ms radius from the collection points on either side of the milk route. SELECTION Through a Selection Committee Though under the Scheme comprising of S.D.O.(C) of the area, Selection Committee is not provided B.D.O. and Distt. Animal Husbandry but as per the rejoinder filed by the Officer or Sub-Divisional Vety. Petitioners, a committee consisting Officer of the area. of the D.C. or his nominee, District Animal Husbandry Officer of the Distt. and officer in charge of the training centre have been making the selection, which averments have not been controverted by the Respondents.

VALUE OF THE TRAINING/SUBJECTS OF TRAINING

The candidates will be given six The training would initially be months basic (theoretical) training started at Sundernagar (Distt. in the selected veterinary institutions, Mandi-Himachal Pradesh) where a which also includes 15 days practical community centre has been training (Batchwise) at Kotla Barog/ constructed under I.G.A.P. The Gosadan Khajjian. Besides this during theoretical part would cover at above six months period, opportunities Sundernagar for a period of two for short term referresher courses month during which period the will be given. The training will be trainees would also visit the cattle imparted mainly on the following Breeding Farm, Bhangrotu Deep subjects: Frozen Semen Laboratory and also (a) Knowledge of breeding time of Milk plant at Chakkar. The theory cows and buffaloes and artificial will simultaneously be insemination. supplemented with practical (b) Knowledge of common ailments of training at these institutions. animals and their treatment, remedial Thereafter, the trainees would be measures of breeding problems of milch taken to Kamand, where they will animals. kept for a period of 3 months and (c) Knowledge of castration of scrub one month's study tour to Kothi- animals. Kapura, Palampur and N.D.R.I. at (d) Knowledge of contagious diseases of Karnal. The training curriculum livestock and their control with would be 80% practical i.e. manual special reference to vaccination. work and 20% theory. The period (e) Care and management of Cross bred for different disciplines would be as animals, milking animals, pregnant under: animals and newly born calves and 1. Cattle raising including knowledge of production of superior first aid 10 weeks. quality of fodder. 2. Fodder raising 2 weeks. (f) The training in the State will be 3. Artificial insemi 8 weeks. provided in Sub-Divisional Veterinary 4. Visit to out stations 4 weeks. Hospitals/Dispensaries of Animal Since this is a practical farm trai- Husbandry Departments (as per list ning, as such, daily training pro- of institutions enclosed (Annexure A) gramme will synchronize with Practical training will be provided timings of farm activities. There either at Kotla Barog or Gosadan Khajjian. will be no regular holidays during the training except Sundays. However, in cases of emergency, the Manager of the farm may authorize leave but each candidate shall have to participate in the training for 22 weeks. STIPEND AND SUBSIDIES During training period each trainee Each trainee would be paid Rs. 150/- will be given stipened of Rs. 250/- per month as stipend plus actual per month. In addition to this, each bus fare from the nearest road head trainee shall be given to and fro to the place of training subject to

charges from his training centre production of ticket and an equal either to Kotla Barog or Khajjian. amount would be paid for the return During the course of practical fare. In addition to above, training he will be given Rs. 10/- actual bus fare will also be per day as daily allowance. paid for out station visits.

(b) after completion of training On the conclusion of the training every Gopal Sahayak will be paid each trainee is expected to start a honorarium of Rs. 300/- for a Dairy unit and he would be helped duration of 12 months by the Animal in securing loan from the financial Husbandry Deptt. This will be institutions and also help them discontinued thereafter. purchase of livestock.

8. (a) After successful completion The economy of such unit of 3 of training, every Gopal Sahayak cows is given in Annexure II. will be issued a certificate of Subsidies. To encourage these training and each Gopal Sahayak unemployed youth to be self reliant could get a kit of veterinary it is proposed that they should be medicines and equipments worth provided subsidy to the extent of Rs. 4,000/- on 75% subsidy, i.e. Rs. interest on capital investment 3,000/- will be paid by the Govt. and insurance charges which and Rs. 1,000/- by the concerned would be approximately come to Gopal Sahayak from his own resources. Rs. 3,50,000/for one year. In addition to this 30% of the This assistance would be given total trained Gopal Sahayaks will up to 3 years. be selected for providing A.I. equipments worth Rs. 11,000/- out It is envisaged that these of which 75% i.e. Rs. 8,250/- will trainees should help other be paid by the Government and 25% livestock owners in first aid i.e. Rs. 2,750/- by the concerned also for conducting A.I. work. Gopal Sahayak. For this purpose, the Department would supply them A. I. kit which (b) Arrangements for bank loans would cost Rs. 2,000/- per trainee. will be made for those trainee who can not pay the 25% costs from their own resources.

(c) Liquid Nitrogen containers shall be supplied on the following conditions: (1) There should not be any depart- mental Artificial Insemination Centre within 2 K.Ms radius of concerned Panchayat.

(2) The centre of Gopal Sahayak should be on the road head so that liquid Nitrogen could be transported through the truck.

(3) The Gopal Sahayak should be able to maintain and handle and A.I. equipment and he should be interested and competent to perform A.I. work independently.

(4) Liquid Nitrogen AB-35 and AB-26 container or containers of small size shall be made available on the basis of availability of these containers.

(5) The container shall only be provided to those centres where road remaining open for traffic throughout the year.

(d) Wherever possible facilities for artificial insemination/ equipments shall be made available by the Animal Husbandry Department.

9. After successful completion of training Course and having obtained a certificate a Gopal Sahayak under the Panchayat area will perform A.I. veterinary first aid, castration and vaccination, dipping, drenching work....

11. After the scheme with regard to training in Dairying and Animal Husbandry came into force, the Director, Animal Husbandry, vide his letter dated 15.7.1981 (Annexure P-3) wrote to officers that they are bound to see that the Scheme is made a success. It was further stated that persons trained under this Scheme would not only be maintaining their own milk animals but would also render veterinary first aid and conduct A.I. in their village for which purpose they were being provided with A.I. kits and veterinary first aid kits which may be requiring replenishment periodically. They were advised that trained persons should be rendered assistance and guidance in conducting their self-engaging gainful profession. A trained person under the said scheme was also issued a Certificate by the Director, Department of Animal Husbandry, that he has undergone six months training under the said scheme. Similarly, after successful completion of training course, a Gopal Sahayak under the guidance and supervision of the local veterinary officer of his Panchayat area is permitted to perform A.I., veterinary first aid, castration and vaccination, dipping, drenching work and they have to furnish a detailed monthly report of work performed by them to the Veterinary officer.

12. After comparison of both the schemes in question, we do not find such difference as to enable the Government to pick up persons belonging to one category and ignore others. No material has been placed before us that what were the considerations on the basis of which trained persons under the Gopal Sahayak Yojna were picked up and the trained persons under the scheme with regard to training in Dairying and Animal Husbandry were ignored. From the impugned letter (Annexure P-12), it appears that the proposal with regard to giving training of Veterinary Pharmacists to Gopal Sahayaks was sent to the Government by the Director, Animal Husbandry and it was approved by compressing the training course to nine months from the normal tenure of two years. It is not in dispute that Gopal Sahayak were given training only in the year 1993 and in all 321 Gopal Sahayaks were trained whereas under the scheme with regard to training in Dairying and Animal Husbandry, regular courses were conducted from the years 1981 to 1996 and 18 batches passed out.

13. In view of these facts on record, there is no justification in picking up Gopal Sahayaks for Veterinary Pharmacists training ignoring the trained persons under the scheme with regard to training in Dairying and Animal Husbandry as persons trained under both the schemes stand on equal footing and Gopal Sahayaks cannot be put in a separate class than the persons trained under the scheme with regard to training in Dairying and Animal Husbandry. Therefore, we hold that the action of the Government in not considering the Petitioners and other persons trained under the Scheme with regard to training in Dairying and Animal

Husbandry is arbitrary, unjust, unreasonable and offends Article 14 of the Constitution.

14. The scope and ambit of Article 14 have been the subject-matter of a catena of Supreme Court decisions, a few of which are being referred to hereinbelow.

In S.G. Jaisinghani Vs. Union of India (UOI) and Others, it is held in Para 14 as follows:

...In a system governed by rule of law, discretion when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and in general, such decision should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey "Law of the Constitution"-Tenth Edn. Introduction ex) "Law has reached its finest moments," stated Douglas, J. in United States v. Wunderlich (1951) 342 US 98, "when it has freed man from the unlimited discretion of some ruler. Where discretion is absolute man has always suffered." It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes (1770) 4 Burr 2528 at p. 22539 "means sound discretion guided by law. It must be governed by rule, nor by humour; it must not be arbitrary, vague and fanciful.

In E.P. Royappa Vs. State of Tamil Nadu and Another, it is held in Para 85 that:

...Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

In A.L. Kalra Vs. Project and Equipment Corporation of India Ltd., after taking note of the decisions in E.P. Royappa v. State of Tamil Nadu (supra) and Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, the learned Judges observed in Para 19:

...It thus appears well settled that Article 14 strikes at arbitrariness in executive/administrative action because any action that is arbitrary must necessarily involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of

discriminatory treatment. An action per se arbitrary itself denies equality of protection by law. The Constitution Bench pertinently observed in *Ajay Hasia* case and put the matter beyond controversy when it said wherever therefore, there is arbitrariness in State action whether it be of the Legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. This view was further elaborated and affirmed in *D.S. Nakara and Others Vs. Union of India (UOI)*, *In Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, it was observed that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It is thus too late in the day to contend that an executive action shown to be arbitrary is not either judicially reviewable or within the reach of Article 14....

15. So far the stand of the Government that since the decision to impart Veterinary Pharmacists training to Gopal Sahayaks is a policy decision, and, is not amenable to judicial review, cannot be accepted in view of our findings that the said action is arbitrary, unjust, unreasonable and offends Article 14 of the Constitution. By now, it is well settled that judicial review of administrative action is an essential part of the Rule of Law. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the Policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. (See: *M.P. Oil Extraction and Another Vs. State of M.P. and Others*, *Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others* and *Industrial Development Corporation of Orissa Ltd., and Tata Cellular Vs. Union of India*,

16. In *Krishnan Kakkanth Vs. Government of Kerala and others*, it is held in Para 36 that:

To ascertain unreasonableness and arbitrariness in the context of Article 14 of the Constitution, it is not necessary to enter upon any exercise for findings out the wisdom in the Policy decision of the State Government. It is immaterial whether a better or more comprehensive policy decision could have been taken. It is equally immaterial if it can be demonstrated that the policy decision is unwise and is likely to defeat the purpose for which such decision has been taken. Unless the policy decision is demonstrably capricious or arbitrary and not informed by any reason whatsoever or it suffers from the vice of discrimination or infringes any statute or provisions of the Constitution, the policy decision cannot be struck down. It should be borne in mind that except for the limited purpose of testing a public policy in the context of illegality and unconstitutionality, courts should avoid "embarking on uncharted ocean of public policy.

17. By testing the present case on the touch-stone laid down in the above

judgments of the apex Court, we find that the Policy which can be deduced from the impugned letter dated 21.9.1998 (Annexure P-12) is to scrap the written test conducted for 700 vacancies by the Animal Husbandry Department during 1997-98 in view of the increase in maximum age for entry into Government service and to compress the tenure of Veterinary Pharmacists from two years to nine months in view of the urgency of filling in a large number of vacant posts of Veterinary Pharmacists, which is not under challenge. What is under challenge is the action of the Government to send Gopal Sahayaks for training of Veterinary Pharmacists including 12 Gopal Sahayaks who could not qualify the examination ignoring the Petitioners and other qualified persons under the scheme with regard to training in Dairying and Animal Husbandry with many years' experience in the field. The proper course for the Government was to consider persons trained both under the Scheme with regard to training in Dairying and Animal Husbandry and the Gopal Sahayak Yojna and make selections, if necessary, by formulating criteria therefor. Since Gopal Sahayaks have already joined and undergone training of Veterinary Pharmacists for a period of three weeks, it will not be in the interest of justice and fair play to set aside the action of the Government to send Gopal Sahayaks for Veterinary Pharmacists training. The ends of justice will be met if the Respondents are directed to consider the claim of the Petitioners and other similarly situated persons trained under the Scheme with regard to training in Dairying and Animal Husbandry from 1981 to 1996 along with Gopal Sahayaks for training of Veterinary Pharmacists. In the alternative, the Respondents are directed to formulate a scheme for training of Veterinary Pharmacists in batches for the Petitioners and those who are trained under the Scheme with regard to training in Dairying and Animal Husbandry from 1981 to 1996 within a reasonable period of one month.

18. The writ petition is allowed in the above terms. The parties are left to bear their own costs.