

(2019) 10 UK CK 0059

In the Uttarakhand High Court

Case No : Special Appeal No. 22, 24, 232, 257 Of 2013, Writ Petition (S/B) No. 23 Of 2017

State Of Uttarakhand Through Principal Secretary, Forest And
Others

APPELLANT

Vs

Birendra Dutt Badola And Others

RESPONDENT

Date of Decision : 17-10-2019

Acts Referred:

Uttarakhand Absorption In The Post Of Forest Range Officer Rules, 2011 — Rule 2, 4
Constitution Of India, 1950 — Article 14, 16, 226, 309, 320, 320(3)(a), 320(3)(b)

Citation : (2019) 10 UK CK 0059

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Pradeep Joshi, B.S. Parihar, Rakesh Thapliyal, Niti Rana, B.D. Kandpal

Final Decision : Allowed

Judgement

Ramesh Ranganathan, CJ

1. Writ petitions and Special Appeals relating to the years 2014, and the years prior thereto, are being listed before us for expeditious hearing every Wednesday and Thursday afternoons. These four Special Appeals, (i.e. Special Appeal Nos. 22, 24, 232 and 257 of 2013, all of which relate to the year 2013), were listed for hearing on 16.10.2019 and 17.10.2019. However, neither were Sri Shashank Pandey and Vikas Bahuguna, learned counsel for the respondents in Special Appeal No. 22 of 2013, and the learned counsel for the appellants in Special Appeal Nos. 232 and 257 of 2013, present on 16.10.2019 when these appeals were heard in part, or on 17.10.2019, nor was there any representation on their behalf. Likewise, Sri G.D. Joshi, learned counsel for the respondents-writ petitioners, in Special Appeal No. 24 of 2013, was also not present in Court either on 16.10.2019 or on 17.10.2019, and there was no representation on his behalf either. Sri Niranjana Bhatt, learned counsel for respondent nos. 4 to 13 in Writ Petition (S/B) No. 23 of 2017 was also not present in Court both on 16th

and 17th October, 2019 when all these matters were heard. There was no representation, on his behalf either, on both these days.

2. Since all these Special Appeals relate to the year 2013, and are interconnected, with each other and with Writ Petition (S/B) No.23 of 2017, we see no reason to defer hearing awaiting the presence of the learned counsel Sri Shashank Pandey, Sri Vikas Bahuguna, Sri G.D. Joshi, and Sir Niranjana Bhatt. We heard Sri Pradeep Joshi, learned Standing Counsel appearing on behalf of the appellant-State Government in Special Appeal Nos. 22 & 24 of 2013 and the respondent-State Government in Special Appeal Nos.233 and 257 of 2013, as also Sri Rakesh Thapliyal, learned Senior Counsel, and Sri B.D. Kandpal, learned Standing Counsel for the Uttarakhand Public Service Commission, who appear for the respondents in Special Appeal Nos. 232 and 257 of 2013 respectively.

3. Special Appeal No. 22 of 2013 is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 184 of 2006 dated 01.08.2012. In the said writ petition, a writ of certiorari was sought to quash the order dated 06.06.2005; for a mandamus directing the respondents not to interfere with the functioning of the petitioners as Assistant Development Officers (Forest) / Deputy Rangers; and to further treat the petitioners as eligible for promotion to the post of Forest Rangers against the 50 per cent direct recruitment quota in accordance with their seniority, and to pay them all consequential benefits. By his order dated 06.06.2005, (which is impugned in this writ petition), the Principal Conservator of Forests informed that employees, who have completed five years' service in the post of Assistant Development Officer (Forest) on 31.05.2005, should be reverted back to their original Circle; and for filling up the posts of Assistant Development Officers (Forest) in future, only employees of the rank of Deputy Forest Rangers should be sent.

4. The petitioners, in Writ Petition (S/S) No. 184 of 2006, were all Foresters who were working as Assistant Development Officers when the impugned order dated 06.06.2005 came to be passed. As a result, (though they were holding the ex-cadre posts of Assistant Development Officers, the pay-scale of which was equivalent to the pay-scale of Deputy Rangers), they were sought to be sent back to their parent cadre in their earlier substantive posts of Forester which was a post in the feeder category for promotion to the post of Deputy Rangers.

5. Special Appeal No. 24 of 2013 is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 292 of 2003 dated 01.08.2012. Writ Petition (S/S) No. 292 of 2003 was filed seeking a writ of mandamus commanding the respondents to encadre the services of the petitioners in the Uttar Pradesh Subordinate (Rangers and Foresters) Services of the Forest Department; to consider the claim of the petitioners for confirmation of their services in the posts of Assistant Development Officer (Forest) with effect from 01.04.1982; and for a mandamus commanding the respondents to pay them salary in the pay-scale of Rs. 5,500-9,000 with effect from the date when they completed 14 years of service in the post of Assistant Development Officers

(Forest), ie the salary paid to Deputy Rangers in the Forest Department.

6. The case of the petitioners, in the said writ petition, was that the posts of Assistant Development Officer (Forest) is equivalent to the post of Deputy Ranger in the Forest Department; both the posts were in the same pay-scale; after completion of 14 years' continuous and satisfactory service, the Deputy Rangers in the Forest Department were allowed the higher pay-scale of Rs. 5,500-9,000/-, whereas the petitioners, who were working as Assistant Development Officers (Forest), were only allowed the pay-scale of Rs. 4,500-7,000/- after completion of 14 years of continuous and satisfactory service in the said posts; and, as their posts were equivalent to the posts of Deputy Ranger (Forest), they also should be extended benefits on par with the Deputy Rangers (Forest).

7. Special Appeal Nos. 232 & 257 of 2013 are preferred against the order passed by the learned Single Judge in Writ Petition (S/S) Nos. 35 & 92 of 2012 dated 01.08.2012. The relief sought in Writ Petition (S/S) Nos. 35 & 92 of 2012 was for a writ of certiorari to quash the notification dated 22.12.2011, whereby 'The Uttarakhand Absorption In The Post Of Forest Range Officer Rules, 2011 (for short "the 2011 Rules")', were made in the exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, by declaring the same as arbitrary, unreasonable and ultra vires Articles 14 & 16 of the Constitution of India; and for a writ of mandamus restraining the respondents from initiating any process of absorption on the basis of the 2011 Rules.

8. The 2011 Rules, which were under challenge in the aforesaid writ petitions, provided for absorption of employees working in the ex-cadre posts of Assistant Development Officer (Forest), (the pay-scale of which was equivalent to the pay-scale applicable to the post of Deputy Forest Rangers), to the next higher post of Forest Rangers. The petitioners had contended that, while absorption may be permissible in an equivalent post, an employee, working in a lower post, cannot be absorbed in a higher post, since a higher post can be filled up only by promotion and not otherwise.

9. Since all the aforementioned four writ petitions (against which these four Special Appeals arise) are interlinked, it is convenient to take note of the relevant facts, in all these cases together, to the extent necessary. The hierarchy of posts in the Forest Department, from the bottom to the top, is firstly the post of Forest Guard. The source of recruitment for this post is 90 per cent by direct recruitment and 10 per cent by promotion from Class IV posts. The minimum educational qualification, for the post of Forest Guard, is a pass in the High School. The next higher post is that of the Forester, and the source of recruitment for this post is 100 per cent by promotion from Forest Guards. This post, like that of Forest Guard, is in Class-III Group 'C', and the minimum educational qualification prescribed for promotion to this post is again a pass in the High School. The next higher post is that of the Deputy Forest Ranger, and the source of recruitment for this post is 100 per cent by promotion from

Foresters. The post of Deputy Forest Ranger is also a Class III Group 'C' post, and the minimum educational qualification required to be promoted to the said post is also a pass in the High School. Above the post of Deputy Forest Ranger is that of the Forest Ranger, which is a Class-II Group 'B' post. The minimum educational qualification, required for appointment to the post of Forest Ranger, is graduation with science for direct recruitment. The source of recruitment for this post is 50 per cent by direct recruitment through the Public Service Commission, and 50 per cent by promotion from the cadre of Deputy Rangers.

10. The State of U.P., by Government Order dated 10.08.1976, created 52 posts of Junior Forest Rangers for the plain areas of U.P. as ex-cadre posts equivalent to the post of Deputy Rangers. By another Government Order dated 03.11.1976, 67 ex-cadre posts of Assistant Development Officers (Forest) were created for the development of Civil and Soyem Forests which had been sanctioned under the 5th Five Year Plan. These 67 ex -cadre posts of Assistant Development Officers (Forest) were created for the four hill districts, i.e. Almora, Pithorgarh, Pauri and Tehri. The post of Assistant Development Officer, an ex-cadre post, was indicated to be equivalent to the post of Deputy Forest Ranger. Executive instructions were issued by the Government of U.P. to the effect that the posts of Assistant Development Officers (Forest) would be filled up by direct recruitment by way of Rules and Regulations, but that was not done.

11. An advertisement was issued in the year 1976 inviting applications for the posts of Junior Forest Ranger. Pursuant thereto, several persons were appointed as Junior Forest Rangers, and were to be sent on training on completion of three years of service as a Junior Forest Ranger. Many people applied and were appointed as Junior Forest Rangers. Unlike the process undertaken to fill up the ex-cadre posts of Junior Forest Rangers created for the plain areas of the State of Uttar Pradesh, no recruitment process was initiated for the 67 ex-cadre posts of Assistant Development Officers (Forest) created for the aforesaid four hill districts (now four districts of Uttarakhand), nor were any service rules or regulations framed by the Government prescribing the minimum qualifications or the mode of selection for recruitment to these ex-cadre posts. Options were, however, invited from Deputy Rangers, Foresters and even Forest Guards for being deputed, and to be posted, as Assistant Development Officers (Forest) in the hill districts.

12. Evidently, because the pay-scale applicable to the post of Assistant Development Officer (Forest) was equivalent to the post of Deputy Rangers, no Deputy Ranger exercised his option to be sent on deputation, and to be appointed in the ex-cadre post of Assistant Development Officers (Forest). However, Foresters and Forest Guards found the offer attractive, and exercised their option to be posted as Assistant Development Officers (Forest). While posting these Foresters and Forest Guards as Assistant Development Officers (Forest), the posting orders stipulated that the post of Assistant Development Officer (Forest) was an ex-cadre post; persons posted thereat would not have

any lien on the post; future promotions would be made from their initial cadre on the basis of their seniority as Forester and Forest Guard as the case may be; and the persons, so sent on deputation as Assistant Development Officer (Forest), would be reverted to their original cadre as soon as regular recruitment to the post of Assistant Development Officers were made.

13. While several persons were posted as Assistant Development Officers (Forest), from time to time, some of them came back to their original cadre on their promotion to the next higher post. After the State of Uttarakhand was created, and the Forest Department of the State was re-organized, Writ Petition (S/S) No. 292 of 2003 (against which Special Appeal No. 24 of 2013 has been preferred) was filed before this Court for creation of a cadre and other reliefs. A Government order dated 06.06.2005 was issued, thereafter, directing that the persons, working in the posts of Assistant Development Officers (Forest), be reverted back to their parent Department on completion of five years service in the post of Assistant Development Officer. Questioning the said proceedings dated 06.06.2005, Writ Petition (S/S) No. 184 of 2006 (against which Special Appeal No. 22 of 2013 was filed) was preferred. An interim order was passed in the said writ petition granting stay of operation of the order dated 06.06.2005 and, consequently, the petitioners continued to work as Assistant Development Officers, and were not repatriated to their substantive posts of Foresters in their parent cadre.

14. The State Government, by its order dated 20.12.2006, abolished the ex-cadre posts of Assistant Development Officers (Forest). We are informed, both by Sri Pradeep Joshi, learned Standing Counsel and Sri Rakesh Thapliyal, learned Senior Counsel, that the Government Order dated 20.12.2006, abolishing the ex-cadre posts of Assistant Development Officers (Forest), has not been subjected to challenge before this Court. This is, possibly, because the petitioners had an interim order in their favour, in Writ Petition (S/S) No. 184 of 2006 dated 21.02.2006, staying operation of the order dated 06.06.2005 repatriating them from the posts of Assistant Development Officer (Forest) to the posts of Forester.

15. While matters stood thus, the Government of Uttarakhand framed the 2011 Rules, in the exercise of its powers under the proviso to Article 309 of the Constitution of India, whereby persons, working in the ex-cadre posts of Assistant Development Officers, were sought to be absorbed as Forest Rangers as a one-time measure. The 2011 Rules were subjected to challenge in Writ Petition (S/S) No. 35 and 92 of 2012 (against which Special Appeal Nos. 232 and 257 of 2013 respectively have been filed).

16. All these four writ petitions were heard together and were disposed of, by the learned Single Judge, by the order under appeal dated 01.08.2012. As is evident therefrom, the Principal Chief Conservator of Forests had informed the Court that, in compliance with the "Entrance and Training Rules (revised) 2004, for Forest Range Officers", (for short the "2004 Rules"), "The Uttarakhand Forest Range Officers Service Rules 2010" (for short the "2010 Rules") were made

regulating the rules of recruitment and conditions of service for appointment to posts in the Uttarakhand Forest Range Officers Service; the minimum educational qualifications prescribed, for being appointed as a Forest Ranger, was a Bachelor's Degree (or equivalent) in Science or Engineering; minimum physical standards were also prescribed therein, and a procedure was also provided for conducting a written examination through the State Public Service Commission.

17. In the order under appeal, the learned Single Judge observed that, while deputing the petitioners as Assistant Development Officers, a condition was imposed that they would not have any lien in the posts of Assistant Development Officers; they could be reverted back at any time, and when regular Assistant Development Officers were appointed; the channel of promotion would be governed by the Rules of the Forest Department i.e. the petitioners' parent department; the action of the respondents became arbitrary, since they were reverting the petitioners to their parent Department in a lower post; while they could have sent the petitioners back to their parent department, the respondents should have ensured protection of their pay, and the post in which they were working; and, since the posts had been abolished, the petitioners could only be adjusted in equivalent posts.

18. After taking note of the submission, urged on behalf of the respondents, that the posts of Assistant Development Officer were equivalent to the posts of Deputy Ranger, the learned Single Judge opined that the petitioners, if they were to be sent back to their parent Department, could only be sent back in an equivalent post, which had the same pay-scale, so that they were not put to any financial loss. The impugned order dated 06.06.2005 was, consequently, quashed. The learned Single Judge observed that, since the petitioners were working for a considerable period of time in the post of Assistant Development Officers, which carried a higher pay-scale, some right had accrued to them and consequently, on this short ground, they could not be reverted back to the posts of Forester, i.e. to their original post.

19. In so far as the relief sought for by the petitioners, that they should be allowed to function as Assistant Development Officers is concerned, the learned Single Judge observed that such a relief could not be granted as the State Government had issued order dated 20.12.2006 abolishing the posts of Assistant Development Officers which was an ex-cadre post.

20. On the petitioners' claim that they should be promoted to the post of Forest Ranger, under the direct recruitment quota, the learned Single Judge observed that the petitioners were not appointed as Assistant Development Officers on the basis of any advertisement; they were substantially appointed as Foresters under the 1951 Rules; they were, thereafter, sent to work as Assistant Development Officers, after inviting options; the petitioners' contention that they were issued fresh appointment as Assistant Development Officers was misconceived and was bereft of merit; the conditions of appointment clearly indicated that their parent cadre would be governed by the 1951 Rules, and their channel of promotion

would also be governed by the 1951 Rules; persons, who were originally working in the posts of Forest Guard or Forester, would, in effect, in the light of the 2011 Rules, be promoted as Forest Rangers and, thereby, become senior to those, who were working in the post of Deputy Ranger, by virtue of their promotion; the 2011 Rules were contrary to the 2010 Service Rules, and the 2004 Rules which had been framed under Rule 5(2) of the 1951 Rules; the basic rules of recruitment, the educational qualifications, age, physical fitness, recruitment through written examination to be conducted by the Public Service Commission, and the period of training prescribed in terms of the 2004 and 2010 Rules, had been given a go-by; the 2011 Rules were, therefore, violative of Articles 14 and 16 of the Constitution of India; by the 2011 Rules, an entry through the back-door was provided for those Assistant Development Officers, who were initially recruited as Forest Guards or as Foresters; the channel of promotion from a Forest Guard to a Forester to a Deputy Ranger, and then to a Forest Ranger, could not be by-passed by the 2011 Rules, by simply saying that these Rules would have an overriding effect over the earlier Rules; as a result of the 2011 Rules, a Forester would jump one post, i.e. the post of Deputy Ranger, and would straightway be appointed as a Forest Ranger; a Forest Guard would jump two promotions, and would be absorbed as a Forest Ranger; and the 2011 Rules were arbitrary and violative of Articles 14 and 16 of the Constitution of India.

21. The learned Single Judge further observed that, since the post of Forest Ranger was required to be filled up by the Public Service Commission, the 2011 Rules, giving a go-by to recruitment by the Public Service Commission and by-passing it, was illegal; and where a post is to be filled up by recruitment through the Public Service Commission, the State Government could not direct the appointing authority to consult the Public Service Commission for absorption of their services, as it would be in violation of Article 320 of the Constitution of India.

22. The learned Single Judge, thereafter, referred to *Union of India & others vs. Harish Balkrishan Mahajan* (1997) 3 SCC 194, wherein the Supreme Court held that the direction to consider the case of the respondent, in consultation with the Public Service Commission for regularization, is in violation of the statutory Rules and Article 320 of the Constitution of India; and the only course known to law was to notify the recruitment to the Public Service Commission, and for the Public Service Commission to conduct the examination inviting applications from all eligible persons.

23. The learned Single Judge also referred to *E. Ramakrishnan & others vs. State of Kerala & others* (1996) 1 SCC 565, wherein the Supreme Court held that the State Government could not take any decision, contrary to the Constitution, to regularize the services of candidates de hors the recruitment rules and the statutory process for selection from the Public Service Commission.

24. The learned Single Judge relied on *P. Ravindran & others vs. Union Territory of Pondicherry & others* (1997) 1 SCC 350, to hold that, where the Public Service

Commission had been entrusted with the constitutional duties to select suitable candidates by inviting candidates from the open market, every candidate has a fundamental right to seek consideration for selection through open competition; and such process could not be by-passed by issuing a direction for regularization of the services of ad hoc persons who came into service through the back door.

25. The learned Single Judge observed that the Rules for recruitment to the post of Forest Rangers were in existence in terms of which the mode of recruitment was 50 % by promotion and 50% by way of direct recruitment; and such a procedure could not be by-passed by making the 2011 Rules, without adhering to the qualifications, written examinations, training etc. Nor could the Public Service Commission be by-passed.

26. Holding that the 2011 Rules were contrary to the 2004 Rules, and was not in conformity with the 2010 Rules, the learned Single Judge held the 2011 Rules to be in violation of Articles 14, 16 and 320 of the Constitution of India. The 2011 Rules were, accordingly, quashed.

27. The learned Single Judge, thereafter, referred to *Kartar Singh & others vs. State of Punjab & Haryana* AIR 1990 Punjab & Haryana 1, to hold that absorption was required to be done so that the persons, who were working in ad hoc posts or in ex-cadre posts, could be absorbed in the parent department, but such absorption could only be done in an equivalent post; the respondent had admitted that the equivalent post was that of a Deputy Ranger; if Absorption Rules were required to be made, then the State Government should absorb these Assistant Development Officers in the post of Deputy Rangers; and by no stretch of imagination could absorption be made in a higher post, which had a different recruitment procedure, and which was in a higher pay-scale. After quashing the 2011 Rules, the learned Single Judge noted the submission, urged on behalf of the State Government, that there were only 10 Assistant Development Officers working in the original 76 ex-cadre posts, and their demand for being absorbed in the parent cadre was pending with the State Government for a long period of time, because of which the 2011 Rules were made. After taking note of the fact that the posts of Assistant Development Officer had been abolished in the year 2006, the learned Single Judge held that these Assistant Development Officers could not be left in the lurch, and were required to be adjusted in the parent department. The Assistant Development Officers were directed to be adjusted in the posts of Deputy Rangers, the period spent by them in the post of Forest Guard or Forester, and the period spent in the post of Assistant Development Officer, was directed to be reckoned while fixing their seniority in the post of Deputy Rangers; and a seniority list was directed to be prepared accordingly.

28. On being informed that the posts of Forest Rangers were available to be filled up in the Forest Department, the State Government was directed to initiate the exercise of filling up the post of Forest Rangers in terms of the relevant 2010 Rules, under the promotion quota, through the Public Service Commission so that these Assistant Development Officers and other Deputy Rangers, who were

eligible and held the essential qualifications, could also apply and be promoted. The State Government was directed to initiate the process within a period of three months from the date of production of a certified copy of the order, and ensure that the exercise of promotion was processed through the Public Service Commission, and was completed within a period of six months.

29. Mr. Pradeep Joshi, learned Standing Counsel for the appellant in Special Appeal Nos. 22 and 24 of 2013, would fairly state that the appellant is not aggrieved by the order passed by the learned Single Judge setting aside the Uttarakhand Absorption on the Posts of Forest Range Officer Rules, 2011 (i.e. the 2011 Rules); they have preferred this appeal, as they are aggrieved to the limited extent the learned Single Judge had directed that the services of the respondents-writ petitioner, in these two appeals, be absorbed as Deputy Rangers; the learned Single Judge had exceeded his jurisdiction in passing such an order; the respondents-writ petitioners were made aware, even when they were initially appointed on deputation to the ex-cadre posts of Assistant Development Officers (Forest), that they may be reverted to their original post as Foresters at any time, and they had no right to continue in the said post; the effect of the order under appeal is to promote the respondents-writ petitioners as Deputy Rangers without their having to undergo a process of selection, or subjecting themselves to a process of promotion; this Court would not, ordinarily, issue a mandamus for regularisation; regularisation is only to regularise the earlier irregular acts; the applicable statutory rules stipulate that the post of Foresters is in the feeder cadre for promotion to the higher post of Deputy Ranger; several employees, who were earlier deputed as Assistant Development Officers, came back to their parent cadre on their promotion as Deputy Rangers; though the pay-scale, applicable to the posts of Assistant Development Officers, was similar to that of Deputy Rangers, the respondents-writ petitioners must await their turn for promotion to the post of Deputy Rangers, and cannot frog-leap over those who were senior to them, and claim absorption in the posts of Deputy Ranger; and the order passed by the learned Single Judge, to the extent the appellants were directed to absorb the respondents-writ petitioners in the cadre of Deputy Rangers, is illegal and must be set aside.

30. It is well settled that no order of regularisation can be passed contrary to the statutory rules or the rules made under the proviso to Article 309 of the Constitution of India. Regularisation is not a mode of appointment. (*National Fertilizers Ltd. v. Somvir Singh* (2006) 5 SCC 493; *Mehar Chand Polytechnic v. Anu Lamba* (2006) 7 SCC 161). The words 'regular' or 'regularisation' do not connote permanence. They are terms calculated to condone any procedural irregularities, and are meant to cure only such defects as are attributable to the methodology followed in making the appointments. (*B.N. Nagarajan v. State of Karnataka* AIR 1979 SC 1676; *Secretary, State of Karnataka and others v. Umadevi and others* (2006) 4 SCC 1; *R.N. Nanjundappa v. T. Thimmiah* (1972) 1 SCC 409; *State of Mysore v. S.V. Narayanappa* AIR 1967 SC 1071; *National*

Fertilizers Ltd. v. Somvir Singh (2006) 5 SCC 493). An appointment to be permanent would still require confirmation. (S.V.Narayanappa AIR 1967 SC 1071; B.N. Nagarajan AIR 1979 SC 1676).

31. If the appointment itself is in infraction of the rules, or if it is in violation of the provisions of the Constitution, illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority, but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of the rules or it may have the effect of setting at naught the rules. (R.N. Nanjundappa (1972) 1 SCC 409; B.N. Nagarajan AIR 1979 SC 1676). Courts cannot encourage appointments which are made outside the constitutional scheme, and it is improper for Courts to give any direction for regularisation of the person who has not been appointed by following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in public employment. (Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad (2006) 7 SCC 684). Only because the employees have worked for some time would not, by itself, be a ground for directing regularisation of their services. (National Fertilizers Ltd. (2006) 5 SCC 493; Umadevi (2006) 4 SCC 1; Anu Lamba (2006) 7 SCC 161).

32. Courts cannot direct regularisation in service. Since the court has no power to direct regularisation, it also follows that it has no power to direct grant of benefits payable to the regular employees. (State of Manipur v. Ksh. Moirangninthou Singh (2007) 10 SCC 544; Umadevi (2006) 4 SCC 1). When the Court is approached for relief, by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it cannot be said that such employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution. (Umadevi (2006) 4 SCC 1). The Court would not, ordinarily, issue a writ of, or in the nature of, mandamus for regularisation of the service of employees which would be violative of the constitutional scheme. Appointments made in violation of the mandatory provisions of a statute would be illegal, and thus void. Illegality cannot be ratified. Illegality cannot be regularised, and only an irregularity can be. (Govt. of A.P. v. K. Brahmanandam (2008) 5 SCC 241).

33. As noted hereinabove, both the 2004 and the 2010 Rules provide for a channel of promotion from the post of Foresters to the posts of Deputy Ranger. All the respondents-writ petitioners herein were working in the substantive posts of Foresters when they exercised their options, and were consequently deputed to work in the ex-cadre posts of Assistant Development Officers (Forest). As noted hereinabove their deputation and posting as Assistant Development

Officers (Forest) was not pursuant to any regular process of selection. Options were invited from, among others, employees in the cadre of foresters and forest guards to be sent on deputation as Assistant Development Officers, making it clear to them that they had no right over the said posts, and they could be reverted at any time.

34. Employees deputed to ex-cadre posts cannot claim a legal right to be made permanent, as they have not been appointed, to any substantive/regular post, in terms of the relevant rules or in adherence to Articles 14 and 16 of the Constitution. (Umadevi (2006) 4 SCC 1). When a person enters an employment, where the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the nature of his appointment. It is not as if the person, who accepts an engagement, is not aware of the nature of his employment. He accepts the employment with open eyes. (Umadevi (2006) 4 SCC 1). Such a person cannot claim any right for being confirmed in the post when an appointment to the post can be made only by following a proper procedure for selection. (Umadevi (2006) 4 SCC 1; Surinder Prasad Tiwari .(2006) 7 SCC 684). It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory of legitimate expectation cannot be invoked to seek a positive relief of being made permanent in the post. (Umadevi (2006) 4 SCC 1; and Official Liquidator v. Dayanand (2008) 10 SCC 1). The argument that, since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment, and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution. (Umadevi (2006) 4 SCC 1).

35. These Foresters/Forest Guards joined the post of Assistant Development Officers (Forest) with their eyes wide open, and were well aware that they had no right to the said post, and their lien was only over their substantial post of foresters and forest guards. The mere fact that they were permitted to work for a considerable length of time, in the ex-cadre posts of Assistant Development Officers (Forest), would not confer on them any right to claim absorption not in the posts of Assistant Development Officers (Forest), but in the post of Deputy Ranger, merely because the pay-scale of both these posts are similar. The posts of Assistant Development Officers (Forest) do not form part of the regular cadre, and, as noted hereinabove, are ex-cadre posts. "Cadre" means the strength of a Service or part of a Service sanctioned as a separate unit. (A.N. Sehgal v. Raje Ram Sheoran 1992 Supp (1) SCC 304). Posts can be created dehors the cadre of a service, and these are known as ex cadre posts. (High Court of Judicature v. Veena Verma (2009) 14 SCC 734). Isolated posts, such as the ex-cadre posts of Assistant Development Officers (Forest), may be created for the performance of special tasks unconnected with the ordinary work which a Service is called upon

to perform. Such temporary posts are treated as unclassified and isolated ex-cadre posts. (A.N. Sehgal 1992 Supp (1) SCC 304).

36. It is, evidently, because they were aware that they had no right to continue in these ex-cadre posts that the respondents-writ petitioners sought that these posts be made a part of their regular cadre. The substantive post which they held, even when were working in the ex-cadre posts of Assistant Development Officers (Forest), was that of Foresters. A member of the service is an officer appointed substantively to a cadre post. (A.N. Sehgal 1992 Supp (1) SCC 304). To become a member of the service, in a substantive capacity, appointment by the Governor shall be preceded by selection of a direct recruit in accordance with the Rules, and, if the Rules so provide, by the Public Service Commission (Keshav Chandra Joshi v. Union of India AIR 1991 SC 284; J & K Public Service Commission v. Narinder Mohan (Dr) (1994) 2 SCC 630). A person can be said to hold a post, permanent or temporary, in a substantive capacity only if his appointment to that post is not fortuitous or ad hoc. A person appointed to a post as a stop-gap arrangement cannot be said to hold that post in a substantive capacity. In addition to the requirement that the appointment should not be fortuitous, stop-gap or ad hoc, no appointment to a temporary post can be regarded as substantive unless it is made in compliance with the rules and regulations which have to be complied with while making appointments to permanent posts. (O.P. Singla v. Union of India (1984) 4 SCC 450). Consequently neither could these employees claim that they should be absorbed in the ex-cadre posts of Assistant Development Officers (Forest) or that these posts be made part of the regular cadre.

37. Yet another fact, which must be taken note of, is that all these posts of Assistant Development Officers (Forest) were abolished by the State Government in the year 2006 and Mr. Pradeep Joshi, learned Standing Counsel, would state that the said order, abolishing the ex-cadre posts of Assistant Development Officers, remain unchallenged. The power to create or abolish a post rests with the Government. Whether a particular post is necessary is a matter to be decided on the exigencies of the situation and administrative necessity. Creation and abolition of posts is a matter of government policy, and every sovereign government has this power in the interest and necessity of internal administration. Creation, continuance and abolition of posts are all decided by the Government in the interest of administration and the general public. As long as the decision to abolish the post is taken in good faith, in the absence of material, interference by the Court is not warranted. (State of Haryana v. Navneet Verma (2008) 2 SCC 65; Dayanand (2008) 10 SCC 1; M. Ramanatha Pillai v. State of Kerala (1973) 2 SCC 650; Kedar Nath Bahl v. State of Punjab (1974) 3 SCC 21; State of Haryana v. Des Raj Sangar (1976) 2 SCC 844; N.C. Singhal (Dr.) v. Union of India AIR 1980 SC 1255; M. Ramanatha Pillai (1973) 2 SCC 650; and Avas Vikas Sanghathan v. Engineers Assn. (2006) 4 SCC 132).

38. The need for streamlining the administration may induce the State

Government to make alterations in the staffing pattern of the civil services necessitating either the increase or the decrease in the number of posts or to abolish the post. In such an event, the Court cannot, by a writ of mandamus, direct the employer to continue employing such employees as have been dislodged. (Avas Vikas Sansthan v. Engineers Assn. : (2006) 4 SCC 132). Abolition of posts will not entail any right on the person, holding the abolished post, to re-employment or to hold the same post. (Avas Vikas Sangathan (2006) 4 SCC 132).

39. The consequence of abolition, of these ex-cadre posts of Assistant Development Officers (Forest), is that employees working in such posts have no right to continue in these non-existent posts. On abolition of the ex-cadre posts of Assistant Development Officers (Forest), the respondents-writ petitioners ought to have joined their substantive posts of Foresters/Forest Guards. As Courts lack power to direct regularization of employees in the posts they held, or in similar posts (which in this case is Deputy Forest Rangers) only on the ground that the pay-scale of the ex-cadre posts of Assistant Development Officers (Forest) and the regular cadre posts of Deputy Forest Rangers are similar, the learned Single Judge has evidently erred, even in the absence of any rule or scheme for regularisation, to direct the State Government to regularize their services in the post of Deputy Forest Rangers. We are satisfied, therefore, that the order under appeal in Special Appeal Nos. 22 and 24 of 2013, to the extent the respondents-writ petitioners services were directed to be absorbed in the post of Deputy Rangers, must be, and is accordingly, set aside.

40. Both Special Appeal Nos. 22 and 24 of 2013 are allowed to the extent indicted hereinabove.

41. In Special Appeal Nos. 232 and 257 of 2013 the appellants are the respondents in the writ petitions. They have preferred these appeals aggrieved by the order passed by the learned Single Judge setting aside the Uttarakhand Absorption on the Posts of Forest Range Officer Rules, 2011 (in short, "2011 Rules") which provided for absorption of persons, working in the ex-cadre posts of Assistant Development Officers (Forest), in the post of Forest Rangers. As noted hereinabove, appointment to the post of Forest Rangers (also called Forest Range Officers) was from two different sources. 50% of the available posts of Forest Rangers were to be filled up by promotion of Deputy Rangers, and the other 50% by direct recruitment. Since the post of Forest Rangers was a Class-II Group 'B' post, it was required to be filled-up, by direct recruitment, from those possessing the prescribed qualifications, through a regular process of selection to be undertaken by the State of Uttarakhand through the State Public Service Commission. Even for the 50% quota earmarked for promotion as Forest Rangers, from the cadre of Deputy Rangers, a departmental promotion committee is required to be convened, and the candidates are to be selected, and recommended for appointment, by the State Public Service Commission.

42. The respondents-writ petitioners, in these appeals, had invoked the

jurisdiction of this Court, under Article 226 of the Constitution of India, questioning the validity of the 2011 Rules. They were all working in the cadre of Deputy Rangers. Their grievance was that the appellants, who were substantially appointed in the post of the Foresters, would frog-leap over them, and be appointed as Forest Rangers, in case they were absorbed in terms of 2011 Rules. They had contended, before the learned Single Judge, that absorption could not be made in a post higher than the one in which they were working, for any such appointment to a higher post would, in effect, amount to promotion.

43. Rule (2) of the 2011 Rules stipulates that, notwithstanding anything contained in any other services rules or orders, the 2011 Rules would be applicable, thereby giving the said Rules over-riding effect, besides violating the rules governing appointment and promotion in the forest service. In terms of Rule 4, of the 2011 Rules, the appointing authority was required to issue orders of absorption to persons, posted against the ex-cadre posts of Assistant Development Officers (Forest) equivalent to the post of Deputy Range Officer, and to substantively appoint them in the department to any posts, earmarked for direct recruitment, in the cadre of Forest Rangers (Forest Range Officers).

44. Article 309 speaks of rules for appointment and general conditions of service. Regularisation of appointment, by stating that notwithstanding any rules the appointment is regularized, strikes at the root of the Rules governing recruitment to these regular posts, and if the effect of regularisation is to nullify the operation and effectiveness of the Recruitment Rules, the regularization Rule itself is open to criticism. As the relevant rules, as to promotion and appointment, are infringed, the impeached regularization Rule cannot be permitted to stand to operate as a regularisation of appointment in utter defiance of the statutory Rules requiring consideration of seniority and merit in the case of promotion, and consideration of appointment by selection or by competitive examination (R.N. Nanjundappa (1972) 1 SCC 409) for direct recruitment.

45. In order to satisfy the requirements of Article 14 and 16 of the Constitution of India, direct recruitment to the post of Forest Rangers can only be made strictly in accordance with the Rules in force, through a regular process of selection undertaken by the Uttarakhand Public Service Commission, after an advertisement is issued inviting applications from all eligible candidates, and not by absorption through the backdoor. Recruitment rules are framed with a view to give equal opportunity to all citizens of India entitled to be considered for recruitment in vacant posts. (Anu Lamba . (2006) 7 SCC 161). Any appointment, in violation of the constitutional provisions (Umadevi (2006) 4 SCC 1; Gurbachan Lal v. Regional Engg. College .(2007) 11 SCC 102) or the recruitment rules, is a nullity, and no recruitment should be permitted to be made through the back door. (Surinder Prasad Tiwari (2006) 7 SCC 684; National Fertilizers Ltd. (2006) 5 SCC 493). The procedure prescribed for recruitment should be just, fair and reasonable. Opportunity should be given to all eligible persons by inviting applications through a public notification. (Narinder Mohan (Dr) (1994) 2 SCC

630).

46. The applicable Rules, made under the proviso to Article 309 of the Constitution, prescribe direct recruitment/promotion as the mode of recruitment for the post of Forest Ranger, to be undertaken only by the Public Service Commission or the departmental promotion committee duly constituted by the Public Service Commission, and by no other. A little leeway, to make ad hoc appointments, does not clothe the executive Government with the power to relax the recruitment rules or to regularise such appointment nor to claim such appointments to be regular or in accordance with the rules. Back door appointments, at the behest of a power source or otherwise, and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair play. The latter are the product of order and regularity. Every eligible person need not necessarily be fit to be appointed to a post or office under the State, selection according to rules by the Public Service Commission, and fitness for appointment, assures fairness in selection and inhibits arbitrariness in appointments. (Narinder Mohan (Dr) (1994) 2 SCC 630).

47. No appointment can be made in deviation of, or in departure from, the procedure laid down in the statutory rules. (Kendriya Vidyalaya Sangathan v. L.V. Subramanyeswara (2007) 5 SCC 326; A. Umarani v. Registrar, Coop. Societies (2003) 5 SCC 388). The Court is bound to insist on the State making regular and proper recruitment, and should not encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent would only encourage the State to flout its own rules, and would confer undue benefits on a few at the cost of many waiting to compete. (Umadevi (2006) 4 SCC 1; Dayanand (2008) 10 SCC 1).

48. A regular appointment, to a post under the State, cannot be made without issuing an advertisement in the prescribed manner, inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete. (Union Public Service Commission v. Girish Jayanti Lal Vaghela (2006) 2 SCC 482; National Fertilizers Ltd. (2006) 5 SCC 493; Surinder Prasad Tiwari (2006) 7 SCC 684). There is no fundamental right, in those who have been employed temporarily, to claim absorption. They cannot be said to be holders of a post, since regular appointments can only be made consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally cannot extend to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. No one claim a right to be absorbed in service without being selected in terms of the relevant recruitment rules. (Umadevi (2006) 4 SCC 1; Anu Lamba (2006) 7 SCC 161).

49. Under Article 320 of the Constitution of India, it is the duty of the Public Service Commission to conduct examinations for appointment to the service of the State, and to assist the State for recruitment to any service for which the

candidates, fulfilling the qualifications, are required. In terms of Article 320 of the Constitution, the State Government is to notify the recruitment to the State Public Service Commission which, in turn, should conduct the examination inviting applications from all eligible persons. (*Union of India v. Harish Balkrishna Mahajan* (1997) 3 SCC 194). Establishment of an independent body, like the Public Service Commission, is to ensure selection of the best available persons, for appointment to a post, to avoid arbitrariness and nepotism in appointments. Whenever the Government is required to make an appointment to a high public office, it is required to consult the Public Service Commission. The Government should fill up posts appointing those selected and recommended by the Public Service Commission, adhering to the order of merit in the list of recommended candidates. (*Narinder Mohan (Dr)* (1994) 2 SCC 630; *Jatinder Kumar v. State of Punjab* AIR 1984 SC 1850).

50. In order to be considered for appointment for a post, the candidate must have the requisite qualifications. Under Article 320(3)(a) and (b), it is the duty of the Public Service Commission to consider and satisfy itself as to which of the candidates have fulfilled the requisites specified in the advertisement. It is the constitutional duty of the Public Service Commission, under Article 320, to recommend candidates, fulfilling all the requisite qualifications for the posts, to the Government for being considered for appointment to the posts concerned. (*Narinder Mohan (Dr)* (1994) 2 SCC 630; *M.C. Bindal v. R.C. Singh* AIR 1987 SC 358).

51. As has been rightly contended before us, by Mr. Rakesh Thapliyal, learned Senior Counsel appearing on behalf of respondents-writ petitioners, absorption can, at best, be in regular posts, temporarily occupied by those seeking absorption, and not to a post higher thereto, since absorption cannot be equated with promotion. The expression "promotion" is understood in a wider sense to mean that "promotion can either be to a higher pay scale or to a higher post" (*State of Rajasthan v. Fateh Chand Soni* (1996) 1 SCC 562; *Union of India v. Pushpa Rani* (2008) 9 SCC 242). While these Assistant Development Officers (Forest) were, no doubt, sought to be absorbed in the quota earmarked for direct recruitment to the posts of Forest Rangers, the expression "Direct appointment/recruitment" means an appointment by open competition but does not include - (a) an appointment made by promotion; (b) an appointment by transfer of an officer from the service of the State Government. (*A.N. Sehgal* 1992 Supp (1) SCC 304). These employees, could not, therefore, seek absorption in the higher post of Forest Rangers even under the direct recruitment quota. Further direct recruitment cannot be permitted to be made through the back door. It can only be made by a regular fair and transparent process of selection to be undertaken by the Uttarakhand Public Service Commission after issuing an advertisement inviting applications from all eligible candidates.

52. The learned Single Judge was, in our view, justified in setting aside the 2011 Rules which provided for absorption of employees working in the ex-cadre posts

of Assistant Development Officer (Forest), not to the post of Deputy Rangers [which has a pay-scale similar to that of an Assistant Development Officer (Forest)], but to a post higher thereto i.e. the post of Forest Rangers. The effect of 2011 Rules is that employees, who substantially hold the post of Foresters, would be absorbed, not in the next higher post of Deputy Rangers, but in a post even higher thereto i.e. the post of Forest Rangers. Such absorption is wholly arbitrary and illegal, and is in violation of Articles 14 and 16 of the Constitution of India. The learned Single Judge was, therefore, justified in setting aside the 2011 Rules.

53. We cannot, however, ignore the fact that several of these Assistant Development Officers (Forest) have already retired from service. Their continuance in the post of Assistant Development Officers (Forest), in view of the interim order passed by this Court in Writ Petition (S/S) No. 184 of 2006 dated 21.02.2006, is no longer permissible as the said interim order would not survive the final order passed by the learned Single Judge in the Writ Petitions. But for the fact that the learned Single Judge had directed their absorption in the post of Deputy Rangers, which order we have now set aside, they should have joined the posts of Foresters, and ought to have been extended the pay-scale applicable to the posts of Forester. Since the ex-cadre posts of Assistant Development Officers (Forest), to which they were deputed on exercising their options, has itself been abolished, the substantive post of the Foresters, which they were holding prior to their deputation, would be the post they would be required to join, and they cannot claim to be posted/absorbed in any other post, merely because they were drawing a higher pay-scale in the ex-cadre posts of Assistant Development Officers (Foresters) to which, on exercising their options, they were deputed to. The only indulgence which can be shown to them, considering the fact that they continued to draw the higher pay-scales for a considerable length of time, is to direct the respondents to protect the pay drawn by them as Assistant Development Officers (Forest), even after they join their substantive posts of Foresters. This would prevent their pay-scale being reduced, and recovery proceedings being initiated against them. Those employees, who have already retired from service and are being paid pension, shall be continued to be paid their retiral benefits in the pay-scales in which they were placed in while working as Assistant Development Officers (Forest), and the respondents - State Government shall not initiate any steps for recovery of the amount paid to them in the posts of Assistant Development Officers (Forest) pursuant to the interim orders, and the final orders, passed in the Writ Petitions.

54. In so far as such of those Assistant Development Officers (Forest) who are still in service are concerned, consequent on the abolition of the posts of Assistant Development Officers (Forest), they are undoubtedly required to join their substantive posts of Foresters. Suffice it to direct the State Government to give them pay-protection, and ensure that the pay which they were drawing as Assistant Development Officers (Forest) is not reduced on their joining the posts of foresters. Their seniority in the cadre of foresters/forest guards shall also be

protected, and they shall be entitled to be considered for promotion to the post of Deputy Rangers in accordance with their seniority in the cadre of Foresters.

55. With the aforesaid directions, Special Appeal Nos. 232 and 257 of 2013 are also disposed of. No costs.

56. Writ Petition (S/B) No. 23 of 2017 was filed by six Deputy Forest Rangers seeking a writ of certiorari to quash the order passed by the Joint Secretary, Government of Uttarakhand dated 21.12.2016 addressed to the Principal Chief Conservator of Forests, Uttarakhand. By the said order dated 21.12.2016, the Principal Chief Conservator of Forest, Uttarakhand was informed that the Governor was pleased to approve creation of 10 ex-cadre posts (dead cadre) of Forest Rangers for employees working / posted in the posts of Assistant Development Officers (Forest) under the Uttarakhand Forest Department, and to absorb the employees, mentioned in the enclosed table, in the created posts. The said order dated 21.12.2016 further states that the duties, responsibilities and other service conditions of employees, absorbed against the ex-cadre posts of Forest Rangers, created above would be similar to employees posted against the regular posts of Forest Rangers in the Forest Department; these ex-cadre posts of Forest Rangers would be of the nature of dead / ex-numbered, which would be deemed to be automatically exhausted on promotion, retirement, and death of employees absorbed in the said posts, or falling vacant due to other reasons.

57. It is necessary to note a few facts preceding issuance of the order dated 21.12.2016. Respondent nos. 4 to 13 herein were all working as Foresters when they were, on exercising their option, posted in the ex-cadre posts of Assistant Development Officers (Forest). The 2011 Rules were framed by the Government with a view to absorb the services of these Assistant Development Officers (Forest) as Forest Rangers. Questioning the 2011 Rules, the petitioners herein had filed Writ Petition (S/S) Nos. 35 and 92 of 2012, and the learned Single Judge had, by a common order passed in four writ petitions on 01.08.2012, set aside the 2011 Rules, but had directed that respondents 4 to 13 herein be absorbed as Deputy Rangers.

58. The Government of Uttarakhand preferred Special Appeal Nos.22 and 24 of 2013 against the order passed by the learned Single Judge to the extent he directed them to absorb the Assistant Development Officers (Forest) in the posts of Deputy Rangers. No appeal was preferred against that part of the order passed by the learned Single Judge whereby the 2011 Rules were set aside. An interim order was passed by a Division Bench of this Court, in Special Appeal No. 24 of 2013 (which is filed against the order passed by the learned Single Judge in Writ Petition (S/S) No. 292 of 2003 dated 01.08.2012), that the petitioners in Writ Petition (S/S) No. 292 of 2003 wanted the post of Assistant Development Officers, which was an ex-cadre post, to be treated as a part of the cadre; and, according to them, they were also Assistant Development Officers; the writ petition was dismissed; having dismissed the writ petition, the learned Single Judge had passed an order directing the post of Assistant Development Officers

(Forest) to be treated as equivalent to that of Deputy Rangers, and to take steps for giving them promotion; and having dismissed the writ petition, it appeared prima facie that the directions given in the order under appeal was in excess of jurisdiction and authority. The judgment under appeal was stayed. As a result of the order of stay, the order of the learned Single Judge, directing absorption of the petitioners in the posts of Deputy Rangers, was not given effect to.

59. Curiously, an order was passed on 29.09.2014 to initiate the process of absorption of these Assistant Development Officers (Forest) as Forest Rangers against the vacant posts of Forest Rangers earmarked for direct recruitment. Since the 2011 Rules had been set aside, the State Government could not have initiated the exercise of absorbing these Assistant Development Officers (Forest) as Forest Rangers. On coming to know of this order dated 29.09.2014, the petitioners in this writ petition filed Contempt Petition No. 306 of 2014, wherein the Principal Secretary, Department of Forest, filed an affidavit on 03.12.2014 stating that the 4th respondent herein (Sri Sharan Pal Singh Kunwar) had made an application, and the order dated 29.09.2014 was passed on the basis of such an application. The Principal Secretary stated that, in compliance with the order of the learned Single Judge in Writ Petition (S/S) NO. 35 and 92 of 2012 dated 01.08.2012, Government Order dated 25.11.2014 was issued cancelling the earlier Government Order dated 29.09.2014. As a result of the Government Order dated 25.11.2014, the process of considering Assistant Development Officers (Forest) for absorption as Forest Rangers came to halt. However, during the pendency of all the four Special Appeals (i.e. Special Appeal Nos. 22, 24, 232 and 252 of 2013) on the file of this Court, and though the order of the learned Single Judge, in Writ Petition (S/S) No. 35 and 92 of 2012 dated 01.08.2012 was still in force, the impugned order dated 21.12.2006 was issued, evidently, to extend an undue and illegal benefit to respondents 4 to 13 herein.

60. Neither respondent nos. 1 and 2, nor respondent nos. 4 to 13, have even chosen to file their counter affidavit in this writ petition, though the matter has been pending on the file of this Court for the past more than two and a half years. In the absence of any counter affidavit being filed by respondent nos. 1 and 2, the reasons which weighed with them in creating ten ex-cadre posts of Forest Rangers, for absorption of respondent nos. 4 to 13, is not known. A counter affidavit has been filed only by the 3rd respondent wherein he stated that the post of Assistant Development Officers (Forest) was never created in the regular cadre of the erstwhile Forest Department of Uttar Pradesh or in the Forest Department of Uttarakhand; 67 ex-cadre posts of Assistant Development Officers (Forest) were created for afforestation works in the Revenue Blocks, and for the development of Civil and Soyam forests, under the 5th Five Year Plan, in the hilly areas of Uttar Pradesh by the Government Order dated 03.11.1976; these Assistant Development Officers (Forest) had to work only in certain Revenue Blocks, but not inside the Reserve Forest areas of the Forest Range or the Forest Division; the private respondents held the rank of Deputy Rangers, Forsters, Ropavani Nayaks / Plantation Jamadars (equivalent to Foresters) or

Forest Guards in the Forest Department; they were deputed, from time to time, to perform the duties of Assistant Development Officers (Forest) in definite Revenue Blocks of the hill districts, but their lien was maintained and they were treated as equivalent to the rank of Deputy Rangers; they were never, substantively, appointed to the posts of Assistant Development Officer (Forest) by the appointing authority; the Principal Chief Conservator of Forest, Uttarakhand had, by letter dated 06.05.2016, informed these facts to the Government of Uttarakhand, and had requested them not to create ex-cadre posts of Forest Rangers or Assistant Development Officers (Forest); meanwhile the Government of Uttarakhand had issued Government Order dated 21.12.2016 for creation of ten ex-cadre posts of Forest Rangers for absorption of ten Assistant Development Officers (Forest); the Principal Chief Conservator of Forest, Uttarakhand had again, by letter dated 27.01.2017, informed the Government of Uttarakhand regarding the situation / illegality in the absorption of Assistant Development Officers in the ex-cadre posts of Forest Rangers; and a speaking order was issued by the Principal Chief Conservator of Forest, Uttarakhand on 09.04.2014 stating that the 4th respondent was currently posted in the rank of Forester in the Forest Department.

61. Though the aforesaid four Special Appeals and this Writ Petition were pending on the file of this Court, the impugned order dated 21.12.2016 came to be passed, by subterfuge, creating ten ex-cadre posts of Forest Rangers for absorption of ten Assistant Development Officers (Forest). What we have held earlier, with respect to the 2011 Rules, would apply equally to the order impugned herein dated 21.12.2016. The post of Assistant Development Officers (Forest), which was an ex-cadre post, was extended the pay-scale equivalent to that of the Deputy Rangers; while the learned Single Judge had directed that they be absorbed as Deputy Rangers, which order was also stayed by a Division Bench of this Court, and which order has now been set aside by this order, it is evident that respondent nos. 4 to 13 were illegally extended undue benefits, to which they were not entitled to, and were permitted to frog-leap over the petitioners herein, who were all working in the higher cadre of Deputy Rangers, for their absorption as Forest Rangers contrary to the Rules in force.

62. The impugned order dated 21.12.2016 itself records that these 10 posts were created only for the benefit of respondent nos. 4 to 13, and these posts were to cease to remain in force on their retirement from service, or their promotion or death. Such special treatment being extended to respondent nos. 4 to 13, without any justifiable reasons, is ex facie arbitrary and illegal. Even more disconcerting is that, by the time the impugned order dated 21.12.2016 was issued, respondent nos. 10 to 13 had already retired from service on attaining the age of superannuation. Yet the impugned order dated 21.12.2016 was forwarded to respondents 10 to 13 directing them also to take charge of the ex-cadre (dead cadre) posts of Forest Rangers under their controlling authority, and to submit a compliance report to the Government.

63. As noted hereinabove, those appointed on deputation as Assistant Development Officers (Forest), all of which were ex-cadre posts, were only holding the substantive posts of Foresters, which was the feeder cadre for promotion to the post of Deputy Rangers; and the post of Deputy Rangers, in turn, was the feeder cadre for promotion to the post of Forest Rangers. It is evident from the order dated 21.12.2016 itself that it was issued only to extend undue benefit to respondent nos. 4 to 13, despite the earlier attempts of the Government, to absorb them as Forest Rangers, having been set at naught by the order of the learned Single Judge in Writ Petition (S/S) Nos. 35 and 92 of 2012 dated 01.08.2012. By issuing this order dated 21.12.2016, the State Government has sought to overrule the judgment of the learned Single Judge in Writ Petition (S/S) Nos. 35 and 92 of 2012 dated 01.08.2012.

64. While the State Legislature may have the power to remove the basis or foundation of a judicial pronouncement, it cannot overturn or set aside the judgment. A judicial pronouncement is always binding unless the very fundamentals, on which it is based, are altered and the decision could not have been given in the altered circumstances. The Legislature cannot, by way of introducing an amendment, overturn a judicial pronouncement and declare it to be wrong or a nullity. What the Legislature can do is to amend the provisions of the Statute to remove the basis of the judgment. If, in substance, it is shown as an attempt to interfere with the judicial process, such a law can be invalidated as being in breach of the doctrine of separation of powers. (*State of Karnataka v. Karnataka Pawn Brokers Assn. .* (2018) 6 SCC 363).

65. While it may have the power to remove the basis of a judgment, even the State Legislature does not have the power to overrule the judgment of a Competent Court. The Executive has the power to do neither. After escaping being punished under the Contempt of Courts Act, in Contempt Petition No. 306 of 2014, by issuing Government Order dated 25.11.2014 cancelling the earlier order dated 25.09.2014, the official respondents have, by issuing the order dated 21.12.2016, sought to circumvent the order of this Court in Writ Petition (S/S) Nos. 35 and 92 of 2012 dated 01.08.2012 which continued to remain in force even during the pendency of Special Appeal Nos. 232 and 257 of 2013. As no such power, to overrule a judgment, is available to the State Government, the order dated 21.12.2016 is null and void, and is of no effect. Any amount paid to respondents 4 to 13, in terms of the order dated 21.12.2016, is unauthorized and illegal, and shall be recovered from them forthwith.

66. The illegal benefits extended to respondent nos. 4 to 13, (who were all holding the substantive post of Foresters which is the feeder cadre for promotion to the post of Deputy Rangers), by absorbing them in a post higher than that of a Deputy Ranger i.e. Forest Ranger, though the 2011 Absorption Rules were set aside by the learned Single Judge by his order in Writ Petition (S/S) Nos. 35 and 92 of 2012 dated 01.08.2012, which order we have now affirmed in the Special Appeals, is ex facie arbitrary, illegal and in violation of Articles 14 and 16 of the

Constitution of India. The impugned order dated 21.12.2016 must be, and is accordingly, quashed. The Writ Petition is allowed with exemplary costs of Rs. 30,000/- i.e. Rs. 5000/- each payable by respondents 4 to 9, (who were in service when the impugned order dated 21.12.2016 was passed), to the Uttarakhand State Legal Services Authority within four weeks from today, failing which the said amounts shall be recovered from them, by the Uttarakhand State Legal Services Authority, in accordance with law.

67. Needless to state that, as a result of the order now passed by us, respondent nos. 4 to 9 shall be relieved forthwith from the posts of Forest Rangers, and shall be directed to take charge of their substantive posts of Foresters protecting the pay which they were drawing, in the post of Assistant Development Officers (Forest), prior to the order dated 21.12.2016. As we have declared the said order dated 21.12.2016 null and void, the State Government shall forthwith recover the differential amounts paid to respondents 4 to 13, [i.e. the difference between the amounts paid to them as Forest Rangers pursuant to the order dated 21.12.2016, and the amounts paid to them as Assistant Development Officers (Forest) prior thereto], and in any event within four weeks from the date of receipt of a copy of this order.