
(2002) 06 PAT CK 0013

In the Patna High Court

Case No : P.A. Nos. 142, 144, 154, 166, 167 and 183/2002

Vijay Kumar Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 28-06-2002

Acts Referred:

Citation : (2002) 06 PAT CK 0013

Final Decision : Allowed

Judgement

Nagendra Rai, J.—All the appeals, except LPA No. 183 of 2002 are barred by limitations. After having heard learned counsel for the parties and taking into consideration the averments made in the limitation petitions in the appeals, we are satisfied that sufficient grounds have been made out to condone the delay in filing these appeals. Accordingly, the delay in filing these appeals are condoned.

The appellants filed the writ applications challenging the order dated February 22, 2001 passed by the Forest and Environment Department, Government of Bihar, annexed as Annexure-30 of the writ application No. 3608 of 2001 (hereinafter referred to as the writ application) by which services of 40 Forest Extension Supervisors (hereinafter referred to as the FES) and 91 Forest Extension Workers; (hereinafter referred to as the FEW) including the appellants were terminated.

2. The three writ applications, namely, C.W.J.C. No. 3608, 4176 and 7601 of 2001, were disposed of by a common order dated October 4, 2001 by the learned single Judge of this Court by which the order of termination of the services of the appellants were upheld with a direction to the State Government to consider their cases for absorption on the post of Foresters and Forest Guards keeping in view the long services rendered by them, past assurance given by the Government and other relevant considerations.

3. C.W.J.C. Nos. 10281, 13977 and 12931 of 2001 filed by some of the appellants were disposed of subsequently in terms of the order passed in the

aforesaid three writ applications. These appeals have been filed by the appellants challenging the aforesaid order dated October 4, 2001 and subsequent orders passed in accordance with the said order and they have been heard together and are being disposed of by a common order.

4. The admitted facts are that the Central Government during 6th Five Year Plan introduced two schemes, known as National Rural Employment Programme (hereinafter referred to as the NREP) and the Rural Landless Employment Guarantee Programme (for short, RLEGP) with a view to alleviate the rural poverty by distribution of income in favour of the poor and the needy population in the rural areas by providing employment opportunities to them and with a view to generate additional employment particularly for the landless workers. The social forestry was one of the earmarked programmes for which 20% of fund was to be given. Out of this earmarked fund 5% was to be spent on meeting the cost of establishment for setting up social forestry scheme. The entire fund was provided by the Central Government. The aforesaid two programmes were being administered by the Rural Development Department, Government of Bihar which was responsible for the implementation of the programmes and the fund was being made available to the department of Forest and Environment, Government of Bihar by it. The Department of Forest and Environment, Government of Bihar, with a view to implement the aforesaid schemes on February 12/14, 1986 took a decision to create 100 posts of FES and 200 posts of FEW, vide Annexure-2 to the writ application. The salary was to be paid out of the fund available under the aforesaid two schemes, namely, NREP and RLEGP. It was clearly provided in the order creating posts that the posts will be temporary and will be co-terminus with the programme/scheme itself. The qualification and mode of selection etc. were also provided. A committee was constituted under the chairmanship of the Divisional Commissioner consisting of himself and two members, namely, one seniormost District Magistrate and one seniormost Divisional Forest Officer to recommend the names for appointment. The appointment of FES was to be made by the Conservator of Forests and the FEW by the Divisional Forest Officer. In terms of the said decision of the State Government, an advertisement was issued inviting applications from the eligible candidates and the appellants and others applied and by following the procedure as prescribed under the scheme as mentioned above, 42 FES and 91 FEW were appointed. Out of 42 FES, one died and another became invalid, thus, only 40 FES remained. Some of them were appointed later on in pursuance of an order of this Court. The appellants after being appointed were sent up for training under social forestry training programme and were awarded certificates in this regard. Under the same very scheme, apart from creation of aforesaid two posts, several other posts of Divisional Forest Officer, Assistant Conservator of Forests, Range Officer, Statistical Assistant, Accounts Assistant, Assistant Conservator of Forests, Assistant Accountant, Range Forester were also created by the Government of Bihar by order dated April 4, 1986 on the same terms and conditions. The Central Government, however, closed the aforesaid two schemes with effect from

April 1, 1989 and launched another scheme, i.e., Jawahar Rojgar yojna. The said newly created scheme was to be implemented through the panchayat and the fund which was earlier routed through the Rural Development Department was now provided to the Panchayat through the District Rural Development Agency (for short, DRDA). Thereafter, on April 27, 1989, the Special Secretary, Rural Development Department, informed the Secretary, Department of Forest and Environment that in view of the closure of the two schemes, the Rural Development Department will not bear the cost of social forestry scheme run by the Forest Environment Department and requested him to make alternative arrangement with regard to expenditure on the post created under the aforesaid two schemes, vide Annexure-9 to the writ application. Thereafter, on April 28, 1989, the Forest Department issued a teleprinter message to the Principal Chief Conservator of Forests as well as the Chief Conservator of the Forests informing them about non-availability of allotment and directing them to stop all expenditure against all posts and incumbents against the aforesaid two schemes. It was further informed that no further liability should be created. Thereafter, no further appointments have been made, but the appellants except few who were appointed later on in pursuance of the order of this Court and who were working since 1986 continued in service and admittedly that continued and the posts were extended from 1989- 90 to 1997-98. As there was uncertainty about the fate of the appellants, the matter was brought to the notice of the Government. A meeting under the chairmanship of the Planning Advisor-cum-Development Commissioner was held on May 27, 1989 in which it was decided to transfer the entire establishment created under the aforesaid scheme under the regular departmental plan of the Forest Department. Paragraph 5 of the minutes runs as follows:

"As regards payment of arrear salary to establishment created under Forest Department for N.R.E.P./R.L.E.G.P., the Rural Development Department was requested to find some money out. As regards payment during the current year, a memorandum may be submitted to the Cabinet suggesting transfer of this establishment under regular departmental plan on the consideration that the Social Forestry Scheme will not only continue but also expand in the future. Even if the Social Forestry is done by the Panchayats, they will continue to need the technical and supervisory support of the Forest Expert."

5. On July 3, 1989, an assurance was given in the Bihar Legislative Assembly on behalf of the State of Bihar that the employees working under the aforesaid two schemes will not be retrenched and they will be absorbed against the regular establishment of the Forest Department. Thereafter, a memorandum was submitted before the Cabinet having approval of the Chief Minister and the Finance Department wherein there is mention about the decision taken in the meeting under the Chairmanship of Development Commissioner on May 27, 1989 as well as under the Chairmanship of Chief Secretary dated July 24, 1989. The proposal was to continue the persons appointed under the aforesaid scheme and the fund for meeting the expenditure for salary was to be borne out of the

normal budgetary provision of the Forest Department. The said proposal of the Cabinet was approved on January 22, 1990 as is evident from Annexure-11 and Annexure-11/a to the writ application. In pursuance of the aforesaid proposal, the mode of payment under regular establishment was approved for all the persons appointed against the said scheme including those appointed subsequently vide Annexure-4, (Annexure-12 to the writ application). The State in its counter affidavit in paragraph 15 thereof has admitted the said fact. The relevant statement is as follows:

"On the direction of the State Government, the matter of termination of service of Forest Extension Supervisors and Forest Extension Workers was considered at various levels and it was decided that the service of the persons already appointed as Forest Extension Supervisors and Forest Extension Workers shall continue on consideration that the social forestry scheme will not only continue but also expand in the future and on consideration that the Panchayats would undertake social forestry schemes and if the social forestry is undertaken by the Panchayats, they will need the technical and supervisory support of the forest experts. The fund for meeting expenditure on salary was to be out of the normal budget provisions of the Forest Department."

6. The Secretary, Department of Forest and Environment by letter dated February 15, 1990 (Annexure-13 to the writ application) directed the Principal Chief Conservator of Forests and the Chief Conservator of Forests, Social Forestry to take steps for absorption of persons appointed under the aforesaid two schemes. It was further mentioned therein that if it is not possible to absorb these persons against the sanctioned posts, then steps should be taken for their absorption in other vacancies available in the department and its compliance should be reported immediately. Later on the Secretary, Department of Forest & Environment asked the Principal Chief Conservator of Forest to send proposal with regard to absorption of persons appointed under the aforesaid schemes (Annexure-14 to the writ application). Later on 13 establishments including the project created under the NREP and RLEGP were also transferred under the non-plan head of the department. However, no decision was taken with regard to their absorption, and file was sent to the Personnel and Administrative Reforms Department and the Personnel and Administrative Reforms Department, Government of Bihar who appears to have agreed with the proposal advised the Forest Department to obtain fresh approval of the Cabinet by putting fresh proposal. The same is evident from the concerned file, extract of which has been filed as Annexure-17 to the writ application. Thereafter, it appears that the Principal Chief Conservator of Forests constituted a committee comprising of the Chief Conservator of Forests (Development), Bihar, the Chief Conservator of Forests-cum-Chief Conservator of Wild Life, Bihar, the Regional Chief Conservator of Forests to decide the question of absorption of the FES and FEW and the Committee after examining the entire issue recommended for absorption of the FES and FEW against Foresters and Forest Guards respectively. It was mentioned therein that the same would not put any excess burden on the State finance nor

it would affect the seniority of Forester and Forest Guard and it will be taken as a direct recruitment. After the said report of the Committee, the Chief Conservator of Forest requested the Principal Chief Conservator of Forest to take immediate steps with regard to their absorption vide letter dated August 26, 1998 (Annexure-18 to the writ application). However, no decision was taken with regard to their absorption.

7. Thereafter, the Principal Chief Conservator of Forests requested the Government to grant extension of the posts. The last such letter was written on November 12, 2000 but the period was not extended and in reply to the letter dated November 12, 2000, the impugned order dated February 22, 2001 has been passed wherein it was mentioned that the department has considered the question of extension of the period of posts of Forest Extension Supervisor and Forest Extension Worker and found that these posts were created under the Rural Labour Employment Guarantee Programme and Jawahar Rojgar Yojna which had come to an end. The Forest Department is not getting any fund for the aforesaid programme. The posts were temporary and technically their services came to an end in the year 1989 itself when the programmes had come to an end, but the posts extended up to 1996- 97 and as such the aforesaid posts were not in existence and accordingly, decision has been taken to abolish the posts and terminate the services of the persons appointed against the said posts.

8. The case of the appellants is that the qualifications for the posts of FES and FEW are the same as of Forester and Forest Guard. After the appointment, they were discharging the same and similar duties as of the Forester and the Forest Guard. Though the scheme under which they were appointed temporarily came to an end in the year 1989, their services were not terminated, on the other hand, the Government having considered their cases decided to retain them in service and in this connection they have relied upon the report of the Development Commissioner, Chief Secretary as well as the decision of the Cabinet wherein it was decided to retain them in service and the fund for meeting the expenditure and salary was to be met from the normal budgetary provisions of the Finance Department. The Committee constituted by the Principal Chief Conservator of Forests also recommended for absorption against the vacant posts of Forester and Forest Guard. They continued in service except two who were appointed later on in pursuance of the order of this Court for more than 12 years. The aforesaid two persons were employed in the year 1988. They have become overage and large number of posts of Forester and Forest Guard are vacant and as such the State Government should have considered their services for absorption in view of the undertaking given before the Legislative Assembly. The decision to terminate their services on the ground that the scheme came to an end in the year 1989 after about 12 years is not only arbitrary but vindictive also. The arbitrariness and mala fide on the part of the State will be evident from the fact that on March 1, 2001 various establishments including those under which these appellants were working were made permanent and the posts of Divisional Forest Officer, Range Officer created under

the aforesaid scheme on April 4, 1986 (Annexure-4 to the writ application) were made permanent whereas the posts created on February 12/14, 1986 (vide Annexure-2) were not made permanent.

9. The State has admitted the fact that after the scheme came to an end the services of the appellants were not terminated. On the other hand, instruction was issued not to make the appointments on April 28, 1989 by the Department of Forest and Environment, Government of Bihar, under the aforesaid scheme. The case of the appellants were considered and the decision was taken that they should continue on consideration that the social forestry scheme will not only continue but also expand in the future and on consideration that the Panchayats would undertake social forestry scheme and if the social forestry scheme is undertaken by the Panchayats, they will need the technical and supervisory support of the forest experts. They were allowed to continue in service and the fund was made available through the normal budgetary provision of the Forest Department. In the aforesaid decision, the department of Forest and Environment issued orders for extension of services which were extended up to 1996-97. This decision was taken on compassionate ground. It is further stated that the appellants appointed under the aforesaid scheme do not possess the expertise required for undertaking the normal work of the Forest Department, such as, Forest Management, Forest Conservation, Forest Protection, Wildlife Protection etc. For the same there is regular department in the Forest Department and the persons are appointed against these regular posts after following the prescribed procedure and there is provision for giving adequate training to the appointed persons so that they may be well qualified to undertake the aforesaid works effectively. The State Government has very limited resources and the Forest Department has additional liability to increase forest coverage of Bihar with limited amount of funds. If the huge amount is spent against the establishment cost, the work of the Forest Department will be hampered and keeping in view of the aforesaid fact, the Forest Department took decision to abolish the posts of FES and FEW which had become non-operational due to closure of the schemes and accordingly, the impugned order was passed terminating their services.

10. With regard to allegation of discrimination regarding making certain posts created under the aforesaid schemes (vide Annexure- 4) as permanent while denying the same to the appellants, the stand of the State is that the posts created by order dated April 4, 1986 (Annexure-4) were regular posts of the Forest Department. No such condition as put in the case of the appellants was put in their cases while creating the aforesaid posts.

11. Learned counsel appearing for the appellants submitted that the decision to terminate their services is arbitrary and discriminatory. Elaborating his submission, he submitted that the appellants' services were not terminated after the closure of the schemes, on the other hand, an assurance was given in the Legislative Assembly to continue them in service. The Cabinet also decided to

continue them in service after taking into consideration the various reports of the Committees and in that view of matter the Forest Department could not have taken a decision without placing the matter before the Cabinet while terminating their services. He also submitted that the order is discriminatory in the sense that certain posts created under the same scheme vide order dated April 4, 1986 (Annexure 4 to the writ application) were made permanent and the incumbent on the said posts were retained in service while the appellants have been removed from employment. It was also submitted that the appellants have been discharging the same duties and functions as of the Forester and Forest Guard. Large number of posts of Forester and Forest Guard are vacant and recommendations were made by the Committee to absorb them against the said vacant posts, but instead of taking any decision with regard to said matter, they have been thrown out of the employment after remaining in service for more than 12 years except two as stated above. By this time, they have become overage and there is no chance to get employment elsewhere. If their services would have been terminated in terms of the schemes in the year 1989, then the matter would have been different but the State allowing them to continue in service for more than 12 years cannot at this stage remove them on the ground that the scheme has come to an end in the year 1989. The ground given for termination of their services is non-est ground and shows a complete non-application of mind by the authority concerned.

12. Learned counsel appearing for the State on the other hand submitted that the appointments of the appellants were terminated and were co-terminus with the scheme as is evident from the order creating posts vide Annexure-2 to the said writ application. The State Government having considered the matter sympathetically and on compassionate ground allowed them to continue in service and the expenditure was met out by the plan head of the Forest Department. Later on the Department of Forest having resources crunch decided to abolish the posts and terminate their services. The said decision has been taken bona fide in public interest and no arbitrariness or discrimination can be alleged against the said decision.

13. The creation, continuation and abolition of post, is the prerogative of the Government. It is the policy decision taken by the executive keeping in view the requirement, exigency and administrative necessity. No body can force the Government to create a post or to retain the post. However, the decision to abolish the post is to be taken in good faith. Once the decision is taken in good faith, the Court cannot go into the question as to whether the post should be abolished or not. Only in a case where the Government has acted mala fide or arbitrarily in abolishing the post resulting in termination of the services of the incumbent, the Court will interfere in the matter. It is well settled that if the post has been abolished in good faith on account of administrative exigency and as a result of which the occupier of the post is removed, then the same is not dismissal or removal attracting the Article 311 of the Constitution of India.

14. The facts stated above clearly show that under the aforesaid two schemes, the Government of Bihar created 100 posts of FES and 200 posts of FEW. It was clearly mentioned in the order creating posts that the appointment would be temporary and co-terminus with the scheme/project. In terms of the aforesaid scheme these appellants and others were appointed. The scheme came to an end in the year 1989 and the Government stopped further appointments, but did not terminate their appointments as well as the appointments of others appointed under the aforesaid scheme on the post of Divisional Forest Officer, Assistant Conservator of Forests, Range Officer etc. In other words, once the scheme came to an end, the appellants were not removed. It is admitted by the State Government that the case of the appellants received consideration of the State Government and assurance was given in the Legislative Assembly to continue them in service and their cases were considered at different levels and decision was taken to keep them in service on compassionate ground as their services were required in future. The same is evident from paragraph 15 of the counter affidavit filed in the said writ application. As a matter of fact, the Committees constituted by the State Government also recommended for their retention in service. Annexure-11 to the writ application which is memorandum submitted by the Forest and Environment Department to the Council of Ministers shows that nine posts including the posts of FES and FEW were sanctioned in the year 1986-87. The Committees, i.e. one constituted under the Chairmanship of Planning Advisor-cum-Development Officer and the other under the Chairmanship of the Chief Secretary recommended for their retention. The said proposal has also approval of the Finance Department as it affected the finance. The ultimate proposal was that the incumbent of sanctioned posts which includes the posts occupied by the appellants should be continued and the expenditure incurred on these posts should be met from the State Plan Head. At the same time, it was also proposed that the establishment for Fallow Land Development Council at the State Level, which was created in the light of the direction of the Government of India, should be taken under the Forestry Expansion head. In order to meet the said expenditure, it has to be adjusted by making curtailment in other schemes of the department. The provision of Rs. 216 lakhs shall be made by obtaining advance from Bihar Contingency Fund, out of which the Department shall refund . Rs. 35 lakhs from other heads and the remaining amount of Rs. 181 lakhs shall be against the difference amount of plan outlay and provision. The said proposal was approved by the Cabinet. Later on the Committees constituted under the Principal Chief Conservator of Forests also recommended for their absorption against the posts of Forester and Forest Guard on the ground that they are discharging the same duties as of the Forester and Forest Guard and the said posts are vacant and their absorption against the said post will not incur any financial burden. It further appears that the Personnel and Administrative Reforms Department agreeing with the aforesaid proposal of the Forest Department opined that the matter should be considered by the Council of Ministers, but no decision was taken with regard to their absorption though the posts were extended up to 1996-97 and thereafter, the impugned order was

passed. If the services of the appellants would have been terminated soon after the closure of the aforesaid two schemes, then the matter would have been different and they would have no claim to remain in service and the decision of the Apex Court in the case of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, referred to by the learned counsel for the State would have been a complete answer to their stands. In that case, the persons were appointed on daily wages to plant trees under NREP Scheme and Jawahar Rojgar Yojna. The Apex Court held that the schemes were evolved to provide income for those who were below the poverty line and particularly without any source of livelihood. The persons were employed on daily wages to complete the scheme and as such their services cannot be regularised. They could not ask for more than what the scheme intended to give them.

15. The said case has no application in the present case as the appellants were not appointed on daily wages, on the other hand they were appointed on temporary basis after due advertisement and fulfilling the requisite criteria fixed by the State Government for the said post. After the scheme came to an end, they were not removed. The State Government on the other hand, as stated above took a decision to continue them in service and paid their salaries from the State funds and not from the fund belonging to the Schemes.

16. Though right to livelihood or right to work is not a fundamental right, the directive principles as contained under Article 41 of the Constitution of India provides that the State shall within the limits of the economic capacity and development make effective provision for securing the right to work. The State cannot act on its whim and remove the employee by adopting the principles of hire and fire. It has to act in reasonable manner and its action should be consistent with the requirement under Articles 14 and 16 of the Constitution of India. It cannot generate hope in employees by asking them to continue in service for so many years and later on to leave them in lurch without any reasonable ground. The Apex Court, in the case of Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, held that if the employees have been working since long possessing requisite qualifications, then effort should be made to regularise them and not throw them out of the job for the reason that they will not only become overage for the purpose of employment, but their families will be ruined and uprooted. The relevant part of paragraph 15 of the said decision at p. 74, of LLJ is as follows:

"If the rule is so interpreted it seems clear to us that employees who have been working on the establishment since long, and who possess the requisite qualifications for the job as obtaining on the date of their employment must be allowed to continue on their jobs and their services should be regularised. It is unfair and unreasonable to remove people who have been rendering service since sometime as such removal has serious consequences. The family of the employee which has settled down and accommodated its needs to the emoluments received by the bread-winner will face economic ruination if the job

is suddenly taken away. Besides, the precious period of early life devoted in the service of the establishment will be wholly wasted and the incumbent may be rendered age-barred for securing a job elsewhere, it is indeed unfair to use him, generate hope and a feeling of security in him attuned to his family to live within his earnings and then suddenly to throw him out of job."

17. The various documents which have been referred to above clearly show that the appellants were retained in service by the State Government after closure of the scheme and decision to that effect was also taken by the State Government as is evident from the proposal sent to the Cabinet (Annexure-11) and approval of the same (Annexure-11/a). The materials further show that the Personnel and Administrative Reforms Department opined that a fresh proposal be sent to the Council of Ministers with regard to their absorption but nothing was done by the concerned authority and when request was made by the Principal Conservator of Forests to extend the period and posts and to pay the salary of the incumbents, the impugned order was passed.

18. The Government of Bihar has framed Rules of Executive Business under Article 166(3) of the Constitution of India to transact the business of the Government. The items mentioned in Schedule III of the Rules of Business has to be placed before the Council of Ministers. Rule 12 provides that no department shall without previous consultation with the Finance Department authorise any orders which affects inter alia the finance of the State or relate to the number of grading or cadre of posts or the emoluments or other conditions or service of posts.

19. Schedule III provides inter alia, that the matter affecting the finance of the State, proposals involving any important change of policy or practice or new plan scheme involving recurring/non-recurring expenditure of the amount mentioned therein or extension of current plan scheme involving recurring/non-recurring expenditure mentioned therein shall be placed before the Council of Ministers.

20. Admittedly, the amount involved concerning retention of the post is more than the amount mentioned under Entry No. 35 of the Third Schedule. Thus, the decision to continue the persons holding the posts under the aforesaid scheme after its closure which was created vide Annexures-2 and 4 to the writ application was required to be taken by the Council of Ministers. The Forest Department put up the proposal after having obtained the concurrence of the Planning Department, Finance Department and the Chief Secretary and the Council of the Ministers approved the proposal to allow the appellants and other persons holding the posts created vide Annexures-2 and 4 to the writ application to continue in service and the expenditure on the said post is to be incurred from the State Plan head. But there was no final decision regarding regularisation or absorption. The question of their absorption was taken up by the Forest Department, the Personnel and Administrative Reforms Department rightly pointed out that the matter has to be placed before the Council of Ministers to decide the said question.

21. The aforesaid decision of the Council of Ministers allowing the appellants to continue in service can be modified or recalled or annulled only by the Council of Ministers under the Rules of Executive Business and not by the Forest and Environment Department. The impugned order does not show that the decision to abolish the posts and to terminate the services was taken after consultation of the Council of Ministers. There is specific statement in paragraph 23 of the counter affidavit that the Department of Forest and Environment took a decision to abolish the posts of Forest Extension Supervisor and Forest Extension Worker which had become non-operational due to closure of the aforesaid schemes. In my view, the department of Forests was not competent to take the aforesaid decision to modify the decision taken by the Council of Ministers under the Rules of Executive Business and the matter should have been placed before the Council of Ministers to decide as to whether the persons should be allowed to continue in service and the expenditure is to be met under the State plan head or their services are to be regularised on the posts held by them or absorbed as Forester and Forest Guard as recommended by the Committees.

22. This apart, the persons appointed under the aforesaid schemes vide Annexure-4 to the writ application on different posts have been retained in service and have been made permanent whereas two posts held by the appellants have been singled out and not made permanent. There is no valid reason to differentiate the case of the appellants who were appointed vide Annexure-2 to the writ application and persons appointed on different posts vide Annexure-4 to the writ application. The stand of the State in this connection does not satisfy the test of reasonableness. Their stand is that as the post of Divisional Forest Officer, Assistant Conservator of Forests, Range Officer, Statistical Assistant, Accounts Assistant etc, which were created under the aforesaid schemes vide Annexure-4 were the regular posts and as such incumbents on the posts though appointed under the aforesaid schemes were made permanent, but the same opportunities were not made available to the appellant because the posts held by them were not the regular posts of the Forest and Environment Department. The nature of the appointments vide Annexures-2 and 4 to the writ application are the same as they were made under the aforesaid schemes. Only because some persons were appointed having nomenclature of the post which had already existed in the department, they cannot form a separate class for the purpose of making them permanent ignoring the claim of other persons similarly appointed, namely, the appellants.

23. Thus, the appellants have made out a case that the State Government has acted arbitrarily in not considering their cases for the purpose of retaining them either by absorption or by regularisation.

24. From perusal of the impugned order, it appears that there is complete non-application of mind while passing the aforesaid order. The main ground for abolition of the posts and termination of the services of the appellants that the scheme under which the appellants were appointed came to an end in the year

1989 and as such their services stood terminated in the year 1989 but the posts were allowed to continue for one reason or the other. Since 1997-98 the aforesaid posts were in existence and the Government has decided to abolish the posts and terminate their services. Admitted fact is that after the scheme was over, the appellants were allowed to continue in service and the question of their absorption was under active consideration of the Government. These matters were not even noticed by the department while passing the aforesaid order.

25. Thus, the impugned order is illegal, without jurisdiction and arbitrary for the reasons mentioned above.

26. As stated above, the appellants have been allowed to continue in service after the closure of the scheme also for more than 10 years. The Government has taken work from them. Large number of the posts of Forester and Forest Guard are vacant. The various reports show that the recommendation has been made for their absorption on the said post. As the said posts are vacant and their absorption will not incur any additional expenditure, the State Government is directed to consider their cases for absorption keeping in view of the fact that their appointments were not the backdoor method and they have continued in service after closure of the scheme for such long time, they served the Forest and Environment Department and they have become overage. It is also open to the Government to consider their cases for regularisation by framing a scheme.

27. As the impugned order by which the services of the appellants have been terminated has been found to be bad in law, the same is quashed. They will continue in service as before but the same will be subject to the final decision taken with regard to their regularisation/absorption by the State Government in accordance with the observations made above.

28. In the result, all the appeals are allowed with the aforesaid observations/directions.

R.S. Garg, J.

I agree.