

(2012) 04 KL CK 0014

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 4414 of 2008 and 14058 of 2009

Yesudasan, V. D. and others

APPELLANT

Vs

State of Kerala and another

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16

Citation : (2012) 2 ILR (Ker) 447 : (2012) 2 KLT 799

Hon'ble Judges : K. T. Sankaran, J

Bench : Single Bench

Advocate : P V. Asha and Smt. S. Karthika, Sri M. S. Unnikrishnan and Smt. K. P. Geetha Mani, for the Appellant; M. K. Sreelatha, (Government Pleader) for 1st respondent and Dr. K. P. Satheesan, Sri K. K. Gopinathan Nair and Sri M.R. Jayaprasad for respondents 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice K. T. Sankaran

1. The petitioners in W.P.(C) No. 14058 of 2009 are working as Overseer Grade I in the Engineering Wing of Local Self Government Department (hereinafter referred to as LSGD), while the petitioners in W.P.(C) No. 4414 of 2008 are working as Assistant Engineers in the LSGD. After the amendment of the Constitution of India by the 73rd amendment, the Kerala Panchayat Raj Act, 1994 was enacted. Before the 1994 Panchayat Raj Act, the Engineering staff of the Panchayats were governed by the Kerala Panchayat Common Service Rules, 1977. They had limited chances of promotion. Stagnation occurred in the entry cadre post for several years. In the year 1998, the Pay Revision Committee took note of the lack of promotion avenues to the Engineering staff of the Panchayat Department and made some suggestions. After the Constitution 73rd Amendment, the functional responsibility of the Engineering staff of Panchayats and Municipalities in the State were substantially enhanced. Under the Kerala Panchayat Raj Act, 1994, a new set of special rules came into existence, namely,

the Kerala Panchayats Subordinate Service Rules, 1994, which were brought into force with retrospective effect from 1-1-1990. The 1994 Rules did not contain the post of Assistant Engineer. Later, the Government issued Special Rules for the Kerala Panchayat Services in 2006, as per G.O.(P)No. 47/2006/LSGD, which came into force with effect from 3-2-2006. The said Rules provide for the qualification and appointment to the post of Assistant Engineer. The method of appointment was by direct recruitment and appointment by transfer from the category of Overseer Grade I in the Kerala Panchayats Subordinate Service in the ratio 6:4.

2. The enhancement in the functional responsibilities of the Panchayats to a great extent necessitated creation of additional posts in the Ministerial Wing as well as in the Engineering Wing. The Ministerial staff working in the various Panchayats were given promotions when additional posts were created in implementation of the Kerala Panchayat Raj Act. However, the Government issued executive orders creating several Engineering cadre posts like Assistant Executive Engineer, Executive Engineer, Superintending Engineer, Chief Engineer etc. and to such additionally created posts, persons from Public Works Department, Irrigation Department, Water Resources Development Department etc. were deployed. G.O.(P)No. 186/2000/LSGD, dated 4-7-2000 was issued by the Government in that regard [Ext. P-1 in W.P. (C) No. 4414 of 2008 and Ext. P-2 in W.P. (C) No. 14058 of 2009]. As per the aforesaid Government Order dated 4-7-2000, the Government ordered deployment of one Chief Engineer, six Superintending Engineers and several Executive Engineers, Assistant Engineers and Overseers to Local Self Government Department from Public Works Department and Irrigation Department.

3. The Engineering Staff of the Panchayat Department filed O.P.No. 28909 of 2000 before this Court apprehending that the deployment of Engineering staff from other Departments to LSGD would result in the loss of promotion prospects of the Engineering staff of the Panchayats. This Court disposed of O.P.No. 28909 of 2000 along with several other Original Petitions by the judgment dated 19th March, 2002. The deployment from the Public Works Department and other Departments was also challenged by some of the personnel of those Departments. This Court considered the grievance of the Engineering Staff of the LSGD as the "third set of cases" and it was held thus:

4. The grievance of the petitioners in 3rd set of cases is slight different. They were appointed as members of Engineering staff in Local Self Government department. They have no sufficient chances for their promotion as compared to the chances available in P.W.D. and I.D. Now implementing the impugned G.O. incumbents from I.D. and P.W.D. are deployed in the higher categories like Assistant Engineers, Assistant Executive Engineers, Executive Engineers, Superintending Engineers and also Chief Engineer in the Local Self Government Department. So the petitioners will not get promotion. Their promotion chances are not taken care of when higher level officers are deployed from the said two

departments. Necessarily depending upon the strength of Engineering staff in the Local Self Government Department at least some posts in the higher categories shall be reserved to them rather than filling up the entire posts by deployment of the incumbents in the higher category from P.W.D. and I.D.

* * *

10. Admittedly by the first respondent, petitioners in the 3rd set of cases are members of Engineering staff originally appointed and continuing so in the Local Self Government Department in different categories. As per the impugned Government Order several Overseers, Assistant Engineers, Asst. Executive Engineers, Executive Engineers and Superintending Engineers are deployed to local self government departments. Necessarily taking into account the strength of the Engineering staff, in different categories, in the local self government department, few posts in the categories of Asst. Engineer, Asst. Executive Engineer and in the category of Executive Engineer be reserved for promotion of qualified hands from among the Engineering staff of the Local Self Government Department. It is only proper that they shall not be stagnated in the present post when their department grows larger because of the amendment of the Constitution and consequent strengthening of local self government institutions. The Government in Local Self Government Department shall consider this aspect and pass appropriate orders at any rate within 6 months from the date of receipt of a copy of this judgment. This will necessarily redress the grievance voiced in the third set of cases.

4. The judgment in O.P.No. 28909 of 2000 was challenged in W.A.No. 733 of 2003. A Division Bench of this Court dismissed the Writ Appeal holding thus:

5. Mr. Lal George, the learned Sr. Government Pleader, contends that the direction given by the learned Single Judge is wholly illegal.

6. We are unable to accept this contention. It is true that the Government is competent to lay down the source of recruitment to the posts in a particular department. However, the rule has to stand the test of fairness as embodied in Article 14 of the Constitution. It must ensure equality of opportunity to the persons already serving in the department. Otherwise, the rights of the persons guaranteed under Articles 14 and 16 shall be violated. To obviate this, the learned Single Judge has directed that the claim of persons serving in the Local Self Government Department itself should not be completely overlooked. The Government has been merely directed to consider the matter. It has no cause for any complaint. The direction is absolutely just and fair. It calls for no interference.

5. Thereafter, the Government issued G.O.(Ms.) No. 269/2003/LSGD dated 5-9-2003 [Ext. P-4 in W.P. (C) No. 14058 of 2009 and Ext. P-2 in W.P. (C) No. 4414 of 2008], creating separate Engineering cadre for LSGD with effect from 1-4-2004. It was also provided therein that the salary of the employees of the Engineering cadre would be paid by the Government. It was further provided in the Government Order dated 5-9-2003 to deploy Engineers and other staff from

Public Works Department and Irrigation Department Some of the Engineering staff of the Panchayat Department challenged the Government Order dated 5-9-2003 in W.P.(C) No. 37375 of 2003. The petitioners therein contended that required number of posts of Executive Engineers, Assistant Executive Engineers etc. should have been reserved for the Engineering Wing of the LSGD. In the counter-affidavit filed in W.P.(C) No. 37375 of 2003, the Government assured that the grievance of the petitioners and similarly situated persons would be examined and considered before finalisation of the Special Rules. W.P.(C) No. 37375 of 2003 was disposed of by the judgment dated 16-6-2004 [Ext. P-5 in W.P. (C) No. 14058 of 2009 and Ext. P-3 in W.P. (C) No. 4414 of 2008], holding thus:

4. While finalising the special rules, as stated by this court and as undertook in the counter-affidavit, the staff of the Engineering Wing of the erstwhile Panchayat Common service shall be given their due share by way of appropriate reservation, additionally ensuring that the promotional avenues are also open to them as stated in the judgment dated 19-3-2002 in O.P. No. 28909/2000. Appropriate action to frame the special rules and implement the same shall be completed within a period of six months from the date of production of a copy of this judgment.

6. It is contended by the petitioners that the Government disregarded the directions issued by this Court and delayed the framing of Special Rules even after the expiry of the time limit specified by this Court. However, the Government issued an order dated 2-9-2004 deploying some of the Executive Engineers in the Water Resources Department to the newly formed Executive Engineer's Office in the District Panchayat level. One of the petitioners in W.P.(C) No. 4414 of 2008 challenged the Government Order dated 2-9-2004 in W.P.(C) No. 29870 of 2004. On 26-11-2004, an interim order was passed by this Court not to fill up five posts of Executive Engineers in the District Panchayat and 65 posts of the Assistant Executive Engineers in the Block Panchayat, vacated by the deployed Engineering staff without furnishing certain details to the Court. It is submitted that the interim order in W.P.(C) No. 29870 of 2004 is still in force.

7. Cont. Case (C) No. 878 of 2005 was filed to take contempt action against the erring officers for not complying with the directions issued by this Court in W.P. (C) No. 37375 of 2003. It is stated that when the Contempt Case came up for hearing, the learned Government Pleader brought to the notice of the Court the Government Order dated 3-2-2006 and submitted that the directions issued by this Court were complied with. It was noticed later that the Government Order dated 3-2-2006 was not relating to the subject-matter in respect of which directions were issued by this Court. Therefore, R.P. No. 490 of 2006 was filed to review the order passed in Cont. Case (C) No. 878 of 2005.

8. Meanwhile, W.A.No. 1669 of 2006 was filed by the Government challenging the judgment in W.P.(C) No. 37375 of 2003. That Writ Appeal was taken up along with Cont. Case (C) No. 878 of 2005. The Contempt Case was closed recording

the submission made by the learned Government Pleader that Special Rules would be framed within six months.

9. However, Special Rules were not framed even within the time provided. Further extension of time was sought for, which was refused by this Court. Special Rules were issued for Local Self Government Engineering Services, as per G.O.(P) No. 271/2007/LSGD dated 27-11-2007 [Ext. P-7 in W.P.(C) No. 14058 of 2009 and Ext. P-13 in W.P.(C) No. 4414 of 2008]. For the Local Self Government Engineering Subordinate Service, Special Rules were framed as per G.O.(P)No. 272/2007/LSGD dated 27-11-2007. The Special Rules for the Kerala Local Self Government Engineering Service, 2007 is under challenge in the Writ Petitions to the extent to which the Rules do not earmark any quota for the Engineering Staff absorbed from the Panchayat Department for promotion to the categories of Assistant Engineers, Assistant Executive Engineers and Superintending Engineers.

10. The petitioners in W.P.(C) No. 14058 of 2009 are working as Overseers Grade I. It is stated that petitioners 1 to 3 commenced their service as Overseer Grade II in the respective Panchayats on and from 17-12-1981, 31-3-1989 and 1-7-1989 respectively. They were promoted as Overseer Grade I on 24-5-2005, 29-9-2003 and 17-6-2005 respectively. It is stated that the petitioners got their first regular promotion only after completion of 24 years, 14 years and 16 years respectively in the entry cadre, for want of sufficient number of posts of Overseer Grade I. It is also stated that the total number of posts in the Engineering Wing of the 990 Grama Panchayats in the State of Kerala was only 171, comprising of 106 posts of Overseer Grade II, 24 posts of Overseer Grade I and 41 posts of Assistant Engineers. The petitioners contend that stagnation resulted in the Engineering Wing of the Panchayat Department.

11. It is pointed out that persons who commenced service as Overseer Grade II in the PWD or Irrigation Department could become Overseer Grade I within two or three years and they could become Assistant Engineers within another two or three years and they could get further promotions to the posts of Assistant Executive Engineer, Executive Engineer etc. without much delay. However, the persons in the Engineering Wing of the Panchayat Service could not aspire for such early promotions. It is submitted that when the new Special Rules were framed for the Kerala Local Self Government Engineering Services 2007 with effect from 1-1-2008, sufficient safeguards should have been taken to give appropriate places to the personnel working in the Panchayat Service.

12. Similar contentions are raised by the petitioners in W.P. (C) No. 4414 of 2008 also. The petitioners in W.P.(C) No. 14058 of 2009 contended as follows in the Writ Petition:

E. The Special Rules, in the absence of any provision for reservation to the Engineering staff of Panchayat Department, in the matter of promotion to the posts of Assistant Engineer and above is unfair, unreasonable and illegal. In view of the Rule 2(2)(v), which provides for reckoning seniority with reference to the

date of appointment in the post held by the incumbents at the time of absorption, the Engineering staff of the Panchayat Department who were stagnating in entry posts and got promotion as 1st Grade Overseer only after about 20 to 24 years just before their absorption are being subjected to unfair and unequal treatment. The action/inaction of the respondents in the case of petitioners amounts to negation of equality and equality of opportunity in matters relating to employment under the State guaranteed under Articles 14 and 16 of the Constitution of India.

F. The respondents ought to have seen that the Overseer Grade I absorbed from Panchayat Department, who are only 24 in number were all enjoying 16 years and 23 years grade promotions and drawing pay admissible to and above that of Assistant Engineers at the time of their absorption in LSGD and hence there would not be any reason for any monetary loss on their absorption in higher posts of Assistant Engineers at least with effect from the date on which they were granted grade promotions. On account of their absorption in LSGD and implementation of Special Rules, they have lost their opportunity to get promotion at least against the 42 posts of Assistant Engineers available for them. Therefore the respondents ought to have set apart for them at least 50% of those 42 posts, instead of permanently blocking their opportunity to get promoted.

13. The petitioners in W.P.(C)No. 4414 of 2008 raised the following contentions:

34. On going through Exts.P-12 to P-15, it can be seen that the special rules are framed in such a way to fill up all the higher post of Engineering staff in the newly formed LSG Department by deploying persons from other departments. As mandated in the judgment dated 19-3-2002 and a repeatedly undertaken before this Hon''ble Court in two or three affidavits (as taken note of by this Hon''ble Court in Ext.P-3 judgment), no provision was made in the Special Rules reserving the required percentage of posts in higher cadre posts (like Asst. Executive Engineer, Exe. Engineer, Supdt. Engineer etc.) for accommodating the senior qualified erstwhile Panchayat Engineering staff who are stagnated in the Asst. Engineer post for the last more than 17 years.

14. A detailed counter-affidavit was filed in W.P.(C) No. 4414 of 2008. That counter-affidavit was sought to be adopted in W.P.(C) No. 14058 of 2009. In the counter affidavit, the following among other contentions are raised:

(a) As there was no post of AEE in the Panchayat Service, the petitioners could not aspire for promotion to that post. However, the time bound grade promotion to those facing stagnation in a post was available to them.

(b) The Government had been attempting integration of services and formation of a separate Engineering cadre for the LSGIs for a long time and all possible efforts had been taken in that regard. Meanwhile, the petitioners moved the High Court and obtained directions to the Government to finalise the Special Rules and to give due consideration to the staff in the Panchayat Common Service by way

of appropriate reservation ensuring promotional avenues.

(c) The petitioners in the erstwhile Panchayat Common Service, who are admittedly senior to those from other services, will get immediate promotion as AEEs. Had a reservation quota been prescribed for such promotions to the post of AEE, the interests of the petitioners in this OP and their juniors in the Panchayat Department would have been affected adversely. It is also likely to affect the other Engineering staff absorbed into the new service from other services.

(d) A provision for reservation would not be beneficial to the category of staff absorbed from the Panchayat Department, since their representation in the Local Self Government Engineering Service is nominal when compared to the strength of other categories.

(e) If reservation is provided, it will operate as a restrictive provision obstructing the chances of promotion of the Assistant Engineers absorbed into the LSG Engineering Service from different services, including those who are juniors to the petitioners and absorbed from the Panchayat Service.

(f) The petitioners have no case that they were B.Tech holders at the time of entering service as Overseer Grade II.

(g) In the Panchayat Department there was no full-fledged cadre of Engineering Staff. The Civil Engineering works in the Panchayats were attended to by the personnel attached to the Public Works Department under its "Local Bodies Engineering Wing".

(h) The petitioners had no claim for promotion to higher posts for want of any higher posts in the Panchayat Department. Creation of new posts just for providing promotional avenues to the petitioners was not possible.

(i) The promotion chances of the Engineering Staff in the Panchayat Department was limited and the higher post available in the Department was that of Assistant Engineer.

(j) The staff deployed from PWD and Irrigation Department continued to be in the cadre of the respective Departments. However, the Government felt the need to constitute a separate cadre of Engineering Staff for the Local Self Government Institutions under the Local Self Government Department, de-linking the redeployed staff from the supervisory control of the PWD and Water Resources Department.

15. It is also stated in paragraphs 12 to 14, 21, 35 and 36 of the counter-affidavit as follows:

12. Government as per G.O. (Ms.) 84/77/LASWD, dated 23-3-1977 had issued the Special Rules in respect of regular full-time employees of the Panchayats (now Grama Panchayats) other than the Executive Officers and those paid from contingencies. The post of Assistant Engineer (formerly Junior Engineer) had

been included in the Panchayat Common Service Special Rules, 1977. Later Government decided that the employees belonging to the Panchayat Common Service (except contingent employees) and those of the Panchayat Department including the Executive Officers (Panchayat Secretaries) would be constituted into a single service, namely Kerala Panchayat Subordinate Service, for which Special Rules were issued as per G.O.(P)151/94/LAD, dated 16-6-1994 with retrospective effect from 1-1-1990. The unification of the Panchayat Common Service and the Panchayat Department Service with effect from 1-1-1990 necessitated the constitution of such a unified service. The enactment of the Kerala Panchayat Raj Act in 1994 was not the reason for constitution of this unified service. Since at that time the post of Assistant Engineer was not in the Subordinate Service, it was not included in the unified Panchayat Subordinate Service. This post has been rightly included in the Kerala Panchayat Service for which revised Special Rules was issued as per Notification G.O.(P)47/2006/LSGD, dated 3-2-2006. This has been made clear in the Explanatory Note to the Notification dated 3-2-2006. Unification or integration of different Services will necessarily have good and bad effects on different categories and incumbents.

13. Consequent on the enactment of Kerala Panchayat Raj Act in 1994, Government ordered a reorganisation of the Panchayat Department. In the reorganisation, the Taluk Panchayat Offices and the offices of the Regional Deputy Director of Panchayats were abolished. The staff therein was accommodated in the 14 District Offices of the Department, each of which was put under the control of a Deputy Director, assisted by an Assistant Director who was till then the District Panchayat Officer. The reorganisation necessitated creation, abolition and shifting of some ministerial posts within the Department. The same was also the case with regard to the unification of Panchayat Common Service and the Panchayat Department Service ordered in 1994 with retrospective effect from 1-1-1990. The unification of service made some senior employees in the Panchayat Common Service eligible for promotion to higher posts which were being held by the Departmental staff. Since there was no engineering staff in the Panchayat Department, the unification did not in any way affect the service prospects of the engineering staff belonged to the Panchayat Common Service.

14. Since there were no sanctioned posts of and above the post of Assistant Executive Engineer, either in the Panchayat Common Service or in the unified Panchayat Service, the Assistant Engineers in the Panchayats could not be promoted. There was no denial of any eligible promotions to the petitioners. In fact they enjoyed the benefits of time bound grade promotions."

"21. While disposing of W.P.(C) 37375 of 2003 the Hon'ble High Court in Exhibit P-3 directed the Government that appropriate action to frame the Special Rules (for the Local Self Government Engineering Service) and to implement the same shall be completed within a period of six months. While framing the Special Rules for the new service, Government was aware that the Engineering Staff of the

Panchayat Subordinate Service and Panchayat State Service should be eligible for due promotions to higher posts.

35. The contention that but for the deliberate inaction on the part of the Government, petitioners 1 and 2 would have got promotion as AEE, EE and SE long prior to 1-4-2004, is baseless and hypothetical. Since in the Panchayat Department there were no posts of AEE, EE or SE they could never aspire promotion to those posts. It so happened that the petitioners entered in a service like Panchayat Service where first appointment was as II Grade Overseer and promotion prospects ended up at the level of AE, for no fault of Government. In Government Service, promotion prospects are not identical in all Departments, whether it is in the ministerial side or technical side. If they desired so, they could have tried for appointment in any other Department/Service where they consider there are better chances for promotion. With the formation of the LSG Engineering Service with effect from 1-1-2008, which includes the categories of AEE, EE, SE and CE, and to which service the petitioners are absorbed, they should wait for their due chances for promotion. They cannot compare their chances with that of the others in other Departments/Services who are absorbed into the Local Self Government Engineering Service on exercising option or otherwise. The dates of promotions of those persons in the parent departments are not relevant to decide the comparative chances of promotions. These dates will be relevant in fixing the comparative seniority of those who are absorbed into the integrated service. A pertinent point to be noted in this connection is that the petitioners entered service as Overseers in the subordinate service whereas most of their counter parts in Public Works Department and Water Resources Department entered service as Assistant Engineers. The petitioners at some point of time secured Degree in Engineering and now claim parity with those in the Public Works and Water Resources Departments, and claim reservation in promotions to higher posts. This claim is untenable and unjustifiable and is not supported by any Service Rules. If the claim of the Panchayat Engineering Staff is admitted their counter parts in other services who are absorbed into the integrated service along with the Panchayat staff will also put forth identical claims. The Special Rules Ext.P-13 has opened sufficient promotional avenues to the petitioners and they have thereby acquired claim for promotion as AEE with reference to their seniority in the integrated cadre of Assistant Engineers. Exts.P-17, P-18, P-19 and P-20 are not relevant and cannot be referred to in support of the claims of the petitioners for promotions to higher posts.

36. For reasons already explained, the request for reservation of quota in higher posts in favour of the staff in the Panchayat Engineering Service is unsustainable in law and against the fundamental principles of integration of staff from among different categories in different services. Such reservation will unsettle inter se seniority among the categories in different services. It may be noted that the directions in the Judgment dated 19-3-2002 in O.P. No. 28909/2000 and the Judgment dated 16-6-2004 in W.P.(C) 37375/2003 (Ext.P-3) with regard to the reservation of posts for promotions have been looked into by the Government

while framing the new Special Rules for Local Self Government Engineering Service. For the reasons stated the claim of the petitioners is unjustifiable and is without any rhyme or reason. The petition is liable to be dismissed.

16. In a batch of Writ Petitions, some of the Engineering staff of the Public Works Department and Water Resources Department (Irrigation Department) challenged their absorption in the newly formed Engineering Wing of the LSGD. They also challenged the Special Rules for Local Self Government Engineering Service, 2007. Those Writ Petitions were disposed of by a Division Bench in *Maju Balakrishnan and others v. State of Kerala and others* (2009) 2 K.H.C. 492 : 2009 (3) KLT S.N. 76 (C. No. 71). The challenge against the Special Rules was rejected by the Division Bench. However, certain other reliefs were granted by the Division Bench.

17. One of the main defences in the Writ Petitions is that the petitioners could not aspire for promotion to a post above that of the Assistant Engineer since in the Panchayat Service no such promotion post was available. It is submitted by the Government Pleader that the petitioners having joined the Panchayat Service knowing full well that they could not get quick promotion as in the PWD or Irrigation Department, the contentions raised by the petitioners in the Writ Petitions are unsustainable. I am of the view that this contention raised by the State is unsustainable.

18. The question to be considered is whether under the Special Rules under challenge the petitioners were treated equally with the Engineering Staff deployed from PWD and other departments. While considering that question the petitioners cannot be told that they chose a service in which there were no promotion avenues and therefore they should be satisfied with whatever that is given under the Special Rules.

19. In *State of Tripura and Others Vs. K.K. Roy*, it was held thus:

6. It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom...

20. In *Food Corporation of India and Others Vs. Parashotam Das Bansal and Others*, a question arose as to whether the Court could direct the Food Corporation of India to create avenues for promotion for the Engineering Staff in the Corporation. In that context, it was held thus:

12. When employees are denied an opportunity of promotion for long years (in

this case 30 years) on the ground that they fell within a category of employees excluded from promotional prospect, the superior court will have the jurisdiction to issue necessary direction.

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

21. It cannot be disputed that the Engineering Staff in the Panchayat Service had no promotional avenues as that of similarly placed staff in the PWD and Irrigation Department. The Engineering Staff in the Panchayat Service could not make any complaint that separate posts should be created for getting promotion for them. Posts were created for the purpose of the works to be undertaken by the Panchayats. However, the functional responsibilities of the Panchayat Raj Institutions were substantially changed after the 73rd Amendment of the Constitution of India. That necessitated the issue of several executive orders deploying personnel from the Public Works Department and Irrigation Department to the Engineering Wing of the Local Self Government Institutions. Thus the Engineering staff of the erstwhile Panchayat Service got promotional avenues in future. The question which came up for consideration in O.P.No. 28909 of 2000 was whether at the time of framing the Special Rules, sufficient protection should be made available to the Engineering Staff of the Panchayats. This Court held that it was necessary. Specific directions were issued by this Court as to how their interests should be protected. The judgment in O.P.No. 28909 of 2000 was challenged by the State in Writ Appeal and the decision of the learned Single Judge was confirmed by the Division Bench. The Division Bench noticed that the rule has to stand the test of fairness as embodied in Article 14 of the Constitution and ensure equality of opportunity to the persons already serving in the department. It was also cautioned by the Division Bench that if it were not so, the rights of the petitioners under Articles 14 and 16 of the Constitution would be violated. The Division Bench also observed that the learned Single Judge issued the directions in O.P.No. 28909 of 2000 only to obviate such contingencies.

22. Again, in W.P.(C) No. 37375 of 2003, the Government assured that the grievance of the petitioners and similarly situated persons would be considered before finalising the Special Rules. The undertaking made by the State was recorded in W.P.(C) No. 37375 of 2003. The grievance of the petitioners is that in spite of all these events, the rule making authority did not consider the grievance of the petitioners and did not honour the undertaking given by the State before the High Court. There is no case for the State that the directions issued in the judgments in O.P.No. 28909 of 2000, W.A.No.733 of 2003 and W.P.(C) No. 37375

of 2003 were illegal or without jurisdiction. On the other hand, a perusal of the counter-affidavit would indicate that the contention of the State is that the rule making authority took into account the directions issued by this Court and considered the same before finalising the Special Rules. But the protection which was directed to be given to the petitioners and similarly situated persons is not seen given to them under the Special Rules. The State could not point out how the rights of the petitioners have been protected by the Special Rules. It is also not pointed out, except saying that under the Special Rules the petitioners can aspire for promotional avenues now, that the petitioners have been placed almost in the same position as that of the persons belonging to the other departments who were deployed to the Engineering Wing of the LSG Institutions. On a perusal of the Special Rules and on a consideration of the contentions raised by the State, it is fairly clear that the Government simply ignored the specific directions issued by this Court to protect the interests of the petitioners and others.

23. In *S. Nagaraj and Others Vs. State of Karnataka and Another*, , the Supreme Court held thus:

12.... Law on the binding effect of an order passed by a court of law is well-settled. Nor there can be any conflict of opinion that if an order had been passed by a court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper.

24. In *Virender Singh Hooda and Others Vs. State of Haryana and Another*, , the Supreme Court held thus:

48. The legislature can change the basis on which a decision is given by the court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power by the State and to function as an appellate court or tribunal, which is against the concept of separation of powers. [In the matter of : *CAUVERY WATER DISPUTES TRIBUNAL*,].

49. When a particular rule or the Act is interpreted by a court of law in a specified manner and the law-making authority forms the opinion that such an interpretation would adversely affect the rights of the parties and would be grossly iniquitous and accordingly a new set of rules or laws is enacted, it is very often challenged on the ground that the legislature has usurped the judicial power. In such a case the Court has a delicate function to examine the new set of laws enacted by the legislature and to find out whether in fact the legislature has exercised the legislative power by merely declaring an earlier judicial decision to

be invalid and ineffective or the legislature has altered and changed the character of the legislation which ultimately may render the judicial decision ineffective [AIR 1997 3127 (SC)]."

25. In *State of Haryana and others Vs. The Karnal Co-op. Farmers' Society Limited, etc. etc. and others*, , the Supreme Court held that a legislature while has the legislative power to render ineffective earlier judicial decisions, by removing or altering or neutralising the legal basis in the unamended law on which such decisions were founded, even retrospectively, it does not have the power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid or not binding, for such power if exercised would not be a legislative power but a judicial power which cannot be encroached upon by a legislature under our Constitution.

26. In *Pankajaksy and others v. George Mathew and others* (7) 1987 (2) KLT 723, the Division Bench considered the scope of challenge of a rule made under a statute by an authority delegated for that purpose and it was held thus:

12. Thus, the rule made under a statute by an authority delegated for the purpose can be challenged on the ground (1) that it is ultra vires of the Act; (2) it is opposed to the Fundamental rights; (3) it is opposed to other plenary laws. To ascertain whether a rule is ultra vires of the Act, the Court can go into the question (a) whether it contravenes expressly or impliedly any of the provisions of the statute; (b) whether it achieves the intent and object of the Act; and (c) whether it is "unreasonable" to be manifestly arbitrary, unjust or partial implying thereby want of authority to make such rules.

27. In *Indian Express Newspapers (Bombay) Private Ltd. and others v. Union of India and others* AIR 1986 S.C. 515, it was held thus:

73. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say "Parliament never intended authority to make such rules. They are unreasonable and ultra vires

28. The learned Government Pleader submitted that the Court cannot interfere with the policy decision taken by the Government. She relied on the decision in *Maju Balakrishnan and others v. State of Kerala and others*(1) and several other decisions.

29. As held in *Indian Express Newspapers (Bombay) Private Ltd. and others v.*

Union of India and others(8) and Pankajaksy and others v. George Mathew and others(7) and several other decisions, a piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by the legislature. A policy decision, however, could not violate the constitutional mandates and the fundamental rights. The contention of the petitioners is that their rights under Articles 14 and 16 of the Constitution of India are infringed.

30. From the admitted facts of the case, it can be seen that the Engineering Staff in the erstwhile Panchayat Service were treated unfairly under the Special Rules in comparison to the Engineering Staff in the PWD and Irrigation Department and other Departments, who were deployed to LSGD. Justice was not done to the members of the Engineering Staff of the Panchayat who were stagnated in service for quite number of years. Their grievances were not considered by the Government in spite of the specific directions issued by the Court on more than one occasion. Rule 2 of the Special Rules which does not provide for any protection to the petitioners and similarly situated persons is violative of Articles 14 and 16 of the Constitution of India, besides being arbitrary and unreasonable. For the aforesaid reasons, it is declared that Rule 2 of the Special Rules for the Kerala Local Self Government Engineering Service 2007, which does not provide for any quota for the Engineering Staff of the erstwhile Panchayat Service, is manifestly arbitrary, illegal, unjust and violative of their fundamental rights enshrined under Articles 14 and 16 of the Constitution of India and therefore Rule 2 shall not be enforced to that extent.

The Writ Petitions are allowed as above.