IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11250 OF 2015

Mr. Sandeep Tulshiram Mohite, age 40]
years, Occupation – Service, Address :]
E/112, Mahatma Gandhi, Smruti]
Vasahat, Jerbai Wadia Road, Bhoiwada]
Mumbai – 400 012.] ... Petitioner

Versus

1. Registrar, Small Causes Court,]
Mumbai.]

2. Registrar, Bombay High Court,]
Mumbai.]

3. State of Maharashtra, through the]
Secretary, General Administration]
Department, Government of]
Maharashtra, Mantralaya, Mumbai] ... Respondents

WITH
WRIT PETITION NO. 11251 OF 2015

Mrs. Smruti Sandesh Lingayat, age 40]
years, Occupation – Service, Address:]
Devrukhar Sonar Chawl, Room No.1,]
Ambika Nagar, Jogeshwari (E),]
Mumbai – 400 060.]

Versus

1. Registrar, Small Causes Court,]
Mumbai.]

2. Registrar, Bombay High Court,]
Mumbai.]

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3. State of Maharashtra, through the]
Secretary, General Administration]
Department, Government of]
Maharashtra, Mantralaya, Mumbai] ... Respondents

WITH
WRIT PETITION NO. 11252 OF 2015

Mr. Avinash Bandu Jadhav, Age 46]
years, Occupation – Service, Address:]
B-143/5, Government Colony,]
Bandra (E), Mumbai – 400 051.]

Versus

1. Registrar, Small Causes Court,]
Mumbai.]

2. Registrar, Bombay High Court,]
Mumbai.]

3. State of Maharashtra, through the]
Secretary, General Administration]
Department, Government of]
Maharashtra, Mantralaya, Mumbai] ... Respondents

WITH
WRIT PETITION NO. 11253 OF 2015

Mr. Uttam Gangaram Tambe, age 49]
years, Occupation – Service, Address:]
Building No.7, Room No.1225,]
Govt. Colony, Bandra (E)]
Mumbai – 400 051.]

Versus

1. Registrar, Small Causes Court,]
Mumbai.]

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2. Registrar, Bombay High Court,]
Mumbai.]

3. State of Maharashtra, through the]
Secretary, General Administration]
Department, Government of]
Maharashtra, Mantralaya, Mumbai] ... Respondents

WITH
WRIT PETITION NO. 11254 OF 2015

Mr. Satish Damodar Salvi, age 40 years]
Occupation – Service, Address: B44/8,]
Govt. Colony, Bandra (E),]
Mumbai – 400 060.]

Versus

1. Registrar, Small Causes Court,]
Mumbai.]

2. Registrar, Bombay High Court,]
Mumbai.]

3. State of Maharashtra, through the]
Secretary, General Administration]
Department, Government of]
Maharashtra, Mantralaya, Mumbai] ... Respondents

Mr. Gunratan Sadavarte for the Petitioners in all the petitions.

Mr. S.R. Nargolkar for the Respondent Nos.1 & 2 in all the petitions.

Ms. Sushma Bhende, AGP, for the Respondent No.3 in all the petitions.

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CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

Reserved On : 13th JANUARY, 2017

Pronounced On: 21ST APRIL, 2017

JUDGMENT : [Per S.C. Dharmadhikari, J.]

1 These five petitions under Article 226 of the Constitution of India raise common issues of fact and law. They were heard together and are, therefore, disposed of by this common judgment.

2 These batch of petitions came to be assigned by an order passed on 15th December, 2015, to a Bench presided over by S.C. Dharmadhikari, J. These writ petitions challenge an order passed by the competent authority, namely, the Chief Judge, Court of Small Causes at Mumbai dated 16th November, 2015. The order reads as under :

" *O R D E R*

In view of direction of the Hon'ble High Court contained in its letter No.F.3720/2001, dated 11th December, 2001, at Sr. No.31 and further directions issued by the Hon'ble High Court in Inspection Note of this Court, 2015, vide its letter dated 12th October, 2015, at Sr. No.43, the following staff members who were initially appointed to the post of "Hamal" on the

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establishment of this Court are hereby removed from the Government Service with effect from Monday, the 16th November, 2015 (A.O.H.).

Sr. No.	*Name and Designation of staff members*
1	*Shri S.T. Mohite, Hamal*
2	*Shri A.B. Jadhav, Bailiff*
3	*Smt. S.S. Lingayat, Clerk-Typist*
4	*Shri U.G. Tambe, Hamal*
5	*Shri S.D. Salvi, Clerk-Typist*

In view of above, the Office is hereby directed to take the necessary steps to pay the dues, as admissible to them, as per rules by recovering Government dues, if any, pending against them, at the earliest.

The Office is further directed to take note of this Order and its compliance in their Original Service Books.

Sd/-
Prithviraj K. Chavan
Chief Judge"

3 It is aggrieved by this order and which is common to the petitioners in the above petitions, that it is prayed that it be quashed and set aside. That, a writ of mandamus or any other writ, order or direction in the nature thereof be issued for absorption of the petitioners in the services on the establishment of the Court of Small Causes, Bombay. Alternatively, their services be regularized.

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4 The petitioner Sandeep Tulshiram Mohite in Writ Petition No. 11250 of 2015 has pointed out that he is in service on the establishment of the Small Causes Court, Mumbai, since last 18 years. He is appointed under a Government Scheme for appointment of relatives of the retired Class IV Government employee which has been set out in the Government Resolution dated 10th December, 1981, and the prior Resolution dated 14th April, 1981. The petitioner states that he is entitled to the benefits on par with the permanent Government servants and has relied upon the communication dated 16th January, 2002, by the appointing authority, namely, the Registrar, Small Causes Court, Mumbai, to the Registrar of this Court. The petitioner submits that though initially appointed on temporary basis, but by following due procedure of law, he is rightly continued in service. The post is a sanctioned post. There is no technical break. It is in these circumstances that the petitioner points out that he was a beneficiary of a Scheme of the State of Maharashtra which is made applicable to the establishment of the first respondent. The petitioner was appointed as Hamal. He has been discharging duties to the satisfaction of all concerned. The petitioner states that the appointment is an exception to the

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general mode, but none of the procedural requirements were dispensed with. The petitioner underwent a medical test. A service book also has been prepared. The petitioner possessed the educational or other qualifications. He was within the prescribed age limit. He is the only heir of his father. Since the father was in the employment of the respondent No.1, upon his retirement, in view of the above mentioned Scheme, the petitioner was appointed. The petitioner points out that his name was duly enrolled in the Employment Exchange at Mumbai. Thus, the petitioner submits that on 11th December, 2001, a letter may have been addressed by the Additional Registrar of this Court to the then Chief Judge of the Court of Small Causes, but that letter was replied on 16th January, 2002. That letter clarified that the petitioner is an Employment Exchange candidate selected for the post of Hamal. His name is on the Wait List at Sr. No.13. That has been informed vide the first respondent office letter dated 4th January, 2002 and that the petitioner would be appointed as a Hamal on the establishment of the Small Causes Court as per seniority as and when vacancy would arise. So far as the appointment of the five candidates, namely, S.T. Mohite, A.B. Jadhav, V.G. Tambe, S.D. Salvi and A.H. Lingayat made in

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pursuance of the directions contained in the Government Circular dated 14th April, 1981 and 10th December, 1981 are concerned, those appointments have been made by dispensing with the condition of recommendation of the Employment Exchange for appointment on Class III and Class IV posts. That stipulation is now relaxed or cancelled by the Government of Maharashtra and reliance is placed on a Circular of 14th April 1981 and 10th December, 1981. Thus, the retiring / outgoing retired employees were to be appointed in Class IV post only. The son or unmarried daughter of Class IV Government servant who retires or is about to retire are exempt from the requirement of enrollment of their names at the Regional Employment Exchange. That is only in relation to appointments in Class IV posts. However, they should fulfill the other conditions laid down in these Circulars. Reliance was placed by the then Chief Judge on the High Court's letter dated 18th October, 1991, and the Government Circulars referred above applicable to subordinate Courts in Greater Bombay. Thus, these appointments of five employees have been made in accordance with the Government Circular. It is stated that the Government Circular of 14th April, 1981, does not contain any directions as are stipulated in the earlier Government Circular

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dated 2nd December, 1968. The petitioner relies upon the contents of this letter to submit that none of the appointments contravene any law. Thus, the petitioner could not have been treated as a candidate entering the service or the employment by a back-door method. His appointment is against a sanctioned and approved post. All requirements have thus been followed. The writ petition is replete with references to several judgments of the Hon'ble Supreme Court. It is not necessary to make a reference to them. The petition also refers to several other Government Resolutions and Policies enunciated therein to submit that the appointments cannot be said to be illegal or unauthorised. The petitioner, therefore, challenges the impugned communication / order on the ground that the same violates the mandate of Articles, 14, 16 and 21 of the Constitution of India. The petitioner also submits that the services rendered are blemishless.

5 On such a writ petition, an affidavit-in-reply was filed. In that affidavit-in-reply the second respondent contends as under :

> "3 The petitioner has approached this Hon'ble

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Court seeking a writ of mandamus under Article 226 of the Constitution of India for absorption / regularization of the services o the Petitioner and also for quashing and setting aside the impugned order whereby the Petitioner was removed from service. It is the contention of the Petitioner that the Petitioner was appointed as a Hamal on the establishment of the Small Causes Court, Mumbai and that his initial appointment was in accordance with the Government Resolution dated 14.4.1981and that he has been working since 17.1.1997. It is further contended that by virtue of such a long service and also in view of the fact that his appointment was legal and proper, the relief of regularization / absorption ought to be granted to him. It is further contended in the petition that termination of his services was illegal and improper. The Petitioner relies upon the Circular issued by the Government of Maharashtra on 14.4.1981, a copy of which is annexed as Exh.C to the petition. The Petitioner also relies on an explanatory Circular issued by the Government of Maharashtra on 10.12.1981. It is the contention of the Petitioner that the Petitioner has been appointed in place of his father, who has retired from services in the same establishment. It is further contended that the dependents of retired employees are entitled to be appointed on regular and permanent basis by virtue of

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the said Government Circular dated 14.4.1981 as clarified by the Government Circular dated 10.2.1981.

... ...

5 I say and submit that reliance placed on the Circular dated 14.4.1981 is misconceived. A perusal of the said Circular dated 14.4.1981 makes it clear that the same was issued to relax certain conditions imposed by the Government Resolution dated 2.12.1968. The Circular dated 2.12.1968 has been issued by the Government of Maharashtra in its Department of General Administration. In the said Circular, directions have been given to the effect that all appointing authorities should make appointments by following the regular process of calling candidates from the Employment Exchanges.

6 A reference is made to the Government Circular dat3ed 23.10.1956 which is the first such Circular issued by the Government in respect of filling up of vacancies of temporary nature and/or fill up all vacancies till regularly selected candidate is available. The Government Circular dated 23.10.1956 directed the appointing authorities that the vacancies which are likely to last for more than a month, and which are not required to be filled in by promotion or through the Public Service Commission, should be notified to the Employment Exchanges with a request to depute

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suitable candidates for appointment therein and the vacancies which are not likely to last for more than a month need not to be reported to the Employment Exchanges only if the appointing authorities concerned are satisfied that there is no adequate time to obtain candidates from the Employment Exchanges.

7 It was noticed by the Government that despite the said mandate contained in the Government Circular dated 23.10.1956, the employees were being recruited to Class III and Class IV posts otherwise than through Employment Exchanges and hence with a view to put a stop to this irregularity, the Government again issued Circular dated 23.8.1965 to the effect that the appointing authorities should take particular care to see that the Government orders conveying need for making recruitment through the Employment Exchanges are followed scrupulously and even where, in view of urgency, they are forced to make appointment directly without reference to the Employment Exchanges, they should ensure that the persons so appointed are not continued in service for more than three months and that they are replaced by persons recruited through the Employment Exchange within this period.

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8 It was further brought to the notice of the appointing authorities by the Government, that instead of interpreting the orders contained in Government Circular dated 23.8.1965 as a measure to avoid immediate dislocation of work, some appointing authorities have misinterpreted them as a permission to make direct recruitment upto a period of three months straightway without making any efforts to obtain candidates from Employment Exchanges. The Government was, therefore, constrained to issue Circular dated 2.12.1968 thereby mandating that on such posts which are likely to continue beyond one month for any reason, the persons appointed directly should be replaced by Employment Exchange candidates as early as possible and in any case within three months. It was further directed that this mandate should not be interpreted as a permission to make direct recruitment to vacancies which are likely to last upto a period of three months. It was further made clear that in very exceptional circumstances, the candidates may be recruited otherwise than through Employment Exchanges, and they should not be continued beyond three months. The mandate of the Government was, therefore, clear that regular appointment should not be and cannot be made directly by the appointing Authorities under any

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circumstances whatsoever. It was also further made clear that even if the vacancies are of temporary nature, the same should not be filled in directly without first taking recourse to the procedure of calling candidates from the Employment Exchanges. Thus the entire Government Circular is on the issue of filling up of vacancies temporarily. The Circular dated 14.4.1981 is nothing but a clarification of the Circular dated 2.12.1968 and a relaxation of certain conditions imposed by the Circular dated 2.12.1968.

9 In cases where an employee has retired from Government service by way of superannuation or where the Government servant has voluntarily retired from service and where his dependent/ progeny applies for temporary appointment, it would not be necessary for the appointing authority to call for candidates from the Employment Exchange to fill in the said post till a regularly selected candidate is made available. Thus by the very nature of instructions contained in the Circular dated 14.4.1981 read with Circular dated 2.12.1968, the nature of appointment and purpose of appointment was a temporary appointment so as to avoid dislocation of work. Circular dated 14.4.1981 cannot be interpreted to mean that license was granted to appoint on a regular basis and permanent basis, the

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progeny of Government servant who had retired. Thus the contention of the Petitioner that he was regularly appointed in the Government service by virtue of the provisions contained in Circular dated 14.4.1981 is wholly misconceived.

10 It is submitted that the purpose of the Government Circular dated 2.12.1968 and Circular 14.4.1981 is to avoid immediate dislocation of work and not to give regular appointment to the progeny of the retired employee. It is respectfully submitted that in view of Articles 14 and 16 of the Constitution of India, transparency and fair play is expected in the matters of employment and that equality has been guaranteed to all citizens of India. Any departure from the same has to be by virtue of some provisions of law, that too such provisions which can stand the test of validity despite the fact that they are an exception to Articles 14 and 16 contained in Part-III of the Constitution of India and hence no departure which is in contravention of the fundamental rights guaranteed by Part-III of the Constitution can be made unless there is specific provision in any law to that effect. Compassionate appointment is an exception to Articles 14 and 16 of the Constitution which has been upheld as a measure to provide immediate relief to an employee, who has died in harness. However, the

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compassionate appointment and the appointments sought to be made under Circular dated 14.4.1981 stand on different footing altogether, inasmuch as compassionate appointment is given to a relative of deceased employee who has died in harness and the appointments to be made of the dependents of Government servants who have superannuated cannot be made on regular basis. In case of deceased employee, the death is an unexpected event whereas in case of superannuation of an employee, the event is a planned event. In case of voluntary retirement and, in case of retirement upon reaching the age of superannuation, the same are planned events and known to the employee even before they actually happen.

11 The death of the breadwinner is an unexpected shock to the family of the deceased government servant thereby causing sudden financial difficulties, whereas a retired/superannuated employee is entitled to pension and thereafter the dependents are entitled to family pension. The superannuated employee also gets benefits of gratuity and provident fund which may have been accrued and earned during his service and to other such benefits. Thus the case of superannuated employee can be distinguished from the case of an employee dying in

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harness. The dependents of a superannuated employee have no right to claim appointment and are not entitled to be appointed without being selected in a proper process of selection. The due process of selection has to be followed by issuing proper advertisement and calling for candidates from the Employment Exchanges.

12 With regard to the contents of letter dated 16.1.2002 (Exhibit 'E' of the Petition) addressed by the incumbent Chief Judge, it is respectfully submitted that the then learned Chief Judge tried to distinguish the Government Circulars dated 2.12.1968 and 14.4.1981 on the basis that the Circular of 1968 relates to the appointment in vacancies of Class III and Class IV posts whereas Circular dated 14.4.1981 relates to the vacancies of class IV employees only, that too with regard to the appointment of son/unmarried daughter of the retired class IV Government servant or who is due to retire within a period of one year.

13 The learned Chief Judge in the letter dated 16.1.2002 has also contended that the circular dated 14.4.1981 did not contain the directions that the Appointing Authority should replace the son / unmarried daughter of the retired Class IV

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Government Servant so appointed directly either in short term or long term vacancies for more than three months, as contained in the Circular of 1968.

14 It is respectfully submitted that the inferences drawn up by the learned Chief Judge in the letter dated 16.1.2002 cannot be said to be true and correct interpretation of these two Circulars. The sole object of the circular dated 14.4.1981 is to relax the conditions contained in the Circular dated 2.12.1968 in respect of recommendations from Employment Exchange in the case covered by Circular of 1968 namely temporary appointments, to avoid dislocation of work.

15 It is submitted that vide letter dated 11.12.2001 (Exhibit 'D' of the Petition), the Hon'ble High Court, Bombay through Additional Registrar, High Court, Bombay had informed the then incumbent Chief Judge, Court of Small Causes that the Hon'ble Lordships had directed to take necessary steps for removal of 5 employees (including the present petitioner) whose appointments have been continued for the period exceeding three months on the basis of wrong interpretation of the Government Circulars. The Hon'ble Lordships had further directed to inform to the learned Chief Judge, Small Causes Court to be

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very careful in future while giving appointments to the children of retired Class-IV Government Servants in view of the Government Circulars in which it is clearly mentioned that the employment to the son/ unmarried daughter of retired Class-IV Government Servant in Government Service may be given without recommendations of the Employment Exchange only on temporary basis not exceeding the period of three months and not on permanent basis.

16 It is submitted that the conclusion drawn by the then incumbent Chief Judge vide letter dated 16.1.2002 to the effect that the appointments of the five employees (including the present Petitioner) are regular one was incorrect conclusion, owing to the wrong interpretation of the Government Circulars.

17 It is also submitted that the Chief Judge, Court of Small Causes had also enquired with the State Government in respect of the appointment of children of the retired Class – IV Court employees and Government of Maharashtra State vide letter dated 14.12.2006 had specifically informed that the requirement of recommendation of the names of candidates from the Employment Exchange as incorporated in Government Resolution dated 2.12.1968 was only relaxed by the Government

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Resolution dated 14.4.1981, but rest of the orders, conditions are in force. This letter is also self explanatory to conclude that the recruitment was to be made by the following due process. The letter dated 14.12.2006 is marked and annexed at **Annexure - 'R-1'**

18 It is submitted that the removal of the Petitioner is not only justified, but so warranted as the same is legal, valid and proper. Since the initial appointment of the Petitioner was not through regularly constituted selection process initiated by giving fair opportunity to the eligible candidates by following due procedure, there is no question of grant of permanency to him. The appointment of the Petitioner was on ad-hoc and temporary basis as contemplated by the Circulars of 1956, 1968 and 1981 as referred above and no amount of such service can entitle the Petitioner to the permanency in public service. The Petitioner cannot rely upon the contents of the letter dated 16.1.2002 which are primarily a result of incorrect interpretation of the Government Circulars, to substantiate his contentions.

19 The appointment order issued to the present Petitioner which is at Exh.B (page 39) to the paper book also factually mentions that the Petitioner

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is being appointed as a Hamal on a temporary basis. It is thus clear from the appointment order itself that the appointment which is made, is clearly on temporary basis and only till further orders. In fact Circular dated 14.4.1981 merely relaxes condition that the candidate appointed temporarily need not be recommended by the Employment Exchange and that a candidate, who is a progeny of a retired employee can be appointed temporarily that too till regularly selected candidate is made available. Thus the initial appointment of the Petitioner was not on regular establishment and the proper recruitment procedure was not followed before the Petitioner was appointed. If the services of the Petitioner are regularized and/or the Petitioner is absorbed in regular service, the same would amount to regularization of services of a back door entrant in public service which has been frowned upon by the Apex Court in several decisions. The judgment of the Supreme Court in the case of **Secretary, State of Karnataka & others v/s. Umadevi and others, (AIR 2006 SC 1806)** mandates that back door entry in public service should not be regularized and no permanency or regularization can be granted to the employees who have not been appointed in accordance with the rules.

6 The respondent No.2 thus supports the impugned

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action. He also brings to the notice of this Court that on the Administrative side, on several occasions, the establishment (first respondent) was informed not to go on with the process as understood by the Registrar of the Court of Small Causes, but to strictly adhere to the Government Policies and Schemes as enumerated in the above Government Resolutions, but applicable to the services in the Court of Small Causes which is a subordinate court at Bombay. Once the petitioner was appointed only on a temporary basis, unless regularly selected candidate is made available through a proper selection process, it cannot be said that he has any right to the post. The petitioner has not been appointed through such a selection process. Hence, no question of regularization of his services would arise and regularizing them would tantamount to endorsing a back door entry in public employment. That is impermissible. That is why the writ petition should be dismissed.

7 These writ petitions were placed before a Division Bench presided over by one of us (S.C. Dharmadhikari, J.) on several occasions and from 1st February, 2016, time was granted to Mr. Nargolkar appearing for the second respondent to

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ascertain as to what steps this Court proposes to take on the Administrative side. Since instructions to that effect were received by Mr. Nargolkar, particularly that this Court would examine the matter on the Administrative side, we granted the adjournments as prayed by him. Eventually, after eight months and more, the Court was informed on 9th August, 2016, by Mr. Nargolkar that the petitioner's request for regularization of his services has been turned down / rejected. The decision to that effect was placed before us. Noting that, on 9th August, 2016, the following order was passed :

> *" Mr. Nargolkar states that there is a decision taken on the administrative side of this court and by which, the request made by the petitioners has not been accepted. A copy of this resolution is taken on record and marked as 'X' for identification. To enable the petitioners' advocate to amend the petitions and challenge this resolution, we grant leave to amend. The amendment to be carried out within a period of one week from the date of receipt of a copy of this resolution.*
>
> *2) List on 30th August, 2016."*

8 After that, the writ petition was posted on 21st September, 2016, when time was sought to file an affidavit to the amended Memo. Thereafter, the above affidavit has been filed. Prior to 6th October, 2016, we had granted time to Mr. Sadavarte

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appearing for the petitioners to indicate whether the petitioners wish to put any rejoinder on record. He submitted that the petitioners would proceed on denials. They do not desire to put in a rejoinder affidavit. A compilation of the judgments was handed over by Mr. Sadavarte in Court. That is how these writ petitions were placed before us on subsequent occasions. We permitted both sides to file their written arguments as well. On 13th January, 2017, we were informed, after some brief oral arguments, that the written arguments placed on record by Mr. Sadavarte be duly noted and considered and a judgment delivered relying on the same. That is how we have proceeded.

9 Mr. Sadavarte, in his oral arguments as also in the written note filed in each of the matters, firstly invites our attention to the position that each of the petitioners have been working from 1997 / 1999. Each of them have rendered unblemished and selfless service. Each of them has not entered by a backdoor method. The petitioners have pointed out as to how they were appointed against regular vacancies and by a process known to law. Their services have been continued without any break. Thus, they have rendered uninterrupted

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service. The abrupt termination thereof by the impugned order is not only contrary to law, but violates the mandate of Articles 14 and 16(1) of the Constitution of India. Mr. Sadavarte would submit that this is not a case on par with the cases and dealt with by the Supreme Court, including in the judgment relied upon by the respondents [*Renu & Others vs. District & Sessions Judge, Tis Hazari and Anr. AIR 2014 SC 2175*]. Mr. Sadavarte would submit, therefore, we should not accept the stand of the respondents as reflected in the affidavit-in-reply, but proceed to allow these petitions.

10 Mr. Sadavarte relies upon the following decisions in support of his contentions :

(1) Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., (2006) 4 SCC 1.

(2) State of Karnataka & Ors. vs. M.L. Kesari & Ors. AIR 2010 SC 2587.

(3) Dulu Devi vs. State of Assam & Ors., Civil Appeal No.8249 of 2015 in SLP(C) No.19947 of 2010 decided on 9th October, 2015.

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(4) State of Jharkhand & Ors. vs. Kamal Prasad & Ors. AIR 2014 SC (Supp) 390.

(5) Sachin Ambadas Dawale & Ors. vs. State of Maharashtra & Ors. Writ Petition No. 2046 of 2010 decided on 19/10/2013 (Nagpur Bench)

(6) Ujwal Ganesh Sadhu & Ors. vs. State of Maharashtra & Anr., Writ Petition No.10145 of 2014 decided on 17h January, 2002.

(7) Ganesh Sitaram Mayne vs. The Chief Conservator of Forests & Ors., Writ Petition No.11408 of 2014 and Anr. Decided on 13th March, 2015.

11 On the other hand, Mr. Nargolkar, learned counsel appearing on behalf of the respondents and particularly the contesting respondents submits that in the affidavit-in-reply, it is pointed out as to how the petitioners have been appointed and relying upon a Circular dated 14th April, 1981 and a further Circular dated 10th December, 1981. This is not an appointment by any process known to law, but a retiring employee names a dependent who, after the retirement / superannuation of that

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employee, enters the service. Mr. Nargolkar would submit that the reliance placed on these Circulars are entirely misconceived. The Circular makes it clear that it was issued to relax certain conditions imposed by the Government Resolution dated 2nd December, 1968. By the Circular dated 2nd December, 1968, issued by the Government of Maharashtra, general instructions and directions were issued to all appointing authorities that they should make appointments by following a regular process of inviting applications / calling candidates from the Employment Exchanges. Mr. Nargolkar submits that in the detailed affidavit-in-reply it has been explained by the respondents that the High Court administration was not in error at all. The High Court administration has relied upon the mandate of the two constitutional Articles relied upon by Mr. Sadavarte and has not deviated therefrom. Equality in matters of public employment denotes opportunity to all those placed equally. The mandate of Article 16(1) of the Constitution of India is not to appoint for there is no right to appoint, but a right to be considered for appointment. That right vests in all the candidates who fulfill the eligibility criteria and thus qualify for the post. Once there is no vested right to appointment and even a select list candidate

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cannot claim such right, then, the appointment secured by these petitioners cannot grant them any permanent benefits. The two circulars relied upon are to avoid any dislocation of work. They would not displace the regular process of appointment and confer benefit on the progeny of a retired employee. In the circumstances, no reliance can be placed on these circulars. These are not compassionate appointments in any manner. For these reasons, it is submitted that the inferences drawn by the Chief Judge in his letter dated 16th January, 2002, cannot be sustained. The High Court administration had clearly informed the Registrar of the Small Causes Court that the present petitioners be removed. They should not be allowed to continue and contrary to law. It is in these circumstances that Mr. Nargolkar, relying upon the judgment in the case of *Renu & Ors.* (supra) submits that the writ petitions be dismissed.

12 For properly appreciating the rival contentions, we must make a reference firstly to the appointment order and which is more or less similar to all the petitioners. The appointment order says that Shri Sandeep Tulshiram Mohite is appointed as Hamal on the temporary establishment of the Court

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of Small Causes, Bombay, with effect from 17th January, 1997, on the terms and conditions in the order annexed to the appointment letter. He has to comply with certain other requirements set out in the appointment letter. The appointment letter reads thus :

> *"Shri Sandeep Tulshiram Mohite, is hereby informed that he is appointed as Hamal on the temporary establishment of this Court with effect from 17.1.97 on the terms and conditions in the orders annexed hereto. He is requested to state in writing whether he accepts the above mentioned post of Hamal offered herewith on the terms and conditions laid down in the orders annexed hereto. If he fails to state in writing within one week from today, his name will be removed from the waiting list."*

13 The petitioner was informed to attend the office with original testimonials, Employment Exchange Card and Character Certificate from two respectable persons. The appointment order clarified that it is purely temporary and until further orders. Then, the petitioner is informed that he is employed as Hamal with effect from 17th January, 1997 under the Government scheme for appointment of relatives of class IV and class III Government employees. This appointment is purely on temporary basis.

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14 The Government Resolution dated 14th April, 1981, copy of which is Annexure-C in the Memo of Writ Petition No.11250 of 2015, page 42, states that by the Government Circular dated 2nd December, 1968, appointments in class III and class IV posts for more than one month have to be by a regular process. Meaning thereby, the candidate to be appointed should be selected from those sponsored by the Employment Exchange. However, that order and direction is relaxed. That is in relation to class IV employees who are retired or who are going to retire within a period of one year. Their relatives (son and unmarried daughter) can be considered for appointment in Government service (class IV post) as a special case. The requirement of sponsorship from Employment Exchanges can be relaxed. However, each of these candidates should fulfill the educational qualifications and the requirement of age. Such employees, who are retiring within one year or have retired, can recommend only one son or unmarried daughter and in their case alone, the requirement stipulated in the Government Resolution dated 2nd December, 1968, will be relaxed. Even if the requirement of sponsorship from the Employment Exchanges is relaxed, still, such candidate before filling up of his application form and

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submitting it should get his name registered in the Employment Exchange.

15 Thereafter follows the Circular dated 10th December, 1981. This Circular refers to the prior Circular of 14th April, 1981, but purports to clarify certain issues. The issues which were raised pertaining to such appointment of the son / unmarried daughter (relatives) of a retired or retiring class IV Government servant) should be anybody who has retired prior to 14th April, 1981. Thus, there is no time limit. Secondly, there is no requirement that the relative of the class IV servant who has retired or is retiring should be appointed in the same office in a class IV servant post. Thirdly, and most importantly, whether such appointments can be made temporarily or for such duration or can such appointments be made on permanent basis and in regular course. The further Circular dated 10th December, 1981, clarifies that these appointments can be made on permanent basis. The further issue raised is that if the appointment is made on a temporary basis, can this appointee be accommodated and even if his appointment is temporary, by not terminating his service, on last come first go basis. The clarification is not and if

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anybody has to go out of service it is the last come first go principle which should be followed. Therefore, if for any reason the appointment has to be terminated, then, such subsequently appointed relative of the retired / retiring employee would have to be relieved from service. Then, there are further issues clarified and it has also been stated that this scheme has nothing to do with the compassionate appointments and which are granted to those employees who expire while in service. It is in these circumstances that we find that though these two Circulars are an exception to the Government Circular of 2nd December, 1968, but that cannot be given a go-by and in the manner suggested.

16 The High Court administration, therefore, clarified that so far as the appointment of the five candidates, namely, S/Shri Mohite, Jadhav, Tambe, Salvi and Kumari A.H. Lingayat made pursuant to the directions made in the Government Circular dated 14th April, 1981, on the establishment of the Court of Small Causes at Bombay, the Lordships of this Court had directed to take necessary steps for removal of these five employees whose appointments have been continued for a period

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extending three months on the basis of wrong interpretation of the above stated Government Circulars. This communication from the Additional Registrar (Administration) of this Court at pages 47 and 48 reads as under :

> *"Sir,*
>
> *With reference to your letter N.B-4/916/2001 dated 16/08/2001. Submitting therewith your detailed report, on the subject noted above, I am directed to state that the representation of Shri Sunil M. Parab a candidate at Sr. No.33 on Select List of Hamal on your establishment and the report forwarded by your letter under reference, were placed before the Honourable the Chief Justice and Judges for consideration. On perusal of the same, their Lordships have been pleased to permit you to maintain validity of the said Select List until further orders with directions to inform Shri Parab that he will be appointed as Hamal, on your establishment as per the seniority as and when vacancy occurs.*
>
> *So far as the appointments of five candidates viz. S/Shri Mohite, Jadhav, Tambe, Salvi and Kum. A.H. Lingayat made in pursuance to the directions contained in Government Circular G.A.D.No.RTR-1080/819/12 dated 14/04/1981, on your establishment is concerned, I am directed by Their Lordships to take necessary steps for removal of these said five employees, whose appointments have been continued for the period exceeding 3 months, on the basis of wrong interpretation of the abovestated Government Circulars.*
>
> *I am further directed by their Lordships to inform you to be very careful in future while giving appointments to the children of retired Class IV Government Servants in view of the abovesaid Government Circulars in which it is clearly mentioned that employment to the Son/unmarried daughter of retired Class IV employees in Government Service may be given without*

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> *recommendation of the Employment Exchange, only on Temporary basis not exceeding the period of 3 months and not on permanent basis.*
>
> *Kindly take note as mentioned above and forward to this office your compliance report in the matter."*

17 Thus, what we have before us is a complete scheme set out in the Circular of 2nd December, 1968. As far back as in 1965 itself, the Government had clarified that despite the order passed on 23rd October, 1956, it has been noticed by the Government that candidates are being recruited to class III and class IV posts otherwise than through the Employment Exchanges and hence with a view to stop this irregularity, Government again issued orders under Circulars of its General Administration Department dated 23rd August, 1965, to the effect that the appointing authorities should take particular care to see that Government orders conveying need for making recruitment through the Employment Exchanges are followed scrupulously. Even where, in view of urgency, they are forced to make appointments directly without reference to the Employment Exchanges, they should ensure that the persons so appointed are not continued in service for more than three months and that they are replaced by

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persons recruited through the Employment Exchanges within this period. However, as a measure to avoid immediate dislocation of work, some appointing authorities have misinterpreted this Circular and taken it as a permission to make direct recruitment upto a period of three months straight away without making any efforts to obtain candidates from Employment Exchanges for temporary vacancies. Hence, the Government has been insisting on making appointments by a regular process and not in the manner done in the instant cases.

18 Once the petitioner Sandeep Mohite has been offered appointment as Hamal on a temporary establishment of the Court, then, there is no substance in the contentions of Mr. Sadavarte that the appointment is against a permanent post. The temporary establishment is referred in the appointment order. It is clarified that the appointment will be on purely temporary basis and until further orders. It has been clarified that the services can be terminated at any time without assigning any reason. The order No.1, copy of which is at page 41 of the paper-book, further clarifies that though this is a Government scheme for appointment of relatives of retired class IV Government

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employees, the appointment is on purely temporary basis. It is made because one B.D. Katkar, Hamal, was promoted as driver. Thus, these communications of 17th and 27th January, 1997, would have to be read together. So read, it is apparent that what is carved out by the Government Circular dated 14th April, 1981, is an exception. That cannot be a rule. On 10th December, 1981, the Government clarifies that its earlier Circular dated 14th April, 1981, enables making of appointment as a special case. That is an appointment made of a relative of a retired / retiring employee and who was serving in a class IV post. Once this is taken as a relaxation and exception, but from a reading of the clarifications issued vide this Circular, such appointment of parties like the petitioner cannot be treated as permanent. This is not even a compassionate appointment. This was a special case. It was not an exception to the general rule. On 2nd December, 1968 itself, the Government had, through a Circular, clarified that such appointment can never be compared with the regular employment or appointment. The Government Departments have been misinterpreting these Circulars issued in 1965 and 1968 to make direct recruitment upto a period of three months straight away without any efforts to obtain candidates from

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Employment Exchanges for temporary vacancies which are likely to last for three months. This itself clarifies that such exceptional appointments are made to avoid immediate dislocation of work. Once such appointments are made and as above, then, it is not possible to equate them with the regular appointment. The posts themselves were not permanent, but the appointments were on a temporary establishment. Once the permission was to make direct appointment without reference to the Employment Exchanges for vacancies in class III and class IV posts which are likely to last for more than one month and the appointing authority must record a satisfaction that there is no adequate time to obtain candidates from Employment Exchanges, then, the persons like the petitioners appointed pursuant to such a process cannot claim any permanency or benefit of permanency. They cannot be equated with the regularly appointed candidates in Government service and against permanent posts. If any reference is required, the Government Resolution dated 2nd December, 1968 itself clarifies that candidates in such posts should bear in mind that if such posts are likely to continue for a period of more than one month for any reason, then, the appointing authorities should ensure that the persons appointed

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directly are replaced by the Employment Exchange candidates as early as possible and, in any case, within three months. This should not be interpreted as a permission to make recruitment to vacancies which are likely to last upto a period of three months. The Government has clarified that in view of exceptional circumstances that the candidates recruited otherwise than through Employment Exchange should continue beyond one month and in no case, they should be continued beyond three months.

19 Once assistance is taken of this exceptional mode of appointment so as to appoint the petitioners before us, then, we do not think that the appointment orders issued in their favour confer them any right. No right is, therefore, created nor vests in them to continue in employment even if they are serving the establishment for nearly a decade. If we allow this manner and method of appointment to continue and that too in the establishments of the Courts, it will be a mockery of the rule of law. We quash and set aside the appointments made in such manner in other Government establishments or on establishments of semi-Government bodies, but when it comes to

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our own Court, our own administration, we do not obey the ordinary and general rule of law. We cannot become an exception to this by allowing appointments of the present nature to continue endlessly. That would mean deserving and eligible candidates are kept out of the process and by a method which has no legal sanctity. If immediate dislocation of work is taken care of by the Government Circulars dated 14th April, 1981, 10th December, 1981, then, these circulars cannot override the specific circulars in the field, namely, dated 23rd October, 1956, 23rd August, 1965 and 2nd December, 1968. We are in agreement with Mr. Nargolkar that the petitioners have no vested right to continue in the posts.

20 We have carefully read the letter of the Chief Judge of the Court of Small Causes, Bombay, dated 16th January, 2002. He clarifies that as far as the five petitioners are concerned, their appointments have been made in pursuance of the Government Circular dated 14th April, 1981 and subsequent Circular dated 10th December, 1981. The Chief Judge relies upon this Circular and the wording thereof to submit that the condition of recommendation of Employment Exchange for appointment in

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class III and class IV Government posts is now relaxed / cancelled by the Government of Maharashtra by these 1981 Circulars. That is not the correct understanding of the 1981 Circulars and particularly in the light of what has been held by us hereinabove. We have not been shown any right and vesting in a retiring or retired Government employee to nominate and recommend his relative (one son / unmarried daughter) for appointment in Government service and in class IV post. Therefore, if such a right does not vest in law in any of these employees, they cannot rely upon the Circular of 1981 and claim to have been appointed on a permanent post and in accordance with the rules. Though the Chief Judge may say that the Government desired to show sympathy to those retiring or retired class IV servants and give them an opportunity to recommend one relative for appointment in Government service, we are sorry to say that nothing of this nature can be culled out from the above Government Circulars. These enable making of temporary appointments and for specified periods. This is not a manner or method of appointing candidates to class III and class IV Government posts. These two Circulars cannot be read so as to circumvent the earlier binding 1965 Circular which still holds the field. Even if there is some

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correspondence on the subject, it is apparent that the High Court has always been insisting on the Chief Judge to act in conformity with the Circulars of 1981. That does not mean he has any blanket permission or authority from the High Court to continue the petitioners permanently in services. The appointment cannot be said to be a regular one. To our mind, the reading of the Circulars by the Chief Judge was totally flawed and legally unsound. He was never permitted to go ahead with the employment and beyond the specified period. If the posts were regular, they ought to be created on the establishment of the Court of Small Causes at Bombay. There is a process by which such posts are created. An approval and sanction has to be obtained for creation of such posts and thereafter filling them. The filling up has to be in accordance with the Government Circulars and rules in the field. The appointments have to be in consonance with the mandate of Articles 14 and 16(1) of the Constitution of India. If public posts have to be filled in there is no licence to resort to subterfuge or to any private understanding. No amount of assurances or promises given and contrary to the settled norms and policies can, therefore, be upheld. If an appointment has to be made, it has to be made in a

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transparent, non-arbitrary and non-discriminatory manner. If the appointment is made by a process which is unfair, unreasonable and unjust, then, it cannot stand the scrutiny of Articles 14 and 16(1) of the Constitution of India. There are rules in place and there are defined policies holding the field. These have to be adhered to. It is in these circumstances that the reliance placed by Mr. Sadavarte on the decisions of the Hon'ble Supreme Court and this Court is entirely misplaced.

21 So far as the decision of the Nagpur Bench rendered in Writ Petition No.2046 of 2010 decided on 19th October, 2013, is concerned, there, the petitioners were recruits in different Departments of the Government Polytechnic in the State of Maharashtra. They are appointed as per the policy of the Government of Maharashtra incorporated in the Government Resolution dated 25th July, 2002, as modified by the Government Resolution dated 2nd August, 2003 and 3rd October, 2003. The grievance of these petitioners was that though they have been in the employment of the respondents for a period ranging from three to ten years, they are not given permanency or the benefit of permanent appointment.

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22 The Division Bench referred to the notifications relied upon to hold that the appointments were to be made on contract basis for the period of two years or until the candidates nominated by the Maharashtra Public Service Commission were available. What was relevant for the issue was that the resolution of the Government dated 2nd August, 2003, constitutes a Selection Committee for appointment of the Lecturers in the Government Polytechnics and the composition of the Selection Committee denoted that all candidates like the petitioners who applied for the post were interviewed and the selections were made by the Committee. The petitioners were given a lump-sum monthly pay package and their appointment order was for a period of two years. The Director of Technical Education issued an order dated 26th October, 2005, and continued the Lecturers whose names are mentioned in the order for a period of two years till 26th October, 2007, but with a rider that the continuation will be till the regularly selected candidates are available. The Lecturers who were appointed on contractual basis submitted a charter of demands to the Government of Maharashtra which was considered by the Government and it was directed that these

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Lecturers will be continued in service on contractual basis after giving a technical break up of four to five days until the candidates regularly selected by the MPSC were available. Thirty days leave was also sanctioned though they were contractual employees. Their monthly salaries were increased. In due course, the Director of Technical Education submitted a proposal on 11th August, 2008, for grant of pregnancy leave and casual leave to these contractual employees, but the Government of Maharashtra from 15th August, 2008, rejected the proposals. However, subsequently, by the communication dated 10th November, 2009, permitted the Directorate of Technical Education to continue the services of all the Lecturers appointed on contractual basis after giving a technical break. It is in these circumstances that the petitioners were working in the respondents Government Polytechnic on contract basis.

23 Their argument was, as noted in paragraph 7, that their appointment has been made by a legally and duly constituted Selection Committee by following the procedure of issuing advertisement, inviting applications from eligible candidates and thereafter appointing them. They are denied

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benefits of regularisation or permanency. Though the rules were framed under Article 309 of the Constitution of India, still, the MPSC could not complete the process. In the meanwhile, such temporary employees and on par with the petitioners were granted benefits of permanency and regularisation. That is also noted in paragraphs 21, 22, 23 of the order of the Division Bench.

24 It is in these circumstances that this Court rejected the argument of the Government that this is a policy matter. Rather, this Court emphasised that the State acts as a model employer. Therefore, the denial of permanency benefits was found to be unfair, unjust, unreasonable and contrary to the mandate of Articles 14 and 16 of the Constitution of India. The Government alone is to be blamed if the MPSC has not started the process for ten years and more. It is in these circumstances that the decision of the Hon'ble Supreme Court in the case of *Secretary, State of Karnataka & Ors. vs. Umadevi & Ors., (2006) 4 SCC 1* has no application.

25 We do not think that the petitioners can derive any assistance from this judgment of the Nagpur Bench of this Court.

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It is distinguishable on facts. It was in the peculiar facts of that case which enabled the petitioners to claim the relief.

26 The reliance placed on the judgment of the Hon'ble Supreme Court in the case of *State of Karnataka & Ors. vs. M.L. Kaveri & Ors. AIR 2010 SC 2587* is once again misplaced. The object behind the directions given in *Umadevi* was surely to take steps to regularise the services of those illegally appointed candidates who have served for more than ten years without benefit of protection of interim orders of Courts or Tribunals as a one-time measure. The respondents – daily wagers before the Hon'ble Supreme Court had worked in Panchayat service for over fifteen years without any protection from Court. That is why the directions were issued. Those were daily wagers. They were appointed on daily wage basis, but their services were utilised as Typist, Literate Assistant and Watchman respectively in the office of the Executive Engineer, Zilla Parishad in Gadag District of the State of Karnataka. They claimed regularisation and it is in dealing with their cases and consistent with *Umadevi* the directions were issued. This judgment is also, therefore, of no assistance.

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27 In the case of *Dulu Devi vs. State of Assam & Ors.* Civil Appeal No. 8249 of 2015 decided on 9th October, 2015, the appellant was seeking a direction to the respondents to allow her to continue in service as Headmistress in-charge of a Primary School; for regularising her services and for payment of regular salary to her for the service rendered.

28 The appellant was appointed as an Assistant Teacher in Assamese subject in the Primary School in 1976. She was finally appointed as an Assistant Teacher against a substantive vacancy in the said School by order dated 19th December, 1989. Even though she was rendering continuous service as Assistant Teacher for more than ten years, she was not paid salary. Therefore, she filed a writ petition in which direction was issued to the Deputy Inspector of Schools to enquire into non-payment of salary and furnish a report. On submission of such report, the Additional Secretary, Education Department, by order dated 3rd May, 2000, directed the Deputy Inspector of Schools to release the salary of the appellant for the period she rendered her services. That writ petition was disposed of by the High Court by

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confirming the direction. That order was allowed to become final.

29 Therefore, all the arrears of her salary and other allowances till August, 2007, were paid. In the meanwhile in 2005, she was given a charge of the post of Headmistress. She was allowed to cross the efficiency bar and granted increments. In connection with some other case, a report was submitted in which it was stated that there were 193 candidates who had been appointed in 1989, but were subsequently terminated. Such candidates were still drawing their salaries. In the list of such candidates, the name the appellant was shown at Sr. No.168. Though such a report was submitted, the authorities were not *ad idem* about the correctness of the contents thereof. Therefore, the order dated 9th February, 2007, stopping the salary of 193 candidates, including the appellant could not have been passed. Yet, the High Court dismissed the writ petition. Though there was no termination of the service, the salaries were stopped and illegally. It is on such an issue that the Supreme Court passed an order in favour of Dulu Devi. This judgment does not lay down any general rule. It is only because Dulu Devi's services were not expressly terminated and there was no agreement in that regard

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that the direction to stop the salary was interfered with. It is in these circumstances that the reliance was placed on those decisions of the Supreme Court wherein it has been held that an order of termination and passed by a Government body or a statutory authority should be communicated and only then it is legal and valid. There being no proof of such a communication that Dulu Devi's request was upheld.

30 In the case of *State of Jharkhand vs. Kamal Prasad & Ors.*, the appointments were termed irregular but the appointees continued on ad-hoc basis for ten years. They were working for ten years or more and though additional posts were created on the establishment, they were not absorbed. It is in these circumstances that the benefit of one-time regularisation and other consequential benefits were granted by the High Court of Jharkhand and which were not interfered with by the Hon'ble Supreme Court. Those are also factors peculiar to those Assistant Engineers who were working on ad-hoc basis for more than ten years though additional posts were sanctioned and created.

31 In the above circumstances we do not find that

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reliance can be placed on any of these judgments or pendency of Writ Petition No. 11408 of 2014 and other petitions in this Court.

32 On the other hand we find that *Renu & Ors. vs. District and Sessions Judge, Tis Hazari* concludes the issue. The Hon'ble Supreme Court has found and repeatedly that appointments to public posts which are not made consistent with the mandate of Articles 14 and 16 of the Constitution of India cannot be protected or upheld. The pertinent observations of the Hon'ble Supreme Court and to be found in paragraphs 19, 20, 21 and 22 enable us to conclude that the departure without following the due procedure has not been upheld.

33 We would only reproduce the above paragraphs and paragraphs 26, 27, 28 and 29 :

> *"19 In making the appointments or regulating the other service conditions of the staff of the High Court, the Chief Justice exercises an administrative power with constitutional backing. This power has been entrusted to the safe custody of the Chief Justice in order to ensure the independence of the Judiciary, which is one of the vital organs of a Government and whose authority is to be maintained. The discretion exercised by the Chief Justice cannot be open to challenge, except on well known grounds, that is to say, when the exercise of discretion is discriminatory or mala fide, or the like(s).*

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20 Even under the Constitution, the power of appointment granted to the Chief Justice under Article 229 (1) is subject to Article 16 (1), which guarantees equality of opportunity for all citizens in matters relating to employment. 'Opportunity' as used in this Article means chance of employment and what it guaranteed is that this opportunity of employment would be equally available to all.

21 As a safeguard, the Constitution has also recognized that in the internal administration of the High Court, no other power, except the Chief Justice should have domain. In order to enable a judicial intervention, it would require only a very strong and convincing argument to show that this power has been abused. If an authority has exercised his discretion in good faith and not in violation of any law, such exercise of discretion should not be interfered with by the courts merely on the ground that it could have been exercised differently or even that the courts would have exercised it differently had the matter been brought before it in the first instance or in that perspective.

22 Article 235 of the Constitution provides for power of the High Court to exercise complete administrative control over the Subordinate Courts. This control, undoubtedly, extends to all functionaries attached to the Subordinate Courts including the ministerial staff and servants in the establishment of the Subordinate Courts. If the administrative control cannot be exercised over the administrative and ministerial staff, i.e. if the High Court would be denuded of its powers of control over the other administrative functionaries and ministerial staff of the District Court and Subordinate Courts other than Judicial Officers, then the purpose of superintendence provided therein would stand frustrated and such an interpretation would be wholly destructive to the harmonious, efficient and effective working of the Subordinate Courts. The Courts are institutions or

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organism where all the limbs complete the whole system of Courts and when the Constitutional provision is of such wide amplitude to cover both the Courts and persons belonging to the Judicial Office, there would be no reason to exclude the other limbs of the Courts, namely, administrative functionaries and ministerial staff of its establishment from the scope of control. Such control is exclusive in nature, comprehensive in extent and effective in operation. (Vide: The State of West Bengal & Anr. v. Nripendra Nath Bagchi, AIR 1966 SC 447; Shri Baradakanta Mishra v. Registrar of Orissa High Court & Anr., AIR 1974 SC 710; Yoginath D. Bagde v. State of Maharashtra & Anr., AIR 1999 SCC 3734 : (1999 AIR SCW 3775); Subedar Singh & Ors. v. District Judge, Mirzapur & Anr., AIR 2001 SC 201 : (2000 AIR SCW 4086); High Court of Judicature for Rajasthan v. P.P. Singh & Anr., AIR 2003 SC 1029 : (2003 AIR SCW 539); and Registrar General, High Court of Judicature at Madras v. R. Perachi & Ors., AIR 2012 SC 232 : (2011 AIR SCW 5972).

....

26 In Binod Kumar Gupta & Ors. v. Ram Ashray Mahoto & Ors., AIR 2005 SC 2103, this Court did not accept the contention that appointment could be made to Class-IV post in Subordinate Courts under the Civil Court Rules without advertisement in the newspapers inviting applications for the posts as that would lead to lack of transparency and violation of the provisions of Article 16 of the Constitution. The Court terminated the services of such appointees who had worked even for 15 years observing that the Court otherwise "would be guilty of condoning a gross irregularity in their initial appointment."

27 To say that the Chief Justice can appoint a person without following the procedure provided under Articles 14 and 16 would lead to an indefinite conclusion that the Chief Justice can dismiss him also without holding any inquiry or following the principles of natural justice/Rules etc., for as per Section 16 of General Clauses Act, 1897 power to

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appoint includes power to remove/suspend/ dismiss. (Vide: Pradyat Kumar Bose v. The Hon'ble Chief Justice of Calcutta High Court, 1956 SC 285; and Chief Justice of Andhra Pradesh & Anr. v. L.V.A. Dikshitulu & Ors., AIR 1979 SC 193).

But as no employee can be removed without following the procedure prescribed by law or in violation of the terms of his appointment, such a course would not be available to the Chief Justice. Therefore, the natural corollary of this is that the Chief Justice cannot make any appointment in contravention of the Statutory Rules, which have to be in consonance with the scheme of our Constitution.

28 In State of West Bengal & Ors. v. Debasish Mukherjee & Ors., AIR 2011 SC 3667 : (2011 AIR SCW 5433), this Court again dealt with the provisions of Article 229 of the Constitution and held that the Chief Justice cannot grant any relief to the employee of the High Court in an irrational or arbitrary manner unless the Rules provide for such exceptional relief. The order of the Chief Justice must make reference to the existence of such exceptional circumstances and the order must make it so clear that there had been an application of mind to those exceptional circumstances and such orders passed by the Chief Justice are justifiable. While deciding the matter, the court placed reliance on its earlier judgment of the Constitution Bench in State of U.P. & Ors. v. C.L. Agrawal & Anr., AIR 1997 SC 2431 : (1997 AIR SCW 2346).

29 Thus, in view of the above, the law can be summarised to the effect that the powers under Article 229 (2) of the Constitution cannot be exercised by the Chief Justice in an unfettered and arbitrary manner. Appointments should be made giving adherence to the provisions of Articles 14 and 16 of the Constitution and/or such Rules as made by the legislature."

34 The operative directions and consistent with the

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above paragraphs issued in paragraph 35, therefore, bind the High Court administration. It acted in accordance with this judgment for that merely reinforces and reiterates the position in law. That position in law was obtaining throughout. It could not have been bypassed. In the present case, that position was bypassed and we cannot allow parties like the petitioners to derive advantage from such departure or bypassing of the rule of law by the appointing authorities. Each one of them, therefore, ought to blame himself and the appointing authorities.

35 Our view is also supported by the decision of the Hon'ble Supreme Court in the case of Secretary to Government Commercial Taxes And Registration Department, Secretariat and Anr. vs. A. Singamuthu, Civil Appeal No.3770 of 2017 decided on 7th March, 2017

36 As a result of the above discussion, the writ petitions fail. Rule is discharged in each of the petitions, but without any order as to costs.

36 In the passing we clarify that since the appointments

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have been made from 1997 by the Chief Judge of the Court of Small Causes and the petitioners have continued in service till the impugned orders were passed, consistent with the Circular that the authorities relied upon while appointing them, the cases of the petitioners be considered for regular appointment not only on the establishment of the Court of Small Causes, but such other Courts in the City of Mumbai if otherwise permissible in law. While considering their cases, appropriate relaxations be given as far as the requirement of age and educational qualifications etc. The relaxations and concessions may be granted purely to accommodate these petitioners and as a special case. If, therefore, any other establishments have issued advertisements inviting applications to fill up the class IV posts on their establishments, including those establishments and departments of the Government of Maharashtra, then, consistent with the 1981 Circulars and our orders and directions, the cases of the petitioners may also be considered. Beyond these observations, we cannot issue any positive command for a writ of mandamus cannot be granted at the instance of parties like the petitioners who had no legal right to the posts.

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37 At this stage, Mr. Sadavarte prays for a stay of this order and direction for a period of sixteen weeks.

38 This request is opposed by the respondents.

39 Having heard both sides on this limited point, we are of the opinion that we have adequately protected the petitioners even though we have held that they have no right to hold the posts in question. We do not see how an order dismissing the petition can be stayed. The request is, therefore, refused.

B.P. COLABAWALLA, J. S.C. DHARMADHIKARI, J.

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