IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2985 OF 2007

Official Liquidator … Appellants

Vs.

Dayanand and Others … Respondents

WITH

Civil Appeal Nos.2986 to 2990 of 2007
Civil Appeal No.6455/2008 @ S.L.P.(C) No.12798 of 2005 and
Civil Appeal No.6456/2008 @ S.L.P. No.13838 of 2006

J U D G M E N T

G.S. Singhvi, J.

1. Leave granted in S.L.P. (C) Nos.12798/2005 and 13838/2006.

2. These appeals are directed against the orders of Calcutta and Delhi High Courts, whereby directions have been issued to the appellants herein to absorb the persons employed by the Official Liquidators attached to those High Courts under Rule 308 of the Companies (Court) Rules, 1959 (for short 'the 1959 Rules') against the posts sanctioned by the Government of India, Department of Company Affairs.

FACTS

3. For the sake of convenience, we have culled out the facts from the pleadings of Writ Petition No.1387 of 2001 filed by Tapas Chakraborty and 109 others in Calcutta High Court, Writ Petition No.2728 of 2001 filed by Smt. Daya Dua and others in Delhi High Court, the record of these appeals and documents filed/produced by the learned counsel for the parties during the pendency of the appeals. These are:

(i) **There are two categories of employees in the offices of the Official Liquidators attached to different High Courts. The first category comprises of the employees who are appointed against the posts sanctioned by the Government of India, Department of Company Affairs. They are recruited in accordance with the procedure prescribed in the rules framed under proviso to Article 309 of the Constitution and the doctrine of equality enshrined in Articles 14 and 16 and are paid salaries and allowances from the Consolidated Fund of India. The second category comprises of the persons employed/engaged by the Official Liquidators pursuant to the sanction accorded by the concerned Court under Rule 308 of the 1959 Rules. The employees falling in this category are described as company paid staff. They are paid salaries and allowances from the fund created by disposal of the assets of the companies in liquidation.**

(ii) **For Calcutta High Court, the Central Government had appointed a Court Liquidator under Section 38A of the Banking Regulation Act, 1949, as amended in 1953. He used to employ staff under Rule 308 of the 1959 Rules in connection with liquidation of banking companies. The salaries of such staff were paid from the assets of the banking companies under liquidation.**

(iii) **In the year 1978, the Government of India, Ministry of Law, Justice and Company Affairs vide its letter dated 27.11.1978 circulated a scheme (hereinafter described as 'the 1978 Scheme') for absorption of company paid staff against Group C posts in the subordinate offices of the Department of Company Affairs. That scheme envisaged consideration of the cases of company paid staff, who were in position on 31.3.1978 and who possessed the educational qualifications prescribed for the post against which they were to be absorbed. It was also provided that absorption of the company paid staff will be limited to 50% vacancies in direct recruitment quota of Group C posts.**

4. Sixty-three employees working under the Court Liquidator attached to Calcutta High Court filed writ petition for grant of the status of permanent Central Government employee with effect from the date of completion of 360 days of service besides regular pay scales with avenues for promotion apart from pension, provident fund and other service benefits on the basis of their length of service.

5. The learned Single Judge of Calcutta High Court allowed the writ petition in terms of the prayer made. The appeal preferred by the appellants herein was dismissed by the Division Bench, which noted that even though the writ petitioners had been working for last 20 to 25 years, neither their services were regularized nor they were paid at par with similar employees of other departments/offices and they were retired at the age of 58 years without any financial benefit. The Division Bench held that the appellants have failed to substantiate their plea that the employees appointed by the Court Liquidator were not engaged for doing work of perennial nature and that there was no reasonable basis for discriminating the Court Liquidator's staff vis-à-vis the regular employees of the office of Official Liquidator.

6. The company paid staff (Estate Clerks) engaged by the Official Liquidator attached to the High Court of Kerala also filed writ petition claiming parity with the government employees appointed in the office of the Official Liquidator. The Division Bench of that High Court took cognizance of the fact that there were two sets of employees under the Official Liquidator – (1) employees appointed by the Central Government, and (2) employees (14 in number) appointed by the Official Liquidator between 1980 and 1989 under Rule 308 of the 1959 Rules; that all the employees were doing the same work but were being paid different salaries and held that there was no rational basis for according unequal treatment to similarly situated employees. The Division Bench then referred to the 1978 Scheme, judgments of this Court in Narender Chadha vs. Union of India [1986 (2) SCC 157], Dhirendra Chamoli vs. State of U.P. [1986 (1) SCC 637], Surinder Singh and Another vs. Engineer-in-Chief, CPWD and Others [1986 (1) SCC 639], H.C. Puttaswamy vs.

Hon'ble Chief Justice of Karnataka High Court, Bangalore [1991 (2) Supp. SCC 421], Bhagwati Prasad vs. Delhi State Mineral Development Corporation [1990 (1) SCC 361], Jacob M. Puthuparambil vs. Kerala Water Authority [1991 (1) SCC 28], Delhi Development Horticulture Employees' Union vs. Delhi Administration, Delhi [1992 (4) SCC 99], State of Haryana vs. Piara Singh [1992 (4) SCC 118] and held that the petitioners are entitled to be absorbed as regular Lower Division Clerks in the office of the Official Liquidator from the date of their initial appointment. Accordingly, a direction was issued to the respondents in the writ petition to absorb the Estate Clerks against the regular posts of Lower Division Clerks and pay them salary in the regular pay scale with consequential benefits.

7. The Government of India and Official Liquidators appealed against the orders of Calcutta and Kerala High Courts by filing petitions for special leave to appeal, which were admitted and converted into Civil Appeal Nos.5642 of 1994 (Government of India and others vs. The Court Liquidator's Employees Association and others) and Civil Appeal No.5677 of 1994 (Union of India and others vs. P.P. Bridget and others). During the pendency of those appeals, Writ Petition No.473 of 1998 filed by the company paid staff employed/engaged by the Official Liquidator of Delhi High Court claiming parity with the regular employees was also transferred to this Court. After hearing the arguments, the Court passed an interim order on 14.1.1998, which reads as under:

> **"In all these cases, the common question that arises for consideration is whether the persons appointed by the Official Liquidator/Court Liquidator under the orders of respective High Courts under Rules 308/309 of the Companies (Court) Rules, 1959 are entitled to equal pay and regularisation as the employees appointed by the Central Government in the office of the Official Liquidator. Learned Senior Counsel appearing for the appointees brought to our notice the findings of the High Courts rendered on the basis of the materials placed before them. They are broadly stated that the appointees were discharging identical duties and functions as that of regular employees in the office of the Official Liquidator; that they have been continuously without break working for a period ranging from 10 to 25 years; that they have been paid only a fixed salary without any benefit of pension, gratuity; that such employees**

appointed up to 1-7-1978 had been regularised by the Government; that though the Central Government appreciated the human problem involved in these matters and came forward before the Kerala High Court to amicably settle the issue ultimately has shown an unsympathetic attitude and that in the light of the several judgments of the Supreme Court, the appointees are entitled to regularisation and salaries as paid to the regular employees in the office of the Official Liquidator at least from three years prior to the date of the judgment of the Single Judge of the Calcutta High Court and in the Kerala cases from the date of appointment.

On the other hand, Mr. Malhotra, learned Senior Counsel appearing for the Union of India submitted that the appointees were not appointed by the Government and they were not paid salaries from the consolidated fund. On the other hand, they were paid salaries from the companies concerned under liquidation. In certain High Courts, there are Official Liquidators and Court Liquidators appointed under Section 38-A of Banking (Regulation) Act. The banking companies under liquidation originally were 75, now only there are 32 banking companies under liquidation. The appointment under court orders are not for a permanent department like Official Liquidator's office and, therefore, the appointees cannot demand regularization and payment of equal salary as that of salaries paid to regular employees in the office of the Official Liquidator.

The hard reality is that the appointees are continued on the basis of fixed salary without any retiral benefits such as pension and gratuity for more than 25 years and the functions they are discharging are similar to those discharged by the employees in the Office of the Official Liquidator without getting equal treatment. In the circumstances, before rendering a decision on merits by the Court, Mr Malhotra, learned Senior Counsel desired that the Government be given an opportunity to consider the matter in the light of the findings rendered by the High Courts and to come forward with an acceptable solution.

The matters are adjourned by four weeks."

8. In furtherance of the aforementioned order, the Government of India considered various proposals. Thereafter an additional affidavit was filed incorporating therein the following three options:

(i) one option that was discussed was to repeat scheme for absorption of

company-paid staff as was done through the 1978 Scheme of Department of Company Affairs. There are certain practical problems in following this course of action. As per the 1978 Scheme such absorption is possible to the extent of 50% only under the direct recruitment quota in the appropriate grade. As the position obtains in the Department of Company Affairs, there is lack of adequate number of vacancies in the aforesaid category (direct recruitment) for the purpose of facilitating absorption of all these company-paid staff in the Department of Company Affairs;

(ii) the second alternative that was discussed was to continue the present arrangement without absorption of these company-paid staff. In such a situation, their salaries and service conditions could suitably be revised by the Hon'ble Company Judges with reference to funds available with the OLs in the various High Courts. According to information gathered, most of the OLs attached to various High Courts have annual surpluses. The balances in the funds maintained by many OLs are substantial; and

(iii) the third option that was discussed was to grant them age relaxation and ask them to sit in the open competitive examination as a one-time measure. This would give them a general opening not restricted to jobs in these two departments.

9. Although, the Government of India indicated its preference for option Nos.2 and 3, this Court did not approve either of them and dismissed the appeals. The transferred writ petition was allowed in similar terms – Govt. of India and others vs. Court Liquidator's Employees Association and others [1999 (8) SCC 560]. Paragraphs 21 to 24 of the judgment which have bearing on these cases read as under:

21. In view of the peculiar facts of these cases and the positive findings of the High Courts with which we concur, we are unable to agree with the contention of the learned Senior Counsel for the appellants that the company-paid staff cannot be absorbed/regularised as they were not employed by the Government in accordance with the rules; that they knew their appointments were only temporary and that their pay was not from the consolidated fund.

22. Undoubtedly, counsel on both sides cited numerous authorities of this Court on earlier occasions sustaining the orders of absorption and setting aside the orders of

absorption. We do not consider it necessary to refer to those decisions inasmuch as the facts presented before us and the findings rendered by the High Courts speak for themselves. As a matter of fact, the Government had considered as one of the options to absorb the company-paid staff as was done through the 1978 Scheme of Department of Company Affairs.

23. In the circumstances, we are satisfied that the orders of the High Court challenged in these appeals do not call for any interference having regard to the facts presented before the High Courts. Accordingly, we dismiss the appeals with no orders as to costs.

24. In view of the above, the writ petition is allowed as the relief prayed for is similar to the one claimed by the contesting respondents/company-paid staff in the connected civil appeals, without costs.

10. Notwithstanding its approval of the reasons and conclusions of Calcutta and Kerala High Courts, this Court gave an opportunity to the appellants to absorb the company paid staff working under the Court Liquidator in the Calcutta High Court and Official Liquidators in other High Courts by framing a scheme modeled on the 1978 Scheme within six months. The Court also stayed the operation of the orders appealed against and the order passed in Writ Petition (Civil) No.473 of 1998 for a period of six months to enable the appellants to frame new scheme and implement the same. This is evident from paragraph 25 of the judgment which is reproduced below :

25. However, we want to give an opportunity to the appellants in the interest of justice and to balance the equities between the parties to come forward to accept and act on the first option given in the additional affidavit, as extracted above, and absorb the company-paid staff working both under the Court Liquidator in the Calcutta High Court and the Official Liquidator in other High Courts by framing a scheme modelled on the 1978 Scheme within six months. In other words, we stay the operation of the judgment of the High Courts under appeal and the order in WP (C) No. 473 of 1988 for a period of six months to enable the appellants to frame the Scheme as suggested above and to give effect to it, failing which the judgments under appeal and the order in WP (C) No. 473 of 1988 will stand confirmed."

11. Within the time limit of six months fixed by the Court, the Government of India framed and notified new Scheme (hereinafter referred to as 'the 1999 Scheme') for absorption of the company paid staff against 50% vacancies in direct recruitment quota and also issued letter dated 1.10.1999 containing guidelines for implementation of the same. That letter reads as under :-

"To

The Regional Director
Department of Company Affairs
Mumbai/Calcutta/Chennai/Kanpur.

Sub: Absorption of company paid staff of the offices of Official Liquidators against Group C posts in the subordinate offices of the Department of Company Affairs on the lines of scheme devised in 1978 – Supreme Court's judgment – regarding.

I am directed to refer to the Hon'ble Supreme Court's Judgment dated 27.08.99 (copy enclosed) on the subject mentioned above and to say that further action in the matter of absorption of the Company Paid Staff in regular Government service may please be taken on the following lines :-

(i) Only such Company Paid Staff of the offices of the Official Liquidators shall be eligible for regular absorption:

(a) Who were in position as on 27.08.99 and

(b) Who possess the requisite educational qualification laid down in the recruitment rules for the post against which they are to be absorbed.

The Regional Directors, in their capacity as Heads of Departments, may consider the relaxation of age limits in deserving cases in accordance with the general instructions existing in this regard.

(ii) The Company Paid Staff can be absorbed against only 50% of the existing and future vacancies in your region in Group 'C' posts which, as per recruitment rules fall under direct recruitment quota. For instance, there is hundred per cent direct recruitment to the posts of Lower Division Clerks; accordingly, 50% of the existing and future vacancies of Lower Division Clerks in your region can be utilized for absorbing Company Paid Staff. Further, the posts of Upper Division Clerks, as per recruitment rules, are to be filled up entirely by promotion; therefore, there can be no possibility of absorbing Company Paid

Staff in the grade of Upper Division Clerks. In the case of Junior Technical Assistants 50% of the vacancies, according to the recruitment rules are to be filled up by promotion and the remaining 50% by direct recruitment. In this case, therefore 25% of the vacancies in the grade of Junior Technical Assistants can be utilized for absorbing Company Paid Staff. The proportion of vacancies in other Group 'C' grades may similarly be worked out.

(iii) The Company Paid Staff, who were in position on 27.08.99, will be screened by a Selection Committee consisting of the following:-

1) Regional Director – Chairman
2) Representative of the Staff Selection Commission -Member
3) Official Liquidator of the office the company paid staff of which is to be screened – Member

The Staff Selection Commission is also being requested to nominate different representatives for the different regions. The place, date and time of holding meeting(s) of the Selection Committee may be finalized in consultation with them.

(iv) As in the scheme of 1978, there will be no test or examination for the purpose of assessing the suitability of the Company Paid Staff. The Selection Committee will make its recommendations on the basis of the qualification, experience etc. and personal interview of the candidates.

2. Immediate steps may please be taken for selection of eligible members of Company Paid Staff for absorption against the existing vacancies in different grades and also the anticipated vacancies upto 31.12.2000 next. Applications may be invited indicating separately the existing vacancies and the vacancies which may occur by 31.12.2000 and making it clear that the question of absorbing be persons recommended for the anticipated vacancies will arise only if the vacancies actually occur by 31.12.2000 and that mere recommendation of the Selection Committee will not confer any right on any Company Paid Staff for being appointed in Government service.

3. A quarterly report beginning with the quarter ended 31.12.99 may be sent to

the Headquarters indicating the extent to which the Company Paid Staff has been absorbed in regular Government service."

12. Thereafter, the concerned authorities undertook exercise for absorption of the company paid staff in the regular cadres of the Department of Company Affairs. As a result of this, 295 out of 399 company paid staff who were in position on 27.8.1999 were adjudged suitable. Of them 130 have been absorbed and 141 are awaiting orders. 104 were not recommended for absorption. 23 of the company paid staff either refused absorption or resigned or retired from service.

13. In the meanwhile, the company paid staff working under the Official Liquidators of Calcutta and Delhi High Courts filed writ petitions and prayed for issue of mandamus to the Union of India and others to absorb them in the regular cadres and to treat them at par with Central Government employees working in the office of the Official Liquidators.

<u>Pleadings of the parties before the High Courts</u>

<u>Calcutta High Court</u>

14. Tapas Chakraborty and others filed Writ Petition (Civil) No.1387 of 2001 in Calcutta High Court for issue of a direction to Government of India and Official Liquidator to absorb them in regular cadres with effect from the date of completion of 240 days' service and also for grant of benefits like pension, provident fund, gratuity, etc. calculated on the basis of total length of service. In the writ affidavit it was pleaded by the petitioners that before appointing them, the Official Liquidator use to take leave from the Hon'ble Judge hearing the company matter in the High Court; that they were appointed as a company paid staff with a stipulation that their services may be terminated at any time without assigning any reason; that all of them have worked for more than 240 days in each and every year of their service; that although they are entitled to regularization of service, the respondents have not taken any action in that direction; that their pay has not been fixed in the regular scale and they are required to retire at the age of 58 year without any financial

benefit; that on or around 30th November, 1999, the respondents asked them to appear in an interview for absorption against the post of Lower Division Clerk or Junior Technical Assistant in terms of letter dated 1.10.1999; that they were not party to the proceedings before the Supreme Court; that the scheme, if any, prepared by the respondents is arbitrary and implementation thereof is afflicted by favoritism and that the respondents cannot take recourse to the order passed by the Supreme Court on 27.8.1999 and deprive them of their legal right to get absorption on completion of 240 days of continuous service. For better appreciation of the case projected by the writ petitioners, paragraphs 5, 6, 7, 18 and 26 and Clauses a(ii) and (iii) of the prayer clause are reproduced below:

> **"5. The very common thing amongst the petitioners herein is that all of them are continuing their service in the office of the Official Liquidator for more than 240 days in each and every year of their service in the office of the Official Liquidator.**
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> **6. Although your petitioners are entitled to regularization of their service in terms of the Central Government employees, but the respondents and each of them neglected to give the petitioners all the service benefits as compared to a Central Government employee.**
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> **7. Although your petitioners have all requisite qualifications, experience, your petitioners were denied their right to work with utmost dignity and compelled to work in the office of respondent No.3 with a temporary status, without any service benefits as admissible to a Central Government employee in similarly situated conditions. In a society, where unemployment is curse, your petitioners have had no other alternative but to accept the terms of service, as dictated by the respondents from time to time for running their office through your petitioners.**
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> **18. <u>Your petitioners state that they were not a party in the said proceedings, before the Hon'ble Supreme Court of India, hence the aforesaid order of the Hon'ble Supreme Court of India, is not applicable to your petitioners</u>. Your petitioners further state that the words 'other High Courts' as referred by the Hon'ble Apex Court is not meant for all the High Courts all over India, but it referred to those two High Courts, the staffs of the Official Liquidator of the Kerala High Court and/or of the Delhi High Court only.**

26. Your petitioners state that purported scheme, if any, prepared by the respondent authorities is bad and arbitrary and without publishing the scheme for appointment and/or regularization, the respondent authorities indulged in the favouritism at the time of choosing the candidates for absorption in regular post. In absence of any scheme or modes of regularization, the respondents are taking recourse to pick and choose policy and doing gross discrimination among the temporary workers in the office of the respondent no.3.

[Emphasis added]

Prayer Clause

(a)(ii) absorb the writ petitioners in regular service under the Central Government with an effective date i.e. soon after expiry of 240 days in their respective services in each continuous period of service;

(iii) Furnish all the service benefits like pension, provident funds and gratuity and pay differences to the petitioners, calculating the service period of the petitioners with an effective date i.e. soon after expiry of 240 days in their respective services, in each continuous period of service.

15. During the pendency of the writ petition, an application was filed on behalf of the petitioners for deleting the names of some of them and for adding additional grounds to challenge the 1999 Scheme. The respondents in the writ petition objected to the amendment to the writ petition, but the learned Single Judge overruled their objection and granted the prayer of the writ petitioners.

Delhi High Court

16. Smt. Daya Dua and others, who belong to the category of company paid staff employed/engaged by the Official Liquidator of Delhi High Court filed Writ Petition No.2728 of 2001 for issue of a mandamus to the respondents (appellants herein) to regularize their services against Group 'C' post from the date of initial appointment. An alternative prayer made by the writ petitioners was to direct the respondents to frame a scheme for absorption of all of them against Group 'C' posts and give them other benefits like pay and allowances at par with regular

Group 'C' employees working in the office of the Official Liquidator. They pleaded that their work is of perennial nature and their duties and functions are identical to those of regular employees, but they are not being paid salary in the regular pay scale. They further pleaded that the direction given by the Supreme Court was not limited to the absorption of any particular category of company paid staff, but the 1999 Scheme is confined to Group 'C' posts and the employees who are eligible for absorption against Group 'D' posts are being discriminated. Another plea taken by the petitioners was that only 11 of company paid staff have been absorbed/regularized against Group 'C' posts and others have been left out in lurch. Clauses (a), (b) and (c) of the prayer clause of Writ Petition No.2728 of 2001 read as under:-

> **"a) regularize the service of the petitioners in Group 'C' Central Government posts from the date of their initial appointment;**
>
> **b) without prejudice to prayer (a) above, in the alternate, frame Scheme as directed by the Hon'ble Supreme Court for absorption of all the petitioners in Group 'C' Central government posts giving therein due regard to their seniority as Group 'C' company paid staff and providing therein time bound regularization of all the petitioners which is the letter and spirit of the directions of the Hon'ble Supreme Court dated 27.8.1999 in W.P. (C) No.473/1988;**
>
> **c) pay the petitioners salary and allowances at par with the Central Government appointed regular group 'C' staff in the office of the Official Liquidator attached to the Hon'ble High Court of Delhi from the date of their initial appointment."**

17. The claim of the writ petitioners (respondents herein) was controverted by the Union of India and Official Liquidators of the two High Courts. The salient features of the counter affidavits filed on their behalf were:

(i) Regular appointments against the posts sanctioned by the Government of India, Department of Company Affairs are made after following the procedure prescribed in the statutory rules. As against this, the company paid staff is engaged/employed by the Official Liquidators for fixed period after obtaining sanction from the Court under Rule 308 of the 1959 Rules.

(ii) The company paid staff are neither the government servants nor their conditions of employment are regulated by statutory rules like the Central Civil Services (Conduct) Rules, which are applicable to the holders of civil posts under the Central Government.

(iii) The company paid staff cannot be equated with regular employees because the source and mode of recruitment of the two categories and their status are entirely different. Moreover, while the regular employees are paid from the budget sanctioned by the Government of India, the salaries and allowances of the company paid staff are drawn from the company fund in terms of the order passed by the Court under Rule 308 read with Rule 309 of 1959 Rules.

(iv) The 1999 Scheme was framed strictly in accordance with the judgment of the Supreme Court in Govt. of India and others vs. Court Liquidator's Employees Association and others (supra). The same was modeled on the 1978 Scheme and 50% of direct recruitment quota posts have been filled by absorbing the company paid staff.

18. In the counter filed in Delhi High Court, it was also pleaded that members of the company paid staff cannot claim absorption in Group 'D' post because the 1978 and 1999 Schemes do not provide for such absorption.

<u>Findings of the High Courts</u>

<u>W.P. No.13871/2001 (Calcutta High Court)</u>

19. The learned Single Judge briefly referred to the pleadings of the parties and held that relief deserves to be granted to the petitioners because the findings and conclusions recorded by Calcutta and Kerala High Courts in the earlier round of litigation were approved by the Supreme Court. in Govt. of India and others vs. Court Liquidator's Employees Association and others (supra), the

learned Single Judge then prepared a comparative table of the two schemes and held that the 1999 Scheme is illusory because all the company paid staff cannot be absorbed against 50% vacancies of the direct recruitment quota. On the issue of absorption of the company paid staff against Group 'D' posts, the learned Single Judge observed that there is no rational reason to confine the benefit of the 1999 Scheme qua Group 'C' posts. He also delved into the legality of the absorption of respondent Nos.5 to 26 and held that the recommendations made by the Selection Committee de hors the seniority of the company paid staff has the effect of vitiating the selection. He, however, declined to nullify the absorption of the private respondents on the ground of delay and laches and proceeded to direct the respondents to prepare fresh merit list strictly in the order of seniority. The learned Single Judge also directed respondents to consider the desirability of increasing the quota of 50% by creating supernumerary posts. The operative part of the order passed by the learned Single Judge reads thus:

> **"The State respondents shall consider their scheme 1999 after ascertaining whether all company paid staff in the office of the Official Liquidator, Calcutta High Court can be absorbed as Group-C staff within three years reckoned from the date of coming into force of the said Scheme of 1999.**
>
> **The aforesaid exercise shall be completed within a period of three months from date hereof. If all the company paid staff cannot be absorbed as Group-C staff within the said period stipulated above, State respondents shall consider the increase in the quota of 50% or by creating supernumerary posts so that, subject to the reservation policy of the State, all the eligible company paid staff could be absorbed as Central Government staff in Group-C.**
>
> **The State respondents shall consider de novo the impugned panel with respect to eligible company paid staff in Group-C strictly in the order of seniority and upon absorption of such company paid staff on the basis of such list which shall be prepared within a period of three months from date hereof, the seniority in the cadre of Group-C shall be maintained ever with respect to the company paid staff respondents 5 to 26 who have already been absorbed.**
>
> **As regards Group-D staff, State respondents shall take steps for regularizing such of the petitioners as may be eligible and qualified according to the rules to be absorbed as Group D staff within a period of three months from date hereof. Such regularization shall be made strictly in the order of seniority (length of service in the**

organization). Upon absorption/regularization such company paid staff shall be placed immediately below the last regularly appointed employees in that category, class and service, as the case may be.

Until the above directions as carried out there shall be a direction upon the respondents not to fill up any post by direct recruitment.

It is clarified that such of the petitioners who did not participate in the interview conducted by the selection committee for the purpose of absorption, their cases shall not be considered."

20. The Division Bench dismissed the appeal preferred by the appellants herein by recording the following observations:

"Since the matter regarding the right of the company paid staff of the office of the official liquidators has been decided and confirmed upto the Hon'ble Supreme Court, all that needs to be worked out is that manner in which such employees are to be absorbed in the offices of the different Official Liquidators of the different High Courts.

We are in agreement with the sentiments expressed by the learned Single Judge that no a section but all the company paid staff working in the office of the Official Liquidator upto the cut off date as provided in the 1999 Scheme are to be absorbed in the office of the Official Liquidator, High Court at Calcutta, even if it means by creation of supernumerary post as observed by the learned Single Judge. Needless to say, such posts will be personal to those appointed and will cease to be in existence upon the incumbent attaining the age of superannuation."

<u>W.P. No.2728/2001 (Delhi High Court)</u>

21. The learned Single Judge referred to the judgment in Govt. of India and Others vs. Court Liquidator's Employees Association and Others (supra) and negatived the plea of the appellants herein that the company paid staff can be absorbed in the regular cadre only against Group 'C' posts to the extent of 50% of direct recruitment quota and held that the writ petitioners are entitled to be absorbed against Group 'C and 'D' posts and their entire service upto the date of absorption has to be counted for the purpose of fixation of seniority and grant of other benefits including promotion. The relevant portions of the order of the learned Single Judge are reproduced below:

"I do not find any force in the argument of the respondent that 1978 scheme was only with regard to Group 'C' employees. The fact of the matter is that Group 'D' employees were appointed only in the year 1985. Therefore, there was no question of the respondent making a scheme in 1978 for Group 'D' employees. I do not find any force in the arguments of counsel for the respondents that the direction of the Supreme Court was limited with regard to the absorption of Group 'C' employees. The Supreme Court has used the words 'company paid employees', the words 'Group 'C' and Group 'D' have not been used in the judgment of Supreme Court. As discussed earlier Group 'D' employees were also petitioners before Supreme Court.

I do not find any substance in the arguments of counsel for the respondents that the Supreme Court has not given a direction for giving seniority to the petitioners after their absorption. If I agree with the interpretation of the respondent that would mean a person who has worked for twenty or more years in the office of Official Liquidator and now he gets absorption his past services of twenty years or more will not be counted. The very proposition of the respondent is preposterous. The Supreme Court in its judgment has not used the words 'new appointment' but has used the word 'absorption'. The Supreme Court had categorically given a mandate to absorb all the company paid employees and not to give fresh appointment. Therefore, the incident of seniority by implication is implicit in the judgment of the Supreme Court and respondents have to absorb the petitioners giving them fitment in the their appropriate scales as well as other promotions, if any, which has to be given as per law.

I issue a writ of mandamus to the respondents to absorb the petitioners in their appropriate scales with all benefits such as fitment and promotions, if any, even if posts have to be created for the petitioners. Illegality and discrimination cannot be allowed to perpetuate indefinitely. They will also be entitled to pension, provident fund, gratuity and all benefits which are to be computed on the basis of their length of service. The petitioners shall be entitled to arrears of three years which shall be paid by the respondents to the petitioners within a period of six months."

[Emphasis supplied]

22. Letters Patent Appeals preferred by the appellants were dismissed by the different Division Benches of the High Court. While deciding LPA No.808 & 809/2003, the Division Bench took cognizance of the fact that during the pendency of contempt case filed in Calcutta High Court with

the complaint that order dated 26.3.2001 passed by the Single Judge of that High Court in W.P. No.211/2001 has not been complied with, the Central Government created 51 posts of Group 'B', 'C' and 'D' and absorbed the staff working in the office of the Court Liquidator with effect from the date of expiry of 360 days of their joining service and held that the direction given by the learned Single Judge for absorption of all Group 'C' and 'D' company paid staff does not call for interference.

<u>Particulars of the additional documents filed/produced during the course of hearing</u>

23. Learned senior counsel appearing for Tapas Chakraborty and others filed I.A. No.10/2008 in S.L.P (C) No.12798/2008 for placing on record the following documents:

(i) Letter No.OL-CAL/24/Staff/G-Part V/2600/G dated 13th June, 2005 sent by the Official Liquidator of Calcutta High Court to the Secretary, Government of India, Ministry of Company Affairs highlighting the factum of increase in the work load and necessity of providing additional manpower.

(ii) Letter No.12011/3/2003-Admn.II dated 2nd September, 2005 issued by the Government of India in the matter of "Optimization of Direct Recruitment to Civilian Posts" of Group 'C' and 'D' for the years 2001-2002, 2002-2003 and 2003-2004 and abolition of some such posts.

(iii) Copy of order dated 28.2.2008 passed by the Division Bench of Kerala High Court in Writ Petition (C) No.22810/2004 and 16471/2007.

(iv) Copy of letter No.RD/CLA/1/717/1135 dated 3rd June, 2008, sent by Assistant Director (Inspection), Government of India, Ministry of Corporate Affairs to the Official Liquidators of Calcutta, Cuttack, Guwahati, Patna and Ranchi asking them to send comprehensive proposal for requirement of staff along with justification for the same.

(v) Letter No.OL/24/Staff/Part VII/1875/G dated 30th June, 2008 sent by the Official Liquidator of Calcutta High Court to the Regional Director, Eastern Region, Kolkata reiterating the need for additional staff to meet with the increased workload.

24. Learned senior counsel also produced two charts containing the details of Group 'C' and Group 'D' posts lying vacant in four regions as on 1.1.2008 and the number of Group 'C' posts abolished during 2001-2002, 2003-2004. He produced two more charts containing the details of the company paid staff as on 31.3.2008 in all the regions and particulars of 119 company paid staff employed/engaged by the Official Liquidator of Calcutta High Court.

25. Ms. Jyoti Mendiratta, learned counsel appearing for the respondents in the appeals arising out of the orders passed by Delhi High Court filed I.A. (unnumbered) in S.L.P. (C) No.12798/2005 for placing on record the following documents:-

(i) Copy of the details of posts with office of Official Liquidator of High Court of Bombay filed on 18.7.2008 along with tables consisting of names of the company paid staff and the date of absorption and table containing names of the 26 company paid staff from Group 'C' and Group 'D'.

(ii) Letter No.12011/3/2003-Admn.II dated 2nd September, 2005 sent by Under Secretary to the Government of India, Ministry of Company Affairs to the Regional Directors of Ministry of Company Affairs of Noida, Kolkata, Mumbai and Chennai in the matter of optimization of direct recruitment to civilian posts of Group 'C' and 'D' posts in the Ministry for the years 2001-2002, 2002-2003 and 2003-2004 and abolition/filling up of some such posts.

(iii) Letter No.OL/24/Staff/Part VII/1875/G dated 30th June, 2008 sent by the Official Liquidator of Calcutta High Court to the Regional Director, Eastern Region, Kolkata reiterating the need for increase of manpower.

(iv) Copy of order dated 19.9.2005 passed by the Division Bench of Delhi High Court in LPA Nos.808/2003 and 809/2003.

(v) Copy of order dated 5.5.2003 passed by learned Single Judge of Delhi High Court in CW No.2728/2001 and CM No.4774/2001.

(vi) Copy of judgment dated 26.3.2001 passed by the learned Single Judge of Calcutta High

Court in W.P. No.211/2001.

(vii) Letter No.A-12013/1/99-Ad.II dated 27.12.1999 sent by Shri D.P. Saini, Under Secretary to the Govt. of India to all the Regional Directors of Department of Company Affairs of Kanpur, Kolkata, Mumbai and Chennai regarding clarifications/suggestions to facilitate the implementation of this Court's judgment dated 27.8.1999 for absorption of company paid staff of the offices of Official Liquidators against Group 'C' posts.

26. Shri P.P. Malhotra, Additional Solicitor General filed reply to I.A. No.10/2008 in S.L.P. (C) No.12798/2005 along with following documents:-

(i) Copy of O.M. No.2/8/2001-PIC dated 16.5.2001 containing policy decision taken by the Government of India on the issue of Optimization of Direct Recruitment to Civilian Posts and lapsing of two-third of vacancies every year.

(ii) Copy of O.M. No.2/8/2001-PIC dated 30th August, 2006, whereby the Government decided to continue the scheme of Optimization of Direct Recruitment to Civilian Posts upto 31.3.2009.

(iii) Copy of O.M. No.A-12011/3/2002-Ad.II dated 14.3.2005 for convening meeting of the Screening Committee to consider the issue of reducing direct recruitment to civilian posts in the Ministry of Company Affairs along with background note.

27. During the course of arguments, Shri Malhotra placed before the Court xerox copy of Writ Petition No.1387/2001 filed in Calcutta High Court along with annexed papers and the following documents:-

(i) Letter No. dated 22nd August, 2008 sent by Official Liquidator, High Court of Bombay to the Regional Director, Western Region, Mumbai on the issue of additional requirement of posts, and

(ii) Copy of additional affidavit of Shri D.P. Saini, Under Secretary to the Government of India,

Arguments

28. Shri P.P. Malhotra, learned Addl. Solicitor General placed reliance on paragraph 25 of the judgment in Govt. of India and others vs. Court Liquidator's Employees Association and others (supra) and submitted that even though this Court approved the reasoning and conclusions of Calcutta and Kerala High Courts, orders passed by those Courts were rendered ineffective because operation and implementation thereof was stayed for six months and in terms of opportunity given to it, the Government of India not only framed the 1999 Scheme for absorption of the company paid staff, but also implemented the same. Shri Malhotra argued that High Court committed serious error by issuing direction for absorption of all the company paid staff in the regular cadres ignoring the fact that the 1999 Scheme was confined to Group C posts and that too upto 50% vacancies in the direct recruitment quota. Learned counsel emphasized that the 1999 Scheme was modeled on the 1978 Scheme and argued that the same cannot be faulted on the ground that due to abolition of posts in the Department of Company Affairs, large number of company paid staff may not get absorbed in the regular cadres till their retirement. Shri Malhotra pointed out that as early as in 2001, the Government of India had taken a policy decision to substantially reduce direct recruitment to all the cadres and recommendations made by the Screening Committee for abolition of posts in various cadres were accepted by the Government. Learned counsel emphasized that the policy decision taken by the Government of India on the issue of Optimization of Direct Recruitment to Civilian Posts was not challenged by the writ petitioners and argued that in the absence of such challenge, the High Courts were not justified in mandating creation of supernumerary posts for absorption of the company paid staff and for grant of monetary benefits to them by applying the principle of equal pay for equal work with retrospective effect. In the end, he argued that the directions given by High Courts for wholesale absorption of the company paid staff are legally unsustainable because that would result in abrogation of the rules framed under proviso to Article 309 of the Constitution of India in terms of which the appointing authority is obliged to

make direct recruitment to various cadres.

29. Shri Bhaskar P. Gupta, learned counsel appearing for the respondents in the appeal arising out of S.L.P. No.12798 of 2005 argued that the judgment of this Court in Government of India and others vs. Court Liquidator's Employees Association & Ors. (supra) is conclusive on the issue of absorption to the company paid staff and the 1999 Scheme is liable to be quashed because the same is not only contrary to the judgment of this Court but is wholly unrealistic and impractical inasmuch as it does not provide for absorption of the company paid staff who have completed more than 10 to 20 years of service. Learned counsel pointed out that after the promulgation of 1978 Scheme, there has been multifold increase in the petitions instituted for liquidation of the companies and submitted that in order to meet the imperatives of the work relating to the companies in liquidation, the Official Liquidator was compelled to engage/employ additional staff and continue them after obtaining sanction from the Court under Rule 308 of the 1959 Rules. He then submitted that the respondents joined service as company paid staff with the fond hope that their services will be regularized and they may get opportunity of career advancement and retrial benefits but on account of unsympathetic attitude of the Government of India, their legal and constitutional rights have been violated. Learned counsel referred to letters dated 13.6.2005, 3.6.2008 (Annexures A-D) and 30.6.2008 written by the Official Liquidator and Assistant Director (Inspection), Kolkata as also letter dated 2.9.2005 written by the Under Secretary to the Government of India, Ministry of Company Affairs to the Regional Directors, NOIDA/Kolkata/Mumbai/Chennai on the subject of Optimization of Direct Recruitment to Civilian Posts in Group C and D and submitted that even though in the assessment of officers at the ground level, there is a dire need for increasing the strength of different cadres, the Government of India has in the garb of implementing the policy decision taken in 2001, abolished large number of posts in the direct recruitment quota, which became available in 2001-02 to 2003-04 and, in this manner, the 1999 Scheme has been made redundant. Shri Gupta invited our attention to the charts and details produced by him to show that even after being recommended by the Selection Committee as many as 141 of the company paid

staff, who were in position on 27.8.1999, have not been absorbed till this day. He submitted that the Government of India cannot sit tight over the matter and frustrate the right of the company paid staff to be absorbed in the regular cadres despite the fact that they were appointed after advertisement and as on date they have continuously worked for 10 to 20 years and fulfill the conditions of eligibility prescribed for direct recruitment. Shri Gupta invoked the doctrine of legitimate expectation and argued that the High Courts did not commit any illegality by recognizing the validity of the claim made by the company paid staff and issuing direction for their absorption in regular cadres with consequential monetary benefits by creation of supernumerary posts. Learned senior counsel lamented that the manner in which the Government of India has acted in last nine years leave no room for doubt that majority of company paid staff, who were in position on 27.8.1999 may never get absorbed and may have to retire without any monetary benefits like pension, gratuity, etc. Lastly, Shri Gupta submitted that the ratio of the Constitution Bench judgment in Secretary, State of Karnataka vs. Uma Devi [2006 (4) SCC 1] should not be applied to these cases because the respondents had been employed/engaged after advertisement and due selection. He also relied on Randhir Singh vs. Union of India [1982 (1) SCC 618], Dhirendra Chamoli vs. State of U.P. [1986 (1) SCC 637], Surinder Singh vs. Engineer-in-Chief, C.P.W.D. [1986 (1) SCC 639 and UP State Electricity Board vs. Pooran Chandra Pandey [2007 (11) SCC 92] and argued that the respondents cannot be deprived of their constitutional right to equality in the matter of regularization of service and payment of salary in the regular pay scales on the pretext of non-availability of posts.

30. Ms. Jyoti Mendiratta referred to the pleadings of Writ Petition No.2728/2001 filed in Delhi High Court to show that as per the appellants' own case, the 1999 Scheme was a replica of the 1978 Scheme and argued that the same is liable to be quashed because while framing the new scheme, the Central Government altogether ignored the factum of employment of a number of persons by the Official Liquidator from 1985 who are eligible for absorption against Group D posts. She further argued that the lackadaisical manner in which the Central Government implemented the 1999

Scheme shattered the hopes of majority of the company paid staff and, therefore, the High Court did not commit any error by removing the discrimination practiced by the Central Government against the company paid staff who have not been absorbed even after 20 years service. She pointed out that the Official Liquidator of Delhi High Court employed/engaged company paid staff after due advertisement and selection and argued that non-availability of sanctioned posts cannot justify wholesale denial of the right to equality guaranteed to the respondents under Articles 14 and 16 of the Constitution. Learned counsel heavily relied on the observations made by the Division Bench of Kerala High Court in O.P. No.9732 of 1990 decided on 27.8.1993 and vehemently argued that in view unequivocal approval of that order in Government of India and others vs. Court Liquidator's Employees Association & Ors. (supra), the learned Single Judge of the Delhi High Court had no choice but to issue mandamus for regularization of the services of the respondents herein with consequential benefits. Learned counsel invited the Court's attention to order dated 26.3.2001 passed by the Calcutta High Court in Writ Petition No.211 of 2001 and submitted that after having sanctioned 51 posts for absorption of the staff working under the Court Liquidator of Calcutta High Court, it is not open to the Central Government to challenge the direction given by Calcutta and Delhi High Courts for regularization of company paid staff employed/engaged by the Official Liquidators on the spacious ground of abolition of posts meant to be filled by direct recruitment.

31. Shri Colin Gonsalves, and Shri Ramesh Kumar, learned counsel for the intervenors, adopted the theme of the arguments of Shri Bhaskar P. Gupta and Ms. Jyoti Mendiratta and submitted that in view of abolition of post meant to be filled by direct recruitment, the 1999 Scheme should be declared as unworkable and redundant and a direction be issued to the appellants to regularize the services of company paid staff having regard to their length of services.

<u>Consideration by the Court</u>

32. At the outset, we consider it necessary to remove the misgivings entertained by the respondents and the High Courts that while dismissing the appeals filed by the appellants in the

earlier round of litigation, this Court had endorsed the directions given by Calcutta and Kerala High Courts for absorption of company paid staff without any rider. A careful reading of paragraphs 20 to 25 of the judgment in Govt. of India and Others vs. Court Liquidator's Employees Association and Others (supra) makes it crystal clear that while approving the reasons and conclusions recorded by the High Courts and dismissing the appeals, this Court not only gave an opportunity to the appellants to frame a new scheme modeled on the 1978 Scheme within six months and implement the same but also stayed the operation of the orders impugned in the appeals and the one passed in Writ Petition (C) No.473 of 1988. The use of the words "failing which the judgments under appeal and the order in WP (C) No.473 of 1988 will stand confirmed" in paragraph 25 leaves no manner of doubt that the orders passed by the High Court and the one passed by this Court in WP (C) No.473 of 1988 were to become effective only if the Government of India had not framed new scheme modeled on the 1978 Scheme. However, the fact of the matter is that Government of India not only framed and notified the 1999 Scheme within six months from the date of judgment, but also issued guidelines for implementation of the same. Therefore, the orders passed by Calcutta and Kerala High Courts and the direction given by this Court in Writ Petition (C) No.473 of 1988 will be deemed to have become ineffective and inoperative and the respondents cannot derive any benefit from those orders and direction.

33. Now on merits. Rules 308 and 309 of 1959 Rules, which were framed by this Court under Section 643 of the Companies Act, 1956 to facilitate employment of special or additional staff in any liquidation and payment of salaries and allowances to such staff read as under:-

> **308. Employment of additional or special staff – Where the Official Liquidator is of opinion that the employment of any special or additional staff is necessary in any liquidation, he shall apply to the Court for sanction, and the Court may sanction such staff as it thinks fit on such salaries and allowances as to the Court may seem appropriate.**
>
> **309. Apportionment of expenses of common staff – Where any staff is employed to attend to the work of more than one liquidation, or any establishment or other**

charges are incurred for more than one liquidation, the expenses incurred on such staff and the common establishment and other charges, shall be apportioned by the Official Liquidator between the several liquidations concerned in such proportions as he may think fit, subject to the directions of the Judge, if any.

The above reproduced rules were framed with a view to ensure that the proceedings of liquidation are not hampered on account of shortage of staff. It was felt that if additional manpower is required for effectively dealing with liquidation cases, the Official Liquidator may apply to the Court and employ such staff after receipt of the sanction. The additional staff is paid from the company fund. If the staff employed under Rule 308 is required to attend the work of more than one liquidation or any establishment or other charges are incurred for more than one liquidation, then the Official Liquidator is required to apportion the expenses subject to the direction, if any, of the Judge concerned.

34. It is not in dispute that the respondents were engaged/employed by the Official Liquidators pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules and from the inception of their employment, they are being paid from the fund created by disposal of the assets of the companies in liquidation. They were neither selected in accordance with the procedure prescribed under the rules framed under proviso to Article 309 of the Constitution nor they were appointed against the posts sanctioned by the Government of India. It is thus clear that the company paid staff constitute a separate and distinct class. While deciding the appeals in the earlier round of litigation, this Court must have been alive to the aforementioned facts and this appears to be the reason why the directions given by Calcutta and Kerala High Courts for absorption of all company paid staff were stayed for six months and an opportunity was given to the Central Government to frame a new scheme within that period.

35. Although neither of the parties to the appeals nor the intervenors have placed before the Court advertisements issued by the Official Liquidators of Bombay, Calcutta, Delhi and Madhya

Pradesh or any other High Court for employment of special or additional staff in accordance with the sanction accorded by the concerned Court and we have not been apprised of the specific terms and conditions, subject to which the respondents were employed/engaged by the Official Liquidators but from the tenor of the pleadings and other records, it can be safely inferred that the respondents were appointed on purely temporary basis for fixed period with a stipulation that they shall not be entitled to seek regularization or absorption in the regular cadre against the sanctioned post. Those who applied in response to the advertisements issued by the Official Liquidators must have been aware of the fact that they were being engaged/employed pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules in connection with liquidation proceedings; that their appointments will not be against the posts sanctioned by the Government; that they will have no right to claim absorption in the regular cadre and that they will be paid salaries and allowances which may be fixed by the Court. They must have accepted the appointment/engagement knowing fully well that they will have fixed tenure without any right to continue in service or to seek absorption against the sanctioned posts. It was neither the pleaded case of the respondents before the High Courts nor Shri Bhaskar P. Gupta and other learned counsel appearing on their behalf argued before this Court that their clients were lured into accepting employment as company paid staff by the Official Liquidators by promising absorption in future against the sanctioned posts or that they were coerced by some authority to accept such employment. Therefore, they cannot be heard to complain of the violation of Articles 14 and 16 of the Constitution on the ground that even after having worked for more than one decade, they have not been absorbed in the regular cadres under the Government. In our opinion, after having applied for and accepted employment/engagement as company paid staff with fixed tenure superimposed by a stipulation that they will have no right to continue in service or to be absorbed in the regular cadres, the respondents are estopped from seeking a direction for their absorption against the posts sanctioned by the Government of India and the High Courts committed a serious error in granting their prayer.

36. The argument of Shri Bhaskar P. Gupta and other learned counsel appearing for the respondents and intervenors that the 1999 Scheme is arbitrary and unreasonable and the same should be treated as having become redundant on account of abolition of posts meant for direct recruitment, which found favour with the High Courts, proceeds on the hypothesis that in the earlier round of litigation this Court, while endorsing the reasons and conclusions recorded by Calcutta and Kerala High Courts issued direction for absorption of all members of the company paid staff and the Government of India was bound to frame a scheme for that purpose. However, the very premise on which this argument is based is incorrect. Admittedly, appointment to the service comprising sanctioned posts is regulated by the rules framed under proviso to Article 309 of the Constitution of India. The mode of recruitment and methodology of selection are prescribed under the rules. The absorption of the company paid staff employed under Rule 308 of the 1959 Rules is not one of the prescribed modes of recruitment. Therefore, it is extremely doubtful whether the Government of India could, without amending the statutory rules, frame the 1978 Scheme for absorption of the company paid staff in the regular cadres. However, as this Court has not only indirectly approved the 1978 Scheme, but also directed the Government of India to frame new scheme, we do not consider it necessary to dilate further on the subject.

37. As mentioned above, while approving the reasons and conclusions recorded by the two High Courts and dismissing the appeals, this Court not only permitted the Government of India to frame a scheme modeled on the 1978 Scheme but also stayed implementation of the orders impugned in the appeal and the one passed by itself in the transferred writ petition. If the Court intended that all members of the company paid staff working on the date of judgment i.e. 27.8.1999 should be absorbed in the regular cadres against Group 'C' and 'D' posts, then a simple direction to that effect would have been sufficient and there was no occasion to stay the implementation of the orders of the High Courts for six months with liberty to the Government of India to frame a new scheme within the same period. The absence of such a direction shows that the Court was very much conscious of the fact that recruitment to the regular cadres is governed by the rules framed under

Article 309 of the Constitution and it would be highly detrimental to public interest to issue direction for wholesale absorption/regularization of the company paid staff and thereby abrogate/stultify opportunity of competition to younger generation comprising more meritorious persons who may be waiting for a chance to apply for direct recruitment. Obviously, the Court did not want to sacrifice the merit by showing undue sympathy with members of the company paid staff who joined service with full knowledge about their status, terms and conditions of their employment and the fact that they were to be paid from the company fund and not Consolidated Fund of India. In this context, we may also mention that though the Official Liquidators appear to have issued advertisements for appointing the company paid staff and made some sort of selection, more qualified and meritorious persons must have shunned from applying because they knew that the employment will be for a fixed term on fixed salary and their engagement will come to an end with the conclusion of liquidation proceedings. As a result of this, only mediocres must have responded to the advertisements and jointed as company paid staff. In this scenario, a direction for absorption of all the company paid staff has to be treated as violative of the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.

38. Since the 1999 Scheme was framed by the Government of India in furtherance of the opportunity given by this Court and no deviation is shown to have been made from the 1978 Scheme insofar as Group 'C' posts are concerned, the same cannot be dubbed as arbitrary, irrational and unreasonable, simply because all the company paid staff who were in position as on 27.8.1999 may not get absorbed in the regular cadres. Here, it is worth noticing that as per the details of 119 company paid staff furnished by the senior counsel appearing for Tapas Chakraborty and others, only 54 had completed tenure of 10 years on 27.8.1999 i.e. the date specified in the 1999 Scheme. Of them, 21 were Lower Division Clerks, 16 were Upper Division Clerks (there is no provision for appointment to the post of Upper Division Clerk by direct recruitment), 1 was Assistant, 1 was Superintendent, 1 was Assistant Commander, 1 was Commander, 2 were Technical Assistants and the rest were Record Arrangers, Peons and Security Guards. Of the remaining 65 employees, 3 were

appointed in the year 2000 and others had worked for periods ranging from 13 months to 8 years 3½ months as on 27.8.1999. This means that not even 50% of the writ petitioners had completed 10 years tenure which was considered by the Courts as benchmark for issuing direction for regularization of the services of temporary/ad hoc/daily wagers employed in Government departments. The position of the company paid staff of Delhi High Court is different. The details furnished by Ms. Jyoti Mendiratta show that 27 of the company paid staff have been absorbed under the 1999 Scheme. Of the remaining 26 company paid staff, all except 1 had worked for more than 10 years as on 27.8.1999. 9 of the company paid staff had worked for 20 years or more. However, they could not be absorbed due to abolition of posts in furtherance of the policy decision taken by the Government of India.

39. The additional documents produced by Shri Malhotra show that in the year 2001, the Government of India had taken a policy decision to reduce the strength of civilian staff in all the cadres. This was reflected in the speech made by the Finance Minister, Government of India, while presenting the budget for 2001-02. He stated that all requirements of recruitment will be scrutinized to ensure that fresh recruitment is limited to 1% of total civilian staff strength and there will be reduction in manpower by 2% per annum, achieving a reduction of 10% in 5 years. Thereafter, OM No.2/8/2001-PIC dated 16.5.2001 was issued by the Government of India. Paragraphs 2.1 and 2.2 of that OM read as under :

> **"2.1 All Ministries/Departments are accordingly requested to prepare Annual Direct Recruitment Plans covering the requirements of all cadres, whether managed by that Ministry/Department itself, or managed by the Department of Personnel and Training, etc. The task of preparing the Annual Recruitment Plan will be undertaken in each Ministry/Department by a Screening Committee headed by the Secretary of that Ministry/Department with the Financial Advisor as a Member and JS (Admn.) of the Department as Member Secretary. The Committee would also have one senior representative each of the Department of Personnel and Training and the Department of Expenditure. While the Annual Recruitment Plans for vacancies in Groups 'B', 'C' and 'D' could be cleared by this Committee itself, in the case of Group 'A' Services, the Annual Recruitment Plan would be cleared by a Committee headed by**

Cabinet Secretary with secretary of the Department concerned, Secretary (DoPT) and Secretary (Expenditure) as Members.

2.2 While preparing the Annual Recruitment Plans, the concerned Screening Committees would ensure that direct recruitment does not in any case exceed 1% of the total sanctioned strength of the Department. Since about 3% of staff retire every years, this would translate into only 1/3rd of the direct recruitment vacancies occurring in each year being filled up. Accordingly, direct recruitment would be limited to 1/3rd of the direct recruitment vacancies arising in the year subject to a further ceiling that this does not exceed 1% of the total sanctioned strength of the Department. While examining the vacancies to be filled up, the functional needs of the organization would be critically examined so that there is flexibility in filling up vacancies in various cadres depending upon their relative functional need. To amplify, in case an organization needs certain posts to be filled up for safety/security/operational considerations, a corresponding reduction in direct recruitment in other cadres of the organization may be done with a view to restricting the overall direct recruitment to one-third of vacancies meant for direct recruitment subject to the condition that the total vacancies proposed for filling up should be within the 1% ceiling. The remaining vacancies meant for direct recruitment which are not cleared by the Screening Committee will not be filled up by promotion or otherwise and these posts will stand abolished."

40. For implementation of the aforementioned decision, the Screening Committee met sometime in March, 2005 and decided to reduce the number of posts in the regular cadres of the Department of Company Affairs. The background note circulated to the members of the Screening Committee vide Office Memo No.A.12011/3/2003-Ad.II dated 14.3.2005 made a clear mention of the orders passed by the Calcutta and Delhi High Courts in favour of the company paid staff, dismissal of the appeal by the Division Bench of Calcutta High Court, pendency of similar appeals before the Division Bench of Delhi High Court and the Government's decision to process the matter for filing SLP against the orders of Calcutta High Court. The Screening Committee which met on 16.3.2005 considered and approved abolition of the direct recruitment quota posts for the years 2001-2002, 2002-2003 and 2003-2004. The decision of the Screening Committee was circulated to various offices of the Ministry of Company Affairs vide letter No.A.12011/3/2003-Admn.II dated 2.9.2005.

This exercise was in consonance with the policy decision taken by the Government of India. The respondents have neither assailed the decision of the Government to abolish the posts on the ground of malafides nor the learned counsel could show that the exercise undertaken by the Screening Committee is vitiated by arbitrariness or non-application of mind or the same is influenced by extraneous reasons. Therefore, the view expressed by the Calcutta and Delhi High Courts that the 1999 Scheme is unworkable or impractical or has become redundant, cannot be approved.

41. The creation and abolition of posts, formation and structuring/ restructuring of cadres, prescribing the source and mode of recruitment and qualifications and criteria of selection etc. are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadres or to prescribe the source or mode of recruitment and lay down the qualification etc. is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by malafides.

42. In State of Haryana vs. Navneet Verma [2008 (2) SCC 65], a Division Bench of two-Judges referred to M. Ramanatha Pillai vs. State of Kerala [1973 (2) SCC 650], Kedar Nath Bahi vs. State of Punjab [1974 (3) SCC 21], State of Haryana vs. Des Raj Sangar [1976 (2) SCC 844], Dr. N.C. Singhal vs. Union of India [1980 (3) SCC 29) and Avas Vikas Sanghathan vs. Engineers Association [2006 (4) SCC 132) and culled out the following principles :

> **"(*a*) the power to create or abolish a post rests with the Government;**
>
> **(*b*) whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity;**
>
> **(*c*) creation and abolition of posts is a matter of government policy and every**

sovereign government has this power in the interest and necessity of internal administration;

(*d*) creation, continuance and abolition of posts are all decided by the Government in the interest of administration and general public;

(*e*) the court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fides, legal or factual;

(*f*) as long as the decision to abolish the post is taken in good faith in the absence of material, interference by the court is not warranted."

43. In Secretary, State of Karnataka vs. Uma Devi (supra), the Constitution Bench adverted its attention to financial implications of creation of extra posts and held that the Courts should not pass orders which impose unwarranted burden on the State and its instrumentalities by directing creation of particular number of posts for absorption of employees appointed on ad hoc or temporary basis or as daily wagers.

44. In Divisional Manager, Aravali Golf Club and another vs. Chander Hass and another [(2008) 1 SCC 683] also, a two-Judges Bench considered the issue relating to creation of post and held :-

"15. The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organisation. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post. Therefore, the directions given by the High Court and the first appellate court to create the posts of tractor driver and regularise the services of the respondents against the said posts cannot be sustained and are hereby set aside."

45. Although in paras 20, 26, 27, 28 and 33 of the last mentioned judgment some sweeping observations have been made suggesting that the orders passed by the High Courts and this Court in some of the cases amount to an encroachment on the domain of the executive and legislature, we

do not propose to deal with the same and decide whether those observations were at all called for in the backdrop of factual matrix of that case and leave the same to be decided in an appropriate case.

46. In view of the above stated legal position, we hold hat the directions given by the High Courts for creation of supernumerary posts to facilitate absorption of the company paid staff are legally unsustainable and are liable to be set aside.

47. The next issue which needs to be address is whether the impugned orders can be sustained on the ground that by having worked continuously for 10 years or more as company paid staff as on 27.8.1999, some of the respondents acquired a right to be absorbed in the regular cadre or regularized in service and they are entitled to the benefit of the principle of equal pay for equal work and have their pay fixed in the regular pay scales prescribed for the particular posts.

48. The questions whether in exercise of the power vested in it under Article 226 of the Constitution of India, the High Court can issue a mandamus and compel the State and its instrumentalities/agencies to regularize the services of temporary/ad-hoc/daily wager/casual/contract employees and whether direction can be issued to the public employer to prescribe or give similar pay scales to employees appointed through different modes, with different condition of service and different sources of payment have become subject matter of debate and adjudication in several cases.

49. The judgments of 1980s and early 1990s – Dhirendra Chamoli vs. State of U.P. [1986 (1) SCC 637], Surinder Singh and Another vs. Engineer-in-Chief, CPWD and Others [1986 (1) SCC 639], Daily Rated Casual Labour vs. Union of India [1988 (1) SCC 122], Dharwad District P.W.D. Literate Daily Wage Employees' Association vs. State of Karnataka [1990 (2) SCC 396], Bhagwati Prasad vs. Delhi State Mineral Development Corporation (supra), State of Haryana vs. Piara Singh (supra) are representative of an era when this Court enthusiastically endeavored to expand the

meaning of equality clause enshrined in the Constitution and ordained that employees appointed on temporary/ad hoc/daily wage basis should be treated at par with regular employees in the matter of payment of salaries and allowances and that their services be regularized. In several cases, the schemes framed by the governments and public employer for regularization of temporary/ad-hoc/daily wag/casual employees irrespective of the source and mode of their appointment/ engagement were also approved. In some cases, the courts also directed the State and its instrumentalities/agencies to frame schemes for regularization of the services of such employees. In State of Haryana vs. Piara Singh (supra), this Court while reiterating that appointment to the public posts should ordinarily be made by regular recruitment through the prescribed agency and that even where ad-hoc or temporary employment is necessitated on account of the exigencies of administration, the candidate should be drawn from the employment exchange and that if no candidate is available or sponsored with the employment exchange, some method consistent with the requirements of Article 14 of the Constitution should be followed by publishing notice in appropriate manner for calling for applications and all those who apply in response thereto should be considered fairly, proceeded to observe that if an ad-hoc or temporary employee is continued for a fairly long spell, the authorities are duty bound to consider his case for regularization subject to his fulfilling the conditions of eligibility and the requirement of satisfactory service. The propositions laid down in Piara Singh's case were followed by almost all High Courts for directing the concerned State Governments and public authorities to regularize the services of ad-hoc/temporary/daily wage employees only on the ground that they have continued for a particular length of time. In some cases, the schemes framed for regularization of the services of the backdoor entrants were also approved.

50. The above noted judgments and orders encouraged the political set up and bureaucracy to violate the soul of Article 14 and 16 as also the provisions contained in the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 with impunity and the spoil system which prevailed in the United Stats of America in sixteenth and seventeenth century got firm foothold in

this country. Thousands of persons were employed/engaged throughout the length and breadth of the country by backdoor methods. Those who could pull strings in the power corridors at the higher and lower levels managed to get the cake of public employment by trampling over the rights of other eligible and more meritorious persons registered with the employment exchanges. A huge illegal employment market developed in different parts of the country and rampant corruption afflicted the whole system. This was recognized by the Court in Delhi Development Horticulture Employees Union vs. Delhi Administration, Delhi and others [1992 (4) SCC 99] in the following words:

> **"23. Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is an Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularization knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularized. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured prospects. That is why most of the cases which come to the courts are of employment in government departments, public undertakings or agencies. Ultimately it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularization has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days they have to be absorbed as regular employees**

although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts."

51. The menace of illegal and backdoor appointments compelled the Courts to have rethinking and in large number of subsequent judgments this Court declined to entertain the claims of ad-hoc and temporary employees for regularization of services and even reversed the orders passed by the High Courts and Administrative Tribunals – Director, Institute of Management Development, U.P. vs. Pushpa Srivastava [1992 (4) SCC 33], Dr. M.A. Haque and Others vs. Union of India and Others [1993 (2) SCC 213], J & K Public Service Commission vs. Dr. Narinder Mohan [1994 (2) SCC 630], Dr. Arundhati Ajit Pargaonkar vs. State of Maharashtra [1994 Suppl. (3) SCC 380], Union of India vs. Kishan Gopal Vyas [1996 (7) SCC 134], Union of India vs. Moti Lal [1996 (7) SCC 481], Hindustan Shipyard Ltd. vs. Dr. P. Sambasiva Rao [1996 (7) SCC 499], State of H.P. vs. Suresh Kumar Verma [1996 (7) SCC 562], Dr. Surinder Singh Jamwal vs. State of J&K [1996 (9) SCC 619], E. Ramakrishnan vs. State of Kerala [1996 (10) SCC 565], Union of India and Others vs. Bishambar Dutt [1996 (11) SCC 341], Union of India vs. Mahender Singh [1997 (1) SCC 247], P. Ravindran and Others vs. Union Territory of Pondicherry and Others [1997 (1) SCC 350], Ashwani Kumar and Others vs. State of Bihar and Others [1997 (2) SCC 1], Santosh Kumar Verma and Others vs. State of Bihar and Others [1997 (2) SCC 713], State of U.P. and Others vs. Ajay [1997 (4) SCC 88], Patna University vs. Dr. Amita Tiwari [1997 (7) SCC 198] and Madhyamik Shiksha Parishad vs. Anil Kumar Mishra [2005 (5) SCC 122].

52. The shift in the Court's approach became more prominent in A. Umarani vs. Registrar, Cooperative Societies [2004 (7) SCC 112], decided by a three-Judges Bench, wherein it was held that the State cannot invoke Article 162 of the Constitution for regularization of the appointments made in violation of the mandatory statutory provisions. In Secretary, State of Karnataka vs. Uma Devi (supra), the Constitution Bench again considered the question whether the State can frame scheme for regularization of the services of ad-hoc/temporary/daily wager appointed in violation of

the doctrine of equality or the one appointed with a clear stipulation that such appointment will not confer any right on the appointee to seek regularization or absorption in the regular cadre and whether the Court can issue mandamus for regularization or absorption of such appointee and answered the same in negative. The Court adverted to the theme of constitutionalism in a system established in rule of law, expanded meaning given to the doctrine of equality in general and equality in the matter of employment in particular, multi-facet problems including the one relating to unwarranted fiscal burden on the public exchequer created on account of the directions given by the High Courts and this Court for regularization of the services of persons appointed on purely temporary or ad hoc basis or engaged on daily wages or as casual labourers, referred to about three dozen judgments including R.N. Nanjundappa vs. T. Thimmiah [1972 (1) SCC 409], Daily Rate Casual Labour vs. Union of India [1988 (1) SCC 122], Bhagwati Prasad vs. Delhi State Mineral Development Corporation [1990 (1) SCC 361], Dharwad District P.W.D. Literate Daily Wage Employees Association and others vs. State of Karnataka and others [1990 (2) SCC 396], State of Haryana vs. Piara Singh [1992 (4) SCC 118] and State of Punjab vs. Surinder Kumar [1992 (1) SCC 489] and held:

> **"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.**
>
> **48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has**

treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

49. It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear constitutional scheme, it

cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution."

53. In paragraph 25, the Constitution Bench specifically referred to the conclusions recorded in paragraphs 45 to 50 of the judgment in State of Haryana vs. Piara Singh (supra) and observed:

"26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent—the distinction between regularisation and making permanent, was not emphasized here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of *Piara Singh* is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognised in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent."

54. In paragraph 54, the Constitution Bench clarified that the earlier decisions which run counter to the principles settled by it will stand denuded of their status as precedents.

55. In Jawaharlal Nehru Technological University vs. T. Sumalatha (Smt.) and others [2003 (10) SCC 405], a two-Judges Bench considered an issue somewhat similar to the one being considered in these appeals. The facts of that case show that the respondents, who were graduates, were appointed as investigators on consolidated pay between 1985 and 1991 in the Nodal Centre set up in the University under the scheme known as the National Technical Manpower Information System sponsored by the then Ministry of Education and Culture, Government of India. The Nodal Centre was financed entirely by the Ministry of Education and Culture, Government of India. Initially, the

term of the Nodal Centre was 1 year and 9 months, but it was continued thereafter. The respondents were appointed for 89 days but their services were extended from time to time on similar terms. Their consolidated pay was also revised twice. They filed writ petition claiming regularization of service in the University. Some directions were issued by the High Court for consideration of the cases of the respondents for absorption. The University declined their prayer. In the second round of litigation, the High Court directed the University to absorb the respondents by applying GO No.212 dated 22.4.1994 issued by the State Government for regularization of the services of temporary/ad hoc/daily wage employees of the Government departments. While reversing the order of the High Court, this Court referred to GO No.212 and held :

> **"7. Can it be said that by virtue of this provision, the State Government assumes the responsibility of absorbing the staff employed in the organizations or establishments with which it has no administrative or financial nexus, merely because an instrumentality of the State is involved in managing it, that too, in a limited sense? The answer could only be in the negative. When the State Government or its instrumentalities have not created the posts on their own and do not bear any part of the financial burden, the question of getting the clearance from the Finance and Planning Department of the Government for the purpose of regularization or absorption does not arise. Viewed from any angle, GO No. 212 would be wholly out of place for those working in the nodal centre which is created and nurtured by the Central Government. It is not within the domain of the State Government or even the University to regulate the staff pattern or the monetary benefits of the staff working therein, without the approval of the Central Government. Therefore, no directions should have been issued to the State Government or to the University to regularize the services of Respondents 1 to 5, if necessary, by creating additional posts."**

56. After rejecting the plea of the respondents for regularization of service, this Court adverted to the issue of increase in their salary and held :

> **"9. Though the plea of regularization in respect of any of the fifth respondents cannot be countenanced, the respondent employees should have a fair deal consistent with the guarantee enshrined in Articles 21 and 14 of the Constitution. They should not be made to work on a meager salary for years together. It would be unfair and unreasonable to extract work from the employees who have been associated with the**

nodal centre almost from its inception by paying them remuneration which, by any objective standards, is grossly low. The Central Government itself has rightly realized the need to revise the consolidated salary and accordingly enhanced the grant on that account on two occasions. That revision was made more than six years back. It is high time that another revision is made. It is therefore imperative that the Ministry concerned of the Union of India should take expeditious steps to increase the salary of the investigators viz. Respondents 1 to 4 working in the nodal centre in Hyderabad. In the absence of details regarding the nature of work done by the said respondents and the equivalence of the job done by them to the other posts prevailing in the University or the Central Government institutions, we are not in a position to give any direction based on the principle of "equal pay for equal work". However, we consider it just and expedient to direct Respondent 7 or 8, as the case may be, to take an expeditious decision to increase the consolidated salary that is being paid to Respondents 1 to 4 to a reasonable level commensurate with the work done by them and keeping in view the minimum salary that is being paid to the personnel doing a more or less similar job. As far as the fifth respondent is concerned, though we refrain from giving similar directions in view of the fact that the post is not specifically sanctioned under the Scheme, we would like to observe that the Central Government may consider increasing the quantum of office expenditure suitably so that the University will be able to disburse higher salary to the fifth respondent."

[Emphasis supplied]

57. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in Secretary, State of Karnataka vs. Uma Devi (supra) is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judges Benches for declining to entertain the claim of regularization of service made by ad hoc/temporary/ daily wage/casual employees or for reversing the orders of the High Court granting relief to such employees - Indian Drugs and Pharamaceuticals Ltd. vs. Workmen [2007 (1) SCC 408], Gangadhar Pillai vs. Siemens Ltd. [2007 (1) SCC 533], Kendriya Vidyalaya Sangathan vs. L.V. Subramanyeswara [2007 (5) SCC 326], Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh [2007 (6) SCC 207]. However, in U.P. SEB vs. Pooran Chand Pandey [2007

(11) SCC 92] on which reliance has been placed by Shri Gupta, a two-Judges Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven-Judges Bench in Maneka Gandhi vs. Union of India [1978 (1) SCC 248].

58. The facts of U.P. SEB vs. Pooran Chand Pandey (supra) were that the respondents (34 in number) were employed as daily wage employees by the Cooperative Electricity Supply Society in 1985. The Society was taken over by Uttar Pradesh Electricity Supply Board in 1997 along with daily wage employees. Earlier to this, the Electricity Board had taken a policy decision on 28.11.1996 to regularize the services of its employees working on daily wages from before 4.5.1990, subject to their passing the examination. The respondents moved the High Court claiming benefit of the policy decision dated 28.11.1996. The learned Single Judge of the High Court held that once the employees of the society became employees of the Electricity Board, there was no valid ground to discriminate them in the matter of regularization of service. The Division Bench approved the order of the Single Bench. A two-Judges Bench of this Court dismissed the appeal of the Electricity Board. In para 11 of its judgment, the two-Judges Bench distinguished Secretary, State of Karnataka vs. Uma Devi (supra) by observing that the ratio of that judgment cannot be applied to a case where regularization has been sought for in pursuance of Article 14 of the Constitution. The two-Judges Bench then referred to State of Orissa vs. Sudhanshu Sekhar Misra [AIR 1968 SC 647], State of Gujarat vs. Ambica Quarry Works [1987 (1) SCC 213], Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd. [2003 (2) SCC 111], Bharat Petroleum Ltd. vs. N.R. Viramani [2004 (8) SCC 579] and observed:

> **"We are constrained to refer to the above decisions and principles contained therein because we find that often *Umadevi (3) case* is being applied by courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in *Bhavnagar University* and *Bharat Petroleum Corpn. Ltd.* a little difference in facts or even one additional fact may make a lot of difference in the**

precedential value of a decision. Hence, in our opinion, *Umadevi (3) case* cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make *Umadevi (3) case* inapplicable to the facts of that case."

"We may further point out that a seven-Judge Bench decision of this Court in *Maneka Gandhi* vs. *Union of India* has held that reasonableness and non-arbitrariness is part of Article 14 of the Constitution. It follows that the Government must act in a reasonable and non-arbitrary manner otherwise Article 14 of the Constitution would be violated. *Maneka Gandhi case* is a decision of a seven-Judge Bench, whereas *Umadevi (3) case* is a decision of a five-Judge Bench of this Court. It is well settled that a smaller Bench decision cannot override a larger Bench decision of the Court. No doubt, *Maneka Gandhi case* does not specifically deal with the question of regularisation of government employees, but the principle of reasonableness in executive action and the law which it has laid down, in our opinion, is of general application."

[Emphasis supplied]

59. We have carefully analyzed the judgment of the two-Judges Bench and are of the considered view that the above reproduced observations were not called for. The only issue which fell for consideration by two-Judges Bench was whether the daily wage employees of the society, the establishment of which was taken over by the Electricity Board along with the employees, were entitled to be regularized in terms of the policy decision taken by the Board and whether the High Court committed an error by invoking Article 14 of the Constitution for granting relief to the writ petitioners. The question whether the Electricity Board could frame such a policy was neither raised nor considered by the High Court and this Court. The High Court simply adverted to the facts of the case and held that once the daily wage employees of the society became employees of the Electricity Board, they could not be discriminated in the matter of implementation of the policy of regularization. Therefore, the two-Judges Bench had no occasion to make any adverse comment on the binding character of the Constitution Bench judgment in Secretary, State of Karnataka vs. Uma Devi (supra).

60. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is *sine qua non* for sustaining the system. In Mahadeolal Kanodia vs. Administrator General of W.B. [1960 (3) SCR 578], this Court observed:

> **"If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court."**
>
> **[Emphasis added]**

61. In Lala Shri Bhagwan vs. Ram Chandra [AIR 1965 SC 1767], Gajendragadkar, C.J. observed :

> **"It is hardly necessary to emphasize that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry**

sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger bench to examine the question. That is the proper and traditional way to deal with such mattes and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself."

62. In Union of India vs. Raghubir Singh [1989 (2) SCC 754], R.S. Pathak, C.J. while recognizing need for constant development of law and jurisprudence emphasized the necessity of abiding by the earlier precedents in following words :

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of law, besides providing assurance to the individual as to the consequence of transaction forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

63. In Sundarjas Kanyalal Bhatija and others vs. Collector, Thane [1989 (3) SCC 396], a two-Judges Bench observed as under :

"In our system of judicial review which is a part of our constitutional scheme, we hold it to be the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Sub-ordinate courts would find themselves in an embarrassing position to choose between the conflicting opinion. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute."

64. In Dr. Vijay Laxmi Sadho vs. Jagdish [2001 (2) SCC 247], this Court considered whether the

learned Single Judge of Madhya Pradesh High Court could ignore the judgment of a coordinate Bench on the same issue and held :

> **"33. As the learned Single Judge was not in agreement with the view expressed in *Devilal case* it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well-settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of "different arguments" or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs."**

65. In Pradip Chandra Parija and others vs. Pramod Chandra Patnaik and others [2002 (1) SCC 1], the Constitution Bench noted that the two learned Judges denuded the correctness of an earlier Constitution Bench judgment in Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha [2001 (4) SCC 448] and reiterated the same despite the fact that the second Constitution Bench refused to reconsider the earlier verdict and observed :

> **"3. We may point out, at the outset, that in *Bharat Petroleum Corpn. Ltd.* v. *Mumbai Shramik Sangha*(2001 (4) SCC 448) a Bench of five Judges considered a somewhat similar question. Two learned Judges in that case doubted the correctness of the scope attributed to a certain provision in an earlier Constitution Bench judgment and, accordingly, referred the matter before them directly to a Constitution Bench. The Constitution Bench that then heard the matter took the view that the decision of a Constitution Bench binds a Bench of two learned Judges and that judicial discipline obliges them to follow it, regardless of their doubts about its correctness. At the most, the Bench of two learned Judges could have ordered that the matter be heard by a Bench of three learned Judges.**
>
> **5. The learned Attorney-General submitted that a Constitution Bench judgment of this Court was binding on smaller Benches and a judgment of three learned Judges was binding on Benches of two learned Judges — a proposition that learned counsel for the appellants did not dispute. The learned Attorney-General drew our attention to the judgment of a Constitution Bench in *Sub-Committee of Judicial Accountability***

v. *Union of India* (1992 (4) SCC 97) where it has been said that "no coordinate Bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another coordinate Bench" (SCC p. 98, para 5). The learned Attorney-General submitted that the appropriate course for the Bench of two learned Judges to have adopted, if it felt so strongly that the judgment in *Nityananda Kar* (1991 Supp. (2) SCC 506) was incorrect, was to make a reference to a Bench of three learned Judges. That Bench of three learned Judges, if it also took the same view of *Nityananda Kar*, could have referred the case to a Bench of five learned Judges.

6. In the present case the Bench of two learned Judges has, in terms, doubted the correctness of a decision of a Bench of three learned Judges. They have, therefore, referred the matter directly to a Bench of five Judges. In our view, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified.

[Emphasis supplied]

66. In State of Bihar vs. Kalika Kuer and others [2003 (5) SCC 448], the Court elaborately considered the principle of per incuriam and held that the earlier judgment by a larger Bench cannot be ignored by invoking the principle of per incuriam and the only course open to the coordinate or smaller Bench is to make a request for reference to the larger Bench. In State of Punjab vs. Devans Modern Breweries Ltd. [2004 (11) SCC 26], the Court reiterated that if a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter has to be referred to a larger Bench. In Central Board of Dwaoodi Bohra Community vs. State of Maharashtra [2005 (2) SCC 673], the Constitution Bench interpreted Article 141, referred to various earlier judgments including Bharat Petroleum Corpn. Ltd. vs. Mumbai Shramik Sangha

(supra), Pradip Chandra Parija and others vs. Pramod Chandra Patnaik and others (supra) and held that "the law laid down in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength and it would be inappropriate if a Division Bench of two Judges starts overruling the decisions of Division Benches of three Judges. The Court further held that such a practice would be detrimental not only to the rule of discipline and the doctrine of binding precedents but it will also lead to inconsistency in decisions on the point of law; consistency and certainty in the development of law and its contemporary status – both would be immediate casualty"

67. In State of U.P. and others vs. Jeet S. Bisht and another [2007 (6) SCC 586], when one of the Hon'ble Judges (Katju, J.) constituting the Bench criticized the orders passed by various Benches in the same case, the other Hon'ble Judge (Sinha, J.) expressed himself in the following words :

> **"100. For the views been taken herein, I regret to express my inability to agree with Brother Katju, J. in regard to the criticisms of various orders passed in this case itself by other Benches. I am of the opinion that it is wholly inappropriate to do so. One Bench of this Court, it is trite, does not sit in appeal over the other Bench particularly when it is a coordinate Bench. It is equally inappropriate for us to express total disagreement in the same matter as also in similar matters with the directions and observations made by the larger Bench. Doctrine of judicial restraint, in my opinion, applies even in this realm. We should not forget other doctrines which are equally developed viz. Judicial Discipline and respect for the Brother Judges."**

68. In U.P. Gram Panchayat Adhikari Sangh vs. Daya Ram Saroj [2007 (2) SCC 138], the Court noted that by ignoring the earlier decision of a coordinate Bench, a Division Bench of the High Court directed that part-time tube-well operators should be treated as permanent employees with same service conditions as far as possible and observed :

> **"26. Judicial discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and is binding, subject of course, to the right to take a different view or to doubt the**

correctness of the decision and the permissible course then open is to refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity."

69. It is interesting to note that in Coir Board, Ernakulam vs. Indira Devi P.S. [1998 (3) SCC 259], a two-Judges Bench doubted the correctness of the seven-Judges Bench judgment in Bangalore Water Supply & Sewerage Board vs. A. Rajappa [1978 (2) SCC 213] and directed the matter to be placed before Hon'ble the Chief Justice of India for constituting a larger Bench. However, a three-Judges Bench headed by Dr. A.S. Anand, C.J., refused to entertain the reference and observed that the two-Judges Bench is bound by the judgment of the larger Bench – Coir Board, Ernakulam, Kerala State vs. Indira Devai P.S. [2000 (1) SCC 224].

70. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the

members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

71. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judges Bench in UP State Electricity Board vs. Pooran Chandra Pandey (supra) should be read as obiter and the same should neither be treated as binding by the High Courts, Tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.

<u>Equal Pay for Equal Work</u>

72. The respondents' claim for fixation of pay in the regular scale and grant of other monetary benefits at par with those appointed against the sanctioned posts has been accepted by the High Courts on the premise that their duties and functions are similar to those performed by regular employees. In the opinion of the High Courts, similarity in the nature of work of the company paid staff on the one hand and regular employees on the other hand, is by itself sufficient for invoking the principle of equal pay for equal work, In our view, the approach adopted by the High Courts is clearly erroneous and directions given for bringing about parity between the company paid staff and regular employees in the matter of pay, allowances etc. are liable to be upset.

73. The principle of equal pay for equal work for men and women embodied in Article 39(d) was first considered in Kishori Mohanlal Bakshi vs. Union of India [AIR 1962 SC 1139] and it was held that the said principle is not capable of being enforced in a Court of law. After 36 years, the issue was again considered in Randhir Singh Vs. Union of India (supra), and it was unequivocally ruled

that the principle of equal pay for equal work is not an abstract doctrine and can be enforced by reading it into the doctrine of equality enshrined in Articles 14 and 16 of the Constitution of India. The ratio of Randhir Singh Vs. Union of India (supra) was reiterated and applied in several cases - Dhirendra Chamoli vs. State of U.P. (supra), Surinder Singh and Another vs. Engineer-in-Chief, CPWD and Others (supra), Daily Rated Casual Labour vs. Union of India (supra), Dharwad District P.W.D. Literate Daily Wage Employees' Association vs. State of Karnataka (supra) and Jaipal vs. State of Haryana [1988 (3) SCC 354] and it was held that even a daily wage employee who is performing duties similar to regular employees is entitled to the same pay. However, in Federation of All India Customs and Central Excise Stenographers (Recognized) Union vs. Union of India [1988 (3) SCC 91], Mewa Ram Kanojia vs. A.I.I.M.S. [1989 (2) SCC 235], V. Markandeya vs. State of A.P. [1989 (3) SCC 191], Harbans Lal and others vs. State of Himachal Pradesh and others [1989 (4) SCC 459], State of U.P. and others vs. J.P. Chaurasia and others [1989 (1) SCC 121], Griha Kalyan Workers' Union vs. Union of India [1991 (1) SCC 619], Ghaziabad Development Authority vs. Vikram Chaudhary [1995 (5) SCC 210], State of Haryana and others vs. Jasmer Singh and others [1996 (11) SCC 77], State of Haryana vs. Surinder Kumar [1997 (3) SCC 633], Union of India vs. K.V. Baby [1998 (9) SCC 252], State of Orissa vs. Balram Sahu [2003 (1) SCC 250], Utkal University vs. Jyotirmayee Nayak [2003 (4) SCC 760], State of Haryana and another vs. Tilak Raj and others [2003 (6) SCC 123], Union of India vs. Tarit Ranjan Das [2003 (11) SCC 658], Apangshu Mohan Lodh vs. State of Tripura [2004 (1) SCC 119], State of Haryana vs. Charanjit Singh [2006 (9) SCC 321], Hindustan Aeronautics Ltd. vs. Dan Bahadur Singh (supra), Kendriya Vidyalaya Sangathan vs. L.V. Subramanyeswara (supra) and Canteen Mazdoor Sabha vs. Metallurgical & Engineering Consultants (India) Ltd. [2007 (7) SCC 710], the Court consciously and repeatedly deviated from the ruling of Randhir Singh Vs. Union of India (supra) and held that similarity in the designation or quantum of work are not determinative of equality in the matter of pay scales and that before entertaining and accepting the claim based on the principle of equal pay for equal work, the Court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the nature of work, the value judgment, responsibilities, reliability, experience,

confidentiality, functional need etc. In State of Haryana and others vs. Jasmer Singh and others (supra), the two-Judges Bench laid down the following principle :

> **"8. It is, therefore, clear that the quality of work performed by different sets of persons holding different jobs will have to be evaluated. There may be differences in educational or technical qualifications which may have a bearing on the skills which the holders bring to their job although the designation of the job may be the same. There may also be other considerations which have relevance to efficiency in service which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performance can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. This Court has repeatedly observed that evaluation of such jobs for the purposes of pay scale must be left to expert bodies and, unless there are any mala fides, its evaluation should be accepted."**

74. In Harbans Lal and others vs. State of Himachal Pradesh and others (supra), the Court held that the claim of carpenters employed by an incorporated company for party in wages payable to their counterparts in Government service is unsustainable. In Jawaharlal Nehru Technological University vs. T. Sumalatha (Smt.) and others (supra), it was held that the respondents who were employed under a scheme known as National Technical Manpower Information System, which was sponsored by the then Ministry of Education and Culture, cannot claim parity with the regular Government employees in the matter of pay scale.

75. In Canteen Mazdoor Sabha vs. Metallurgical & Engineering Consultants (India) Ltd. (supra), another two-Judges Bench held that simply because some employees of a contractor of the alleged head employer are performing the task or duties similar to the employees of the head employer, it will not entitle such employees to claim parity.

76. As mentioned earlier, the respondents were employed/engaged by the Official Liquidators pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules and they are paid

salaries and allowances from the company fund. They were neither appointed against sanctioned posts nor they were paid out from the Consolidated Fund of India. Therefore, the mere fact that they were doing work similar to the regular employees of the office of the Official Liquidators cannot be treated as sufficient for applying the principle of equal pay for equal work. Any such direction will compel the Government to sanction additional posts in the offices of the Official Liquidators so as to facilitate payment of salaries and allowances to the company paid staff in the regular pay scale from the Consolidate Fund of India and in view of our finding that the policy decision taken by the Government of India to reduce the number of posts meant for direct recruitment does not suffer from any legal or constitutional infirmity, it is not possible to entertain the plea of the respondents for payment of salaries and allowances in the regular pay scales and other monetary benefits at par with regular employees by applying the principle of equal pay for equal work.

Legitimate Expectation

77. We shall now advert to the question whether the respondents can invoke the doctrine of legitimate expectation for supporting the impugned orders. This part of the respondent's claim is founded on their assertion that notwithstanding the contrary stipulation contained in the orders of appointment, they had expected that in view of the 1978 Scheme the Government will absorb them in the regular cadres on some future date and give benefit of the principle of equal pay for equal work. The argument of Shri Bhaskar P. Gupta and Ms. Jyoti Mendiratta is that the respondents had joined as company paid staff with the hope that they will be absorbed in the Government service, but their hopes have been totally belied because instead of creating adequate number of posts for absorption of company paid staff in accordance with the 1999 Scheme, the Government has arbitrarily abolished large number of posts in direct recruitment quota and on that account, even those who have been adjudged suitable will never get absorbed in the regular cadres. In our opinion, there is no merit in this argument. The pleadings of the parties and records produced before the High Courts and this Court do not show that any competent authority of the Government

of India had ever given any assurance much less made a promise to the respondents that they will get absorbed against the sanctioned posts or that there will be no abolition of posts meant to be filled by direct recruitment. As a matter of fact, the respondents joined as company paid staff knowing fully well that they were being employed as additional staff in connection with the liquidation proceedings and on the basis of sanction accorded by the concerned Court and further that they will have no right to seek absorption. They also knew that their employment will come to an end on the expiry of the tenure specified in the letter/order of appointment or on cessation of the liquidation proceedings. In this scenario, the doctrine of legitimate expectation cannot be invoked for sustaining the directions given by the High Courts for absorption of all company paid staff with consequential benefits or for nullifying the policy decision taken by the Government to gradually reduce the direct recruitment quota.

78. The concept of "due process of law" has played a major role in the development of administrative law. It ensures fairness in public administration. The administrative authorities who are entrusted with the task of deciding lis between the parties or adjudicating upon the rights of the individuals are duty bound to comply with the rules of natural justice, which are multifaceted. The absence of bias in the decision making process and compliance of audi alteram partem are two of these facets. The doctrine of legitimate expectation is a nacent addition to the rules of natural justice. It goes beyond statutory rights by serving as another device for rendering justice. At the root of the principle of legitimate expectation is the constitutional principle of rule of law, which requires regularity, predictability and certainty in government's dealings with the public – J. Raz, The Authority of Law [(1979) Ch. 11]. The 'legal certainty' is also a basic principle of European Community. European law is based upon the concept of "vertrauensschutz" (the honouring of a trust or confidence). It is for these reasons that the existence of a legitimate expectation may even in the absence of a right of private law, justify its recognition in public law.

79. In Halsbury's laws of England (Fourth Edition), the doctrine of legitimate expectation has

been described in the following words :

> **"A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice."**

80. A formal statement on the doctrine of legitimate expectation can be found in the judgment of House of Lords in Council of Civil Services Union vs. Minister of the Civil Service [1985 AC 374 (HL]. In that case the Government tried to forbid trade unionism among civil service. For this, Civil Service Order-in-1982 Council was issued. The Court of appeal declared that the Minister had acted unlawfully in abridging the fundamental right of a citizen to become a member of the trade union. The House of Lords approved the judgment of the Court of appeal and held that such a right could not be taken away without consulting the concerned civil servant.

81. In India, the Courts have gradually recognized that while administering the affairs of the State, the Government and its departments are expected to honour the policy statements and treat the citizens without any discrimination. The theory of legitimate expectation first found its mention in Navjyoti Coop. Group Housing Society vs. Union of India [1992 (4) SCC 477]. In that case the right of a housing society for right to priority in the matter of registration was recognized in the following words :

> **"... In the aforesaid facts, the Group Housing Societies were entitled to 'legitimate expectation' of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the**

discussions on 'legitimate expectation' at page 151 of Volume 1(1) of Halsbury's Laws of England — Fourth Edition (re-issue). We may also refer to a decision of the House of Lords in Council of Civil Service Unions v. Minister for the Civil Service. It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in Registration by introducing a new guideline."

(emphasis supplied)

82. In Food Corporation of India vs. Kamdhenu Cattle Feed Industries [1993 (1) SCC 71], this Court considered whether rejection of the tender of the respondent was vitiated by arbitrariness. The claim of the respondents was negated in the following words :

"In the contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an

abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. The rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise of by judicial review.

The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this context."

[Emphasis supplied]

83. In Union of India and others vs. Hindustan Development Corporation and others [1993 (3) SCC 499] this Court considered the doctrine of legitimate expectation and held :

"For legal purposes, the expectation cannot be the same as anticipation. It is different from a wish, a desire or a hope nor can it amount to a claim or demand on the ground of a right. However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope even leading to a moral obligation cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Again it is distinguishable from a genuine expectation. Such expectation should be justifiably legitimate and protectable. Every such

legitimate expectation does not by itself fructify into a right and therefore it does not amount to a right in the conventional sense."` [Emphasis supplied]

84. In Punjab Communications Ltd. vs. Union of India [1999 (4) SCC 727], the Court observed as under :

> **"The principle of 'legitimate expectation' is still at a stage of evolution. The principle is at the root of the rule of law and requires regularity, predictability and certainty in the Government's dealings with the public. The procedural part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. …**
>
> **However, the more important aspect is whether the decision-maker can sustain the change in policy by resort to Wednesbury principles of rationality or whether the court can go into the question whether the decision-maker has properly balanced the legitimate expectation as against the need for a change. ... In sum, this means that the judgment whether public interest overrides the substantive legitimate expectation of individuals will be for the decision-maker who has made the change in the policy. The choice of the policy is for the decision-maker and not for the court. The legitimate substantive expectation merely permits the court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made."**
>
> **(emphasis in original)**

85. In J.P. Bansal Vs. State of Rajasthan [2003 (5) SCC 134], this Court refused to invoke the doctrine of legitimate expectation in favour of the appellant who claimed compensation of pre-mature termination of the contractual appointment as Judicial Member of the Rajasthan Taxation Appellate Tribunal.

86. In Dr. Chanchal Goyal (Mrs.) vs. State of Rajasthan [2003 (3) SCC 485], the appellants claim for absorption in the regular cadre/regularization of service was rejected by the High Court. While approving the orders of the Single and Division Benches of the High Court, this Court

observed :

> **"23. On the facts of the case delineated above, the principle of legitimate expectation has no application. It has not been shown as to how any act was done by the authorities which created an impression that the conditions attached in the original appointment order were waived. Mere continuance does not imply such waiver. No legitimate expectation can be founded on such unfounded impressions. It was not even indicated as to who, if any, and with what authority created such impression. No waiver which would be against requisite compliances can be countenanced. Whether an expectation exists is, self-evidently, a question of fact. Clear statutory words override any expectation, however founded."**

87. In Secretary, State of Karnataka vs. Uma Devi (supra), the Constitution Bench referred to the claim of the employees based on the doctrine of legitimate expectation and observed as under :

> **"The doctrine can be invoked if the decisions of the administrative authority affect the person by depriving him of some benefit or advantage which either (*i*) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (*ii*) he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn."**

88. In Kuldeep Singh vs. Govt. of NCT of Delhi [2006 (5) SCC 702], the Court refused to invoke the doctrine of legitimate expectation to nullify the revised policy decision taken by the Government not to grant fresh liquor licenses.

89. In Ram Pravesh Singh vs. State of Bihar [2006 (8) SCC 381], a two-Judges Bench considered the question whether the employees of Futwah Phulwarisharif Gramya Vidyut Sahakari Samiti Ltd., which was a cooperative society, could claim absorption in the services of Bihar State Electricity Board by invoking the doctrine of legitimate expectation. The facts of that case show

that the society was brought into existence by the State Government, the Electricity Board and the Rural Electrification Corporation for effective implementation of Rural Electrification Scheme meant for better distribution of electricity to rural areas, but the license of the society was revoked in the year 1995 and the Board refused to absorb the employees of the society. The learned Single Judge and Division Bench of the High Court declined to interfere with the decision of the Board. This Court dismissed the appeal of the employees and observed :

> **"What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant: (*a*) to an opportunity to show cause before the expectation is dashed; or (*b*) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation". The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognised legal relationship with the authority."**

After noticing the judicial precedents on the subject, the Court held that employees of the erstwhile society cannot invoke the theory of legitimate expectation for compelling the Board to absorb them despite its precarious financial condition.

90. By applying the ratio of the aforementioned judgment to the facts of this case, we reiterate that the respondents cannot invoke the doctrine of legitimate expectation. At the cost of repetition, it needs to be emphasized that the respondents were employed by the Official Liquidators as additional staff pursuant to the sanction accorded by the concerned Courts. The conditions of their appointment clearly envisaged cessation of employment at the end of fixed tenure or on completion of liquidation proceedings. Of course, as it later turned out, the respondents were made to work in relation to different liquidation proceedings and for that purpose, the term of their employment/engagement was extended from time to time and they continued in service for many years in the same capacity. However, no material has been placed before this Court to show that any promise was made or any assurance was held out to the respondents by any competent authori9ty of the Government of India for their absorption in the regular cadres. There is nothing in the language of Rule 308 of the 1959 Rules from which it can be inferred that those employed as additional staff in connection with the liquidation proceedings will, in future, be absorbed in the regular cadres. The 1978 as also the 1999 Schemes are merely illustrative of compassionate approach adopted by the Government of India for facilitating absorption of the company paid staff against the sanctioned posts to the extent of 50% vacancies in the direct recruitment quota. These schemes cannot be read as a charter for legitimating the claim of company paid staff to be absorbed in the Government service de hors availability of vacancies, more so when the Government has taken a rational policy decision to reduce direct recruitment to various services in a phased manner. In our opinion, any direction by the Court for absorption of all company paid staff would be detrimental to public interest in more than one ways. Firstly, it will compel the Government to abandon the policy decision of reducing the direct recruitment to various services. Secondly, this will be virtual abrogation of the statutory rules which envisages appointment to different cadres by

direct recruitment.

91. Before parting, we consider it necessary to take cognizance of the fact that in compliance of order passed by Calcutta High Court in Writ Petition No.211 of 2001, the Government of India created 51 posts for absorption of staff employed by the Court Liquidator. However, that cannot be made basis for granting relief to the respondents because creation of those posts was clouded by the threat of contempt, for which proceedings had been initiated by the aggrieved employees.

92. On the basis of above discussion, we hold that -

(i) the respondents are not entitled to absorption against the sanctioned posts in Group C of the Department of Company Affairs, Government of India, as of right.

(ii) The 1999 Scheme does not suffer from any legal or constitutional infirmity insofar as it provides for absorption of the company paid staff only to the extent of 50% vacancies in direct recruitment quota of Group C posts.

(iii) The decision taken by the Government of India to reduce the number of posts in direct recruitment quota and consequential abolition of posts in the Department of Company Affairs is not vitiated by arbitrariness or violation of the doctrine of equality or malafides.

(iv) The doctrine of legitimate expectation cannot be invoked for sustaining the directions given by the High Courts of Calcutta and Delhi for creation of supernumerary posts to facilitate absorption of all company paid staff in the regular cadres.

(v) The respondents are not entitled to have their pay fixed in the regular scales and other monetary benefits at par with regular employees working under the Official Liquidators.

93. Notwithstanding our conclusion that the directions given by the Calcutta and Delhi High Courts for absorption of company paid staff against Group C posts and grant of monetary benefits to them at par with regular employees of the Department of Company Affairs are legally

unsustainable, we are inclined to accept the contention of the respondents that failure of the Government of India to frame scheme for absorption of Group D posts has resulted in invidious discrimination qua one section of the company paid staff. The appellants have not placed any material before this Court to show that the finding recorded by the learned Single Judge of Delhi High Curt that a number of persons were employed by the Official Liquidator in 1985 and thereafter who could be considered for absorption against Group D posts. This means that at the time of framing of the 1978 Scheme the existing company paid staff did not include the employees who could be absorbed on Group D posts and this appears to be the reason why the said scheme was confined to absorption of company paid staff against Group C posts. Since the employees who could be eligible for absorption on Group D posts were appointed in 1985 and thereafter, the Government of India should have, while framing the 1999 Scheme, taken cognizance of their presence and made appropriate provision for their absorption. Its failure to do so has certainly resulted in unintended discrimination qua one section of the company paid staff. It is, therefore, appropriate to direct that the Government of India should frame a scheme for absorption of eligible and suitable employees against Group D posts. The scheme should be modeled on the 1999 Scheme. The needful be done within six moths. Thereafter, eligible and suitable members of the company paid staff should be absorbed against Group D posts.

94. We also feel that the salaries and allowances payable to the company paid staff should be suitably increased in the wake of huge escalation of living cost. In Jawaharlal Nehru Technological University vs. T. Sumalatha (Smt.) and others (supra), a two-Judges Bench, after taking note of the fact that emoluments payable to the Investigators appointed in the Nodal Centre at Hyderabad had not been revised for six years directed the Union of India to take expeditious steps in that direction. Keeping that judgment in mind, we direct the Official Liquidators attached to various High Courts to move the concerned Court for increasing the emoluments of the company paid staff. Such a request should be sympathetically considered by the concerned Courts and the emoluments of the company paid staff be suitably enhanced and paid subject to availability of funds.

95. In the result, the appeals are allowed. The impugned judgments and orders are set aside subject to the direction for framing of scheme for absorption of eligible and suitable employees against Group D posts and implementation thereof and increase in the salaries and emoluments payable to the company paid staff.

…….J.
[B.N. Agrawal]

…….J.
[Harjit Singh Bedi]

…….J.
[G.S. Singhvi]

New Delhi
November 4, 2008.