A P.V.T. PHILIP

v.

P. NARASIMHA REDDY AND ORS.

JULY 13, 1993

B [P.B. SAWANT AND DR. A.S. ANAND, JJ.]

A.P. State and Subordinate Services Rules :

Rule 10(a)(1)(i), 23(a) and 47—Regularisation—Appellant appointed C *as Temporary Jailor—Further appointed as District Probation Officer—Stipulation that he may be transferred as Jailor in case of necessity—Retransferred and temporarily appointed as Jailor—Rules relaxed in favour of appellant—Services regularised from the date of initial appointment—Validity of.*

D **The appellant was an Ex-Air Force Officer and was a graduate in Commerce and Law. He was appointed as Jailor temporarily under Rule 10(a)(1)(i) of the Andhra Pradesh State and Subordinate Services Rules (hereinafter referred to as the 'Rules'). On the closure of the temporary jail, he was appointed as District Probation Officer (D.P.O) Grade II. It** E **was, however, made clear in the said appointment letter that whenever occasion demanded, the appellant was likely to be posted as Welfare Officer/Jailor/Brother and Deputy Superintendent of certified schools.**

After a few months the appellant was transferred and posted temporarily as Jailor. In the meanwhile, one Jailor, reverted as Deputy Jailor F **made a representation to the Government against his reversion and restoration of his seniority in the cadre of Jailors over two other Jailors. The Government rejected the said representation. However, on appeal, the Government reconsidered and set aside the order of reversion and restored him to the post of the Jailor. As a result of this, the appellant was** G **again sent back as the D.P.O Grade II.**

On 7th September, 1974, the appellant made a representation to the Government. The Government advised the I.G. (Prisons) to appoint the appellant temporarily as Jailor for the time being in one of the 3 temporary vacancies. The I.G. (Prisons) treated the appellant as a leave-reserve H **D.P.O. Grade II on other duty at District Jail, and appointed him to the**

post of Jailor temporarily subject to the condition that his services were liable to be terminated at any time without notice and without assigning any reasons. He was appointed in the vacancy caused due to the retirement of a Jailor. A

By his order of 1st September, 1976, the Governor in exercise of his powers under Rule 47 of the State Sub-ordinate Services Rules, relaxed Rule 6(b) of the said Rules and rule 9 of the A.P. Jail Subordinate Services Rules in favour of the appellant for his regular appointment as a Jailor. The Government made it clear that the regularisation of the appellant as a Jailor was w.e.f. 27th June, 1969 when the order posting him as a Jailor was passed. B C

The appellant was temporarily promoted as Deputy Superintendent of Jails. On the recommendation of the State Public Service Commission, the State Government regularised the services of the appellant as Deputy Superintendent of Jails w.e.f. 20th August, 1977, and further declared that the appellant had completed his probation as Deputy Superintendent of Jails on 19th August, 1978. D

The Government further temporarily promoted the appellant to the post of the Superintendent of Jails alongwith 5 other Deputy Superintendents of Jails including respondents 1 to 3. In the seniority list, the appellant was shown senior to respondents 1 to 3 both in the post of the Deputy Superintendents as well as in the post of the Superintendent of Jails. Against the seniority given to the appellant over them, respondents 1 to 3 made representations to the Government, which were rejected. Respondents 1 to 3 filed a petition before Administrative Tribunal and the Tribunal remanded the proceedings to the Government for reconsideration pointing out that the Government order did not mention the date from which the relaxation was given. The Government on reconsideration of all the facts and circumstances justified the regularisation of the services of the appellant and clarified that the regularisation would be effective from 27.6.1969, the date on which he was posted as Jailor. Against this order, an appeal was preferred to the Tribunal and it was dismissed. Hence this appeal. E F G

Allowing the appeal, this Court

HELD : 1.1 The appellant's service record shows that in fact he had H

A served as a Jailor for more than 5 years and had fulfilled the qualifying period of service under the rule for promotion to the post of the Deputy Superintendent of Jails. The relevant rule does not in terms require that the service as a Jailor should be a regular service. It merly requires experience as a Jailor for a minimum period of five years. [111-F]

B 1.2. There is nothing in Rule 23(a) of the Andhra Pradesh State and Subordinate Services Rules which prohibits regularisation from the earliest date of the appointment to the post notwithstanding any intervening developments. Further, if in the peculiar facts of the present case, the Government thought it fit to give the benefit of the said Rule to the C appellant w.e.f. 27th June, 1969 when he was first appointed to the post of a Jailor, the Government's decision could hardly be faulted. But more important in this connecton are the provisions of rule 47 of the Rules which give wide powers to the Governor to deal with the case of any person in such manner as may appear to him to be just and equitable. There is D no dispute that the Governor used his powers under the said Rule 47 in the present case when he issued the order on 1st September, 1976 by relaxing Rule 6(b) of the general rules and Rule 9 of the A.P. State Jail Subordinate Services Rules for the regular appointment of the appellant with effect from his initial appointment as a Jailor on 27th June, 1969 as clarified by his subsequent order dated 23rd December, 1987. [112-D-G]

E 1.3. The instant case was a proper case for the Governor to exercise his powers under Rule 47. Both equity and justice lay in favour of the appellant. His superior, viz., the I.G. (Prisons) and the Government all along wanted to treat him as a Jailor. In fact, he served as a Jailor for F more than the requisite qualifying period with merit and distinction and to the great satisfaction on the authorities. He is an Ex-Air Force Officer and he had put in not less than 10 years and 10 months service as such. He was fully qualified to hold the post of the Jailor. On the closure of the Jailor he was transferred or appointed as D.P.O., which carried a higher G salary than that of the Jailor. The anxiety shown by the authorities to utilise his services as a Jailor was so much that even while appointing him as the D.P.O., since no post of a Jailor was available at that time, they added a special clause in the order of appointment making his services transferable as a Jailor whenever needed, notwithstanding the fact that the post of the Jailor and that of the D.P.O. were not transferable. His services H as a Jailor were never terminated even when he was appointed as a D.P.O.

Within about 8 months of his appointment as a D.P.O., he was taken back as a Jailor, and but for the small gap necessitated by the non- availability of the post of the Jailor, he continued to serve as a Jailor throughout. As against this, respondents 1 to 3 came in the service as direct recruits for the first time as Deputy Superintendents of Jails in 1979 when by that time the appellant had completed his service as the Deputy Superintendent of jails for no less than two years. In the circumstances the orders passed by the Governor on 1st September, 1976 and 23rd December, 1987 in exercise of his powers under Rule 47 have cured whatever defects might have been there earlier, in the matter of the regular appointment of the appellant as a Jailor. Thus the appellant shall rank senior to respondents 1 to 3 both as Deputy Superintendent of Jails and as Superintendent of Jails.

[113-G-H; 114-A-E]

Rabindra Nath **v.** *Union of India,* **AIR (1979) SC 470;** *S.S. Megha* **v.** *Union of India,* **AIR (1981) S.C. 1485;** *Govt. of Andhra Pradesh & Ors.* **v.** *Sri D. Janardhana Rao And Anr.,* **[1977] 1 SCR 702 and** *R.P. Khanna & Ors.* **v.** *S.A.F. Abbas & Ors.,* **[1972] 3 SCR 548, relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3202-04 of 1993.

From the Judgment and Order dated 1.9.92 of the Andhra Pradesh Administrative Tribunal in O.A.Nos.10217 & 10219 of 1990.

K.K. Venugopal, V.A. Bobde, K.V. Viswanathan and K.R. Nambiar for the Appellant.

K. Madhava Reddy, Vimal Dav, B. Rajeshwar Rao and G. Prabhakar for the Respondents.

The Judgment of the Court was delivered by

SAWANT, J. Leave granted.

Although the facts are many, the only question involved in the present case is whether the appellant is entitled to the benefit of his service as Jailor from 26/27th June, 1969 to 30th September, 1969 as a qualifying period of service for being appointed to the post of the Deputy Superintendent of Jails on 30th July, 1977. The said service has also a bearing on his seniority as a Deputy Superintendent of Jails over respondents 1 to 3 who were directly appointed as Deputy Superintendent of Jails on 25th

A September, 1979 and completed their probation in 1981.

The admitted facts are that the appellant is an Ex-Air Force officer and possesses a Commerce and a Law Degree. By the order of 24th June, 1969, he was appointed as Jailor in the scale of Rs. 180-375 temporarily
B under Rule 10(a)(1)(i) of the Andhra Pradesh State and Subordinate Service Rules (hereinafter referred to as the 'Rules') and he assumed office on 26th June, 1969 as Jailor at Camp M Jail, Yrragadda, as is evidenced by the order of June 27, 1969. On the date he assumed office, the temporary Jail at Yrragadda was in existence and it was closed only w.e.f. 9th September, 1969 as stated in the order of the Inspector General of Prisons
C dated 18th September, 1969.

On 6th August, 1969 the I.G. (Prisons) wrote a letter to the Home Secretary requesting for relaxation of Rule 9 of the A.P. Jail Subordinate
D Services Rules which required training for a period of 9 months for a direct recruit to the post of the Jailor. In this letter, the I.G. (Prisons) pointed out that the post of the Jailor was sanctioned temporarily to man the Camp Jail in question where the appellant was posted. There was a need of persons who could maintain discipline in jails and such persons could be available only from the military services. Instead of , therefore, recruiting
E fresh hands and placing them under training, in view of the urgency, he had directly appointed, through the Employment Exchange, the appellant who had the requisite educational qualifications, was within the prescribed age limit and who had also worked as a non-commissioned officer in the Indian Air Force for 10 years and 10 months. He was directly appointed
F to the post without imparting training as it was considered unnecessary. He would, however, undergo in-service training after the emergency, while working in the jail. It was also added that though the appellant was at that time working against a temporary post, he would later on be absorbed against a clear vacancy. It appears that on account of the closure of the
G Camp Jail where the appellant was posted, the relaxation of Rule 9 became unnecessary since the appellant was in the meanwhile, by order dated October 3, 1969 appointed as District Probation Officer (D.P.O) Grade II w.e.f. 6th October, 1969 with a pay scale of Rs. 200-400. It was, however, made clear in the said appointment letter that whenever occasion demanded, the appellant was likely to be posted as Welfare Of-
H ficer/Jailor/Brother and Deputy Superintendent of certified schools.

It appears that barely 8 months thereafter, by the order dated 16.6.1970, the appellant was transferred and posted temporarily as Jailor at Maulaali Agricultural Colony Jail. On 2nd November, 1971, the I.G. (Prisons) wrote a letter to the Home Secretary of the State Government pointing out that the appellant was directly recruited as Jailor temporarily during the Telangana agitation and later, on account of the abolition of the temporary post of the Deputy Superintendent of Jails and consequent reversions, he was absorbed as D.P.O. Grade II w.e.f. 6th October, 1969 to 29th June, 1970. However, since his initial appointment was to the post of Jailor, he was taken back as Jailor when a clear vacancy arose treating him as a direct recruit to the post of the Jailor w.e.f. 27th June, 1969. He also pointed out that his period of training on appointment as D.P.O. Grade II in between, was treated as service on other duties and he was being continued as Jailor. It was, therefore, asserted in the letter that in the circumstances, his appointment to the post of the Jailor was not irregular. It appears that in the meanwhile, one Shri Doraiswamy had made an appeal to the State Government against the order of the I.G. (Prisons) dated 24th October, 1970 reverting him from the post of the Jailor to that of the Deputy Jailor and for restoration of his seniority in the cadre of Jailors over two other jailors viz., S/Shri K. Vasantha Rao and M. Rama Rao. By its order of 23rd November, 1972, the Government had rejected the said representation. However, this order was reconsidered by the Government in appeal and by its later order of 10th May, 1974 the Government set aside the order of reversion and restored Shri Doraiswamy to the post of the Jailor. As a result, the appellant was again sent back as the D.P.O. Grade II. While doing so, the Government observed that the appellant was selected to the post of the D.P.O. Grade II during 1969 and he was temporarily appointed as Jailor in the same year although "the jails wing and the probation wing are two separate entities and inter-transfers are not permissible." It was also observed that the appellant was allowed to continue as Jailor overlooking Shri Doraiswamy's claim which was not in order, and the appellant's continuance as Jailor was against the rules when he belonged to the Probation wing. It would be apparent that the statement made in this order that the appellant was recruited as a D.P.O. Grade II is inconsistent with the order dated 24th June, 1969 appointing the appellant as a Jailor. However, the fact remains that consequent upon the aforesaid order of the Government, the appellant was reverted as D.P.O. grade II by an order of 2nd September, 1974. On 7th September,

A B C D E F G H

A 1974, the appellant made a representation to the Government. The I.G. (Prisons) forwared the said representation to the Home Secretary of the State Government with his own comments and giving a detailed profile of the appellant's service, pointing out in particular that the appellant was initially appointed as a Jailor though against a temporary post, and not as
B a D.P.O and that he was also paid the salary of Jailor straightaway and not the pay admissible during the training period for the said post; that even when the was appointed as D.P.O., his services as Jailor were not terminated by any formal order, and that even the order of appointment to the post of D.P.O. mentioned that his services could be transferred as a Jailor at any time according to the exigencies of the administration, and
C that the appellant was given the unmistakable impression that the Department desired to treat him as a Jailor on deputation. The I.G. (Prisions), therefore, in the said letter, pleaded that the appellant's services as a Jailor should be regularised. By its letter of 29th April, 1975 the Government informed the I.G. (Prisons) that he should consider the question of con-
D tinuing the appellant as a Jailor considering his past experience and his suitability and efficiency in the said post, without, however, affecting the order dated 10th May, 1974 passed in favour of Shri Doraiswamy. It appears that from 2nd September, 1974 the appellant went on leave. Ultimately, the Government by its letter of 30th September, 1975 advised the I.G. (Prisons) to appoint the appellant temporarily as Jailor, for the
E time being in one of the 3 temporary vacancies. In view of the said letter of the Government, the I.G. (Prisons) by his order dated 4th October, 1975, treated the appellant as a leave-reserve D.P.O. Grade II on other duty at District Jail, and appointed him to the post of the Jailor temporarily subject to the condition that his services were liable to be terminated at
F any time without notice and without assiging any reasons. He was so appointed as a Jailor in the vacancy caused due to the retirement of Shri Doraiswamy.

By his order of 1st September, 1976, the Governor in exercise of his
G powers under Rule 47 of the State Subordinate Services Rules relaxed Rule 6(b) of the said Rules and Rule 9 of the A.P. Jail Subordinate Services Rules in favour of the appellant for his regular appointment as a Jailor. This order, however, did not state, in terms, as to from which date the regularisation of the appellant's services as a Jailor was made. Hence, by their detailed order of 23rd December, 1987 in which the history of the
H appellant's service was traced right from the day he was appointed as the

Jailor under order dated 24th June, 1969, the Government made it clear that the regularisation of the appellant as a Jailor was w.e.f. 27th June, 1969 when the order posting him as a Jailor was passed. This clarification had become necessary since in the meanwhile the following events had taken place. A

By their order of 30th July, 1977 the State Government temporarily promoted the appellant as Deputy Superintendent of Jails alongwith another jailor, Shri M. Rama Rao. By his order order of 16th March, 1983, the I.G. (Prisons) on the recommendation of the State Public Service Commission, regularised the services of the appellant as Deputy Superintendent of Jails w.e.f. 20th August, 1977. By his order of 22nd March, 1983, the I.G. (Prisons) declared that the appellant had completed his period of probation as Deputy Superintendent of Jails on 19th August, 1978. B C

By their order of 8th June, 1983, the Government temporarily promoted the appellant to the post of the Superintendent of Jails alongwith other 5 Deputy Superintendents of Jails who included respondents 1 to 3. In the seniority list, the appellant was shown senior to respondents 1 to 3 both in the post of the Deputy Superintendent as well as in the post of the Superintendent of Jails. Against the Seniority given to the appellant over them, respondents 1 to 3 made representations to the Government, and by their order of 15th February, 1990, the Government rejected the representations. While rejecting the representations, the Government asserted that since there was a vacancy in the post of Jailor on 27th June, 1969, there was nothing wrong in appointing the appellant temporarily to the said post from that date. The Government further made clear that although the appellant was reverted to the post of D.P.O. Grade II subsequently, and the posts of Jailor and D.P.O. were not interchangeable, the fact remained that the services of the appellant as a Jailor were never terminated. The Government also stated that since the appellant was an experienced Ex-Air Force officer besides being educationally qualified, the Government considered that his services would be more useful as Jailor right from his temporary appointment to that post on 27th June, 1969. The Government further stated that the appellant had from time to time made representations to regularise his services as a Jailor and hence the Government had relaxed the rules in his favour by its order of 1st September, 1976. It was only by a mistake that the date from which the relaxation was given was not mentioned in the said order. That order further neither affected D E F G H

A the conditions of service of any member of the service nor caused any undue hardship to anyone. No representation was also made against the said order at that time. On the other hand, if the relaxation was not made in favour of the appellant, he would have been been definitely subjected to great hardship as all the service rendered by him from 27th June, 1969 B would have gone unaccounted for. The Government further stated that they were not expected to keep in view the interests of future entrants in service while providing such relaxation of rules in favour of any in-service person. The Government pointed out that respondents 1 to 3 were not in service on 1st September, 1976 and, therefore, could not argue that they were adversely affected by the relaxation given to the appellant. The C Government contended that the only omission on the part of the Government was that they had not mentioned the date from which the relaxation should be given and that they had to make good that omission after it was pointed out by the Andhra Pradesh Administrative Tribunal in its order dated 10th February, 1987 in R.P. No.1299 of 1986 which was filed by the D respondents 1 to 3 against the rejection of their representation by the Government on 30th January, 1986. The Government further pointed out that had the date been mentioned in the original order of 1st September, 1976, respondents 1 to 3 would not have had any *locus standi* to challenge it since they had entered the service only in the year 1979. The appointment E of the appellant was made about 20 year ago and a review of the appointment at that distance of time was not desirable as it would be contrary to the law declared by the Supreme Court in *Rabindra Nath* v. *Union of India,* AIR (1979) SC 470, reiterated in *S.S. Megha* v. *Union of India,* AIR (1981) SC 1485. The Government also pointed out that by virtue of the relaxation given to the appellant, only he could be promoted as a Deputy Superinten- F dent of Jails though temporarily on 20th August, 1977, the date on which respondents 1 to 3 were not in service at all. They also pointed out that the appellant could have been regularly promoted to the said post from 20th August, 1977 or his services could have been regularised from that date but for the fact that the post was under the purview of the State Public G Service Commission and pending approval by the Commission, no person could be promoted regularly. Since the Commission could give concurrence only on 29th February, 1982, the appellant's services in the cadre of the Deputy Superintendents of Jails could not be regularised till 25th February, 1983. The Government by the same order again made it clear H that the orders issued on 1st September, 1976 in the matter of relaxation

of rules and regularisation of the appointment of the appellant as a Jailor, would be operative from 27th, 1969. A

The contentions raised by Shri Madhava Reddy, learned counsel appearing for the respondents against the seniority given to the appellant over respondents 1 to 3 in the post of the Deputy Superintendent may be summarised as follows. He contended that the post of the Jailor and that of the D.P.O. belonged to two different cadres. The appellant's initial appointment as Jailor did not survive after the post of the jailor came to be abolished consequent upon the closure of the Camp Jail w.e.f. September 1969. Although there is no formal order terminating the services of the appellant as a Jailor, the very fact that by the order of 3nd October, 1969, the appellant was appointed as D.P.O. Grade II and had to undergo probation period of that post, shows that his earlier service as a Jailor had come to an end and he was freshly employed as a D.P.O. He continued as D.P.O. from 6th October, 1969 to 29th June, 1970 when he was absorbed as such D.P.O. as is stated in the order dated 2nd November, 1971 passed by the I.G. (Prisons). Although, from 16th June, 1970 till 4th October, 1975 he was posted to work as Jailor, his substantial appointment was as a D.P.O. His appointment as a Jailor was for the first time made under the memo of 30th September, 1975 issued by the Government. The learned counsel also relied upon the order dated 11th July, 1975 which stated that in accordance with the order of July 11, 1975, the appellant reported as "Leave Reserve Probation Officer Grade II" on 11th July, 1975 in his office and he was directed to report immediately before the Superintendent, District Jail, Secundrabad to assist him in connection with the emergency. The second contention of the learned counsel was that according to the rules governing the appointment to the post of the Deputy Superintendent of Jails, the said appointment could be made either by transfer (promotion) or direct recruitment and the promotee-candidate had to serve as a Jailor for a minimum period of 5 years. Since the appellant had started his first service as a Jailor for the first time on 30th September, 1975, he had not even completed 2 years of service as Jailor on 30th July, 1977, i.e., the date he was appointed as a temporary Deputy Superintenent of Jails. The last contention of the learned counsel was that Rule 23(a) under which the relaxation was made was not available in the present case for regularisation of the appellant's service from the 26/27th June, 1969. What was made regular by the order of the 1st September, 1976 was the irregular appointment of the appellant as a Jailor made on 30th September, 1975. The B C D E F G H

A regularisation could not be made from 26/27th June, 1969 since the appellant was appointed as a D.P.O. thereafter by the order of 3rd October, 1969. According to the learned counsel, it is too late in the day to contend that his initial appointment was as a Jailor, since the appellant had ceased to be so, after he was appointed as a D.P.O.

B

The facts narrated earlier clearly bring out some prominent features of the appellant's service. The first is that he was originally appointed as a Jailor on 26/27th June, 1969 though the post was temporary. Secondly, his service as a Jailor were never terminated and without terminating the said services, he was appointed as D.P.O. Grade II by an order of 3rd October, C 1969. The post of D.P.O. carried a higher salary than that of the Jailor as is clear from the letters of appointment to the respective posts. Although the posts of Jailor and that of D.P.O. were not interchangeable, the appellant's appointment order as D.P.O., made it clear that he was liable to be transferred as a Jailor whenever the exigencies of the service so D required. Within about 8 months, by the order of 16th June, 1970, he was transferred and appointed to discharge the duties of a Jailor notwithstanding the fact that he was technically holding the post of the D.P.O. He continued to discharge the duties of the Jailor thereafter and he was appointed formally in one of the three temporary vacancies of Jailor by the order of 30th September, 1975. The said appointment was thereafter E regularised by the order dated 1st September, 1976. This order, however, did not make it clear as to from what date his services as a Jailor were regularised. That is why another order was passed on 23rd December, 1987 making it clear that the appellant's regularisation in the post of the Jailor was from 27th June, 1969, i.e. the date on which he was initially posted as F a Jailor. Although the Government did not have any doubt with regard to the date from which his services as a Jailor were regularised by the order of 1st September, 1976, the subsequent order of 23rd December, 1987 became necessary in view of the decision of the State Tribunal on 10th February, 1987 whereby the Tribunal had remanded the proceedings before them, to the Government for reconsideration of the whole issue G afresh. It may be mentioned here that the said proceedings were filed by respondents 1 to 3 herein and the main contention raised in the said proceedings was with regard to the date from which the appellant's services stood regularised as Jailor. The chronology of the facts given earlier leaves no doubt that except for an interval of about 18 months, the Government H had, from 27th June, 1969, all along treated the appellant as a Jailor and

taken work from him as such till he was promoted to the post of the Deputy Superintendent of Jails by the order of the 30th July, 1977. The Government itself had never disputed the said fact. On the other hand, they had throughout been asserting it and it is for this reason that they had thought it necessary to regularise the appellant's services as a Jailor from the date of this initial appointment to it on 27th June, 1969. All that Rule 3(a) of the *Ad hoc* Rules then in existence in respect of the appointment to the temporary post of the Deputy Superintendent of Jails required was 5 years' service as a Jailor as one of the requisite qualifications for being promoted to the said post. There is no dispute that the appellant fulfilled the other qualifications for the post. The Rule specifically stated that the candidate "must have served as a Jailor .....for not less than 5 years". On the facts narrated above, it can hardly be disputed and is not disputed before us that the appellant had served as Jailor for more than 5 years when he was promoted to the post of Deputy Superntendent of Jails on 30th July, 1977. The dispute is not with regard to the actual service as a Jailor but with regard to "the regular" service as a Jailor. What is contended on behalf of the respondent employees is that although the appellant was initially recuited as a Jailor on 27th June, 1969, he had ceased to be so w.e.f. 3rd October, 1969 when he was appointed to the post of D.P.O. and till he was brought back and appointed temporarily as Jailor in one of the three temporary vacancies by the order of 30th September, 1975, he was not in the cadre of Jailors. Thus from 3rd October, 1969 till 30th September, 1975, i.e., for about a period of six years he had ceased to be a regular Jailor and hence when he was appointed as a Deputy Superintendent of Jails on 30th July, 1977, he had not served as a regular Jailor for more than about two years. We have sufficiently detailed the appellant's service record which shows that in fact he had served as a Jailor for more than 5 years and had fulfilled the qualifying period of service under the rule for promotion to the post of the Deputy Superintendent of Jails. The Rule does not in terms require that the service as a Jailor should be a regular service. It merely requires experience as a Jailor for a minimum period of five years.

We are further of the view that there is no legal impediment in regularising the appellant's services as a Jailor w.e.f. 26/27th June, 1969. Rule 23(a) of the Rules reads as follows:

> "23(a). Date of commencement of probation of persons first appointed temporarily - if a person, having been appointed tem-

A porarily under sub-rule (a) or sub-rule (c) or rule 10 to a post borne on the cadre of any service, class or category or having been appointed to any service, class or category otherwise than in accordance with the rules governing appointment thereto is subsequently appointed to any service, class or category in accordance with the rules, he shall commence his probation from the date of such subsequent appointment or from such earlier date as the appointing authority may determine."

B

The rule thus states that if a person has been appointed temporarily under Rule 10(a) of the said Rules to fill an emergent vacancy and is C subsequently appointed to the same service in accordance with the Rules, he shall commence his probation from the date of such subsequent appointment or from such earlier date as the appointing authority may determine. According to the learned counsel for respondents 1 to 3, two events prevent the regularisation of the appellants' service as a Jailor w.e.f. D 27th June, 1969, viz., his appointment as a D.P.O. on and from 3rd October, 1969 and his subsequent temporary appointment as a Jailor on 30th September, 1975. We do not find anything in Rule 23(a) which prohibits regularisation from the earliest date of the appointment to the post notwithstanding any intervening developments. Further, if in the peculiar facts of the present case, the Government thought it fit to give the benefit of the E said Rule to the appellant w.e.f. the 27th June, 1969 when he was first appointed to the post of a Jailor, the Government's decision could hardly be faulted. But more important in this connection are the provisions of Rule 47 of the Rules which give wide powers to the Governor to deal with the case of any person in such manner as may appear to him to be just and F equitable. There is no dispute that the Governor used his powers under the said Rule 47 in the present case when he issued the order on 1st September, 1976 by relaxing Rule 6(b) of the general rules and Rule 9 of the A.P. State Jail Subordinate Services Rules for the regular appointment of the appellant w.e.f. his initial appointment as a Jailor on 27th June, 1969 as clarified by his subsequent order dated 23rd December, 1987. Rule 47 G reads as follows:

"Rule-Relaxation of rules by the Governor. - No rule made under the proviso to article 309 of the Constitution of India or continued under article 313 of that Constitution shall be construed to limit H or adridge the power of the Governor to deal with the case of any

class or category of persons for being appointed to any civil post, or of any person who is serving or has served in a civil capacity under the Government of Andhra Pradesh in such manner as may appear to him to be just and equitable: A

Provided that, where any such rule is applicable to the case of any person or a class of persons, the cases shall not be dealt with in any manner less favourable to the person or class of persons than that provided by that rule." B

This rule had come up for consideration before this Court in *Govt. of Andhra Pradesh And Ors.* v. *Sri D. Janardhana Rao And Another.,* [1977] 1 SCR 702. While interpreting the said rule, this Court observed that "Rule 47.....gives power to the Governor to relax the rigour of the general rules in such a manner as may appear to him to be just and equitable.....clearly, the power under rule 47 is to be exercised in the interest of justice and equity. It is not difficult to say that the occasions for acting under rule 47 may well arise after the attention of the Government is drawn to a case where there has been a failure of justice. In such cases, justice can be done only by exercising the power under rule 47 with retrospective effect, otherwise the object and purpose of the rule will be largely frustrated. The Court also observed that the Court was taking firm support from the decision of this Court in *R.P. Khanna and Ors.* v. *S.A.F. Abbas & Ors.,* [1972] 3 SCR, 548, and also specifically negatived the contention that the rule was meant to be applied only prospectively and held that there is nothing in rule 47 to indicate that the Governor cannot exercise the power conferred by the said rule with retrospective effect if this was no required in the interest of justice and equity." C D E F

On the facts of the present case, it can hardly be contended that his was not a proper case for the Governor to exercise his powers under the said rule. Both equity and justice lay in favour of the appellant. His superior viz., the I.G. (Prisons) and the Government all along wanted to treat him as a Jailor. In fact, he served as a Jailor for more than the requisite qualiying period with merit and distinction and to the great satisfaction of the authorities. As stated earlier, he is an Ex-Air Force officer and he had put in not less than 10 years and 10 months service as such officer. He was fully qualified educationally to hold the post of the Jailor. What is more when on the closure of the jail, he was transferred or G H

A appointed as D.P.O., the post of the D.P.O. carried a higher salary than that of the Jailor. The anxiety shown by the authorities to utilise his services as a Jailor was so much that even while appointing him as the D.P.O., since no post of a Jailor was available at that time, they added a special clause in the order of appointment making his services transferable as a Jailor whenever needed, notwithstanding the fact that the post of the Jailor and B that of the D.P.O. were not transferable. What is further necessary to remember is that his service as a Jailor were never terminated even when he was appointed as a D.P.O. As pointed out about within about 8 months of his appointment as a D.P.O., he was taken back as a Jailor, and but for the small gap necessitated by the non-availability of the post of the Jailor, C he continued to serve as a Jailor throughout. As against this respondents 1 to 3 came in the service as direct recruits for the first time as Deputy Superintendents of Jails in 1979 when by that time the appellant had completed his service as the Deputy Superintendent of Jails for no less than two years. In the circumstances, we are of the view that that orders passed by the Governor on 1st September, 1976 and 23rd December, 1987 in D exercise of his powers under Rule 47 have cured whatever defects might have been there earlier, in the matter of the regular appointment of the appellant as a Jailor.

In the circumstances, we allow the appeals, set aside the impugned E decision of the Tribunal and declare that the appellant shall rank as senior to respondents 1 to 3 both as Deputy Superintendent of Jails and as Superintendent of Jails. The appeals are allowed accordingly, with costs against respondents 1 to 3.

V.M. Appeals allowed.