A C.S.I.R. & ORS.

*v.*

RAMESH CHANDRA AGRAWAL & ANR.

(Civil Appeal No. 1716 of 2004)

DECEMBER 19, 2008

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**[S.B. SINHA AND CYRIAC JOSEPH, JJ.]**

*Service Law:*

*Regularization/absorption – Claim of – Scheme for* C *absorption of researchers in CSIR Laboratories/Institutes – Framing of, pursuant to directions by Supreme Court – Scheme envisaging that full time researchers in CSIR to have put in 15 years or more of research work – Fixation of cut of date and director conferred power of relaxation of* D *conditions – Selection of few researchers in terms thereof – However, non-regularization of services of applicants-researchers – Scheme, challenge to – Held: Scheme was one-time measure – Cut off date fixed is rational – It has nexus with the date Supreme Court directed CSIR to consider framing of regularization scheme – Fixing of 15 years of* E *scientific research work as eligibility criteria reasonable as large number of persons found eligible – Inclusion of service rendered in Quick Hire Scheme also permissible – Doctrine of legitimate expectation not applicable to applicants – They did not have a legal right to be appointed – Constitution of* F *India, 1950 – Articles 14, 16 and 226.*

*Regularization – When permissible – Held: Regularization is not a mode of recruitment – It does not mean permanence – Irregularity can be regularized, not illegality.*

*Relaxation/modification/amendment, of conditions of* G *regularization scheme – Grant of – Power – Held: Relaxation can be granted only when there exists a provision therefore – If provision is circumscribed by conditions, those conditions must be fulfilled – Ordinarily, court would not interfere with such discretionary power.*

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*Administrative Law: Legitimate expectation – Applicability of – To cases where applicants are seeking regularization/absorption – Held: There has to be a basis for giving effect to doctrine of legitimate expectation – It is based on principles of natural justice and not on mere anticipation.*

**As regards absorption/regularization of Researchers in CSIR Laboratories/Institutes, this Court on 02.05.2007 issued directions to the appellants to consider framing of a regularization scheme. In pursuance thereof, Scheme for Absorption of Researchers in CSIR Laboratories/Institutes, 1997 was framed for absorption/ regularization of researchers at suitable levels who had put in 15 years or more of research work in CSIR Laboratories/Institutes. The cut of date was fixed as 02.05.2007. The Director General was given the power to relax/modify/amend any of the conditions of the Scheme. Pursuant thereto, 51 persons applied and eight of them were selected. However, the respondents were not given the application form. Aggrieved, respondents filed application and the tribunal dismissed the same. Respondents then filed writ petitions. High Court held that ordinary tenure of researchers in the posts Junior Research Fellows/Senior Research Fellows/Research Associates/Senior Research Associates being 5+5+3=13 years, the condition of 15 years of service is arbitrary; that Quick Hire Service-a stopgap arrangement against a post/vacancy of the scientist to make regular appointment having been taken into consideration in the case of some of the applicants, was discriminatory in nature; that the cut off date being 02.05.1997 is unreasonable; and that the Director General having been conferred with the general power of relaxation, his decision not to consider the case of any candidate whatsoever who had not worked for a period of 15 years of continuous research was arbitrary. Hence the present appeals.**

**Allowing the appeals, the Court**

A HELD:1.1. The terms and conditions fixing the tenure for Junior and Senior Research Fellows and Research Associates limiting the period of tenure to five years had been brought into force only w.e.f. 1.1.1990. Prior thereto, the period was five years in each post which would mean B that one could work for 20 years. Apart from CSIR, research work done in other institutions is also taken into consideration. It would include the period of fellowship by UGC/DST/ICMR/ICAR etc. If decision as regards tenure was taken as in its affidavit before the High Court, the appellant contended that more qualified persons were C available in 1990. When 15 years' period was fixed in 1997, it would relate back to 1982 or earlier dates when the terms and conditions of CSIR research grants were not applicable. Furthermore, the appellant recognized fellowship and associateship not only in regard to the D internally funded scheme but also externally funded ones. Thus, a person may obtain a grant for research associateship or research fellowship from other departments also. [Paras 20 and 21] [1395-A-F]

1.2. The definition of 'eligible researcher' is contained E in paragraph 3(6). Clause (7) of paragraph 3 even provides for a service under external funded project scheme. According to the appellants quick hire service was a part of it. It may be a separate externally funded scheme. Quick higher service is also a part of the scheme F in respect of the major projects. [Paras 25 and 27] [1401-E]

1.3. A 'State' is entitled to fix a cut off date. Such a decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to G whether it has a rational nexus with the object sought to be achieved. 2.5.1997 was the date fixed as the cut off date in terms of the scheme. The reason assigned therefor was that this was the date when this Court directed the appellants to consider framing of a regularization scheme. They could have picked up any H

other date. They could have even picked up the date of the judgment passed by the Central Administrative Tribunal. By choosing 2.5.1997 as the cut off date, no illegality was committed. Ex facie, it cannot be said to be arbitrary. However, High Court proceeded on the basis that the cut off date should have been the date of issuance of the notification. The employer in this behalf has a choice. Its discretion can be held to be arbitrary but then the High Court only with a view to show sympathy to some of the candidates could not have fixed another date, only because according to it, another date was more suitable. In law it was not necessary. The court's power of judicial review in this behalf although exists but is limited in the sense that the impugned action can be struck down only when it is found to be arbitrary. It is possible that by reason of such a cut off date an employee misses his chance very narrowly. Such hazards would be there in all the services. Only because it causes hardship to a few persons or a section of the employees may not by itself be a good ground for directing fixation of another cut off date. [Para 29] [1405-C-G]

1.4. The scheme was a one-time measure. The number of posts was not confined to the posts which have been sanctioned. The validity of the scheme has been challenged as unrealistic, illusive, arbitrary or unworkable. Whereas the tribunal directed framing of a scheme, this Court directed the appellants to consider the same. [Paras 29 and 30] [1405-H; 1406-A-B]

1.5. Cut off date has been fixed for those who are eligible as per the criteria laid down by the scheme. The service rules were framed in terms of the bye-laws of the society. Appellant No. 1 is not a statutory authority. It is a research oriented organization. It knows its needs. The research fellows and research associates because of their involvement in the research work are to get priority in their appointments. Particular projects whether funded by the Ministry concerned or others would depend upon

A the nature thereof. It, by a judicial fiat, could not have been made a continuous scheme. A policy decision is not beyond the pale of judicial review. But, the court must invalidate a policy on some legal principles. It can do so, inter alia, on the premise that it is wholly irrational and not
B otherwise. The submission of the respondents that only two chances are granted for consideration of the candidature of the employees for the purpose of regularization is misconceived. The scheme being a one-time measure, even one opportunity could have been granted. [Para 31] [1406-A-F]
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1.6. It was with a view to give benefit to the concerned employees that their services are continued so that they can avail another opportunity. The quantity/ quality of research work done by a researcher is a very important consideration for assessing the suitability. But,
D that would not mean that any researcher as on 2.5.1997 may not be in a position to complete 15 years of the service but would do so on 3.7.1998 and, thus, may be deprived of the opportunity of two chances by itself. This could not have been a ground to strike down the cut off
E date fixed by the appellants. A person may get having regard to the scheme, one chance or two chances. It is not necessary that irrespective of the fact that as to whether they are eligible for consideration in terms of the scheme or not, must be given two chances. It is not a
F case where the cut off date is given a retrospective effect. It is also not a case where persons similarly situated are being treated differently. [Para 32] [1406-F-H; 1407-A-C]

*D.S. Nakara & Ors. v. Union of India* (1983) 1 SCC 305, referred to.

G 1.7. Researchers are not selected on the basis of the tenure of research work alone but also on the basis of their performance in the interview by the selection board. Submission that cut off date should have been fixed keeping in view the principles of legitimate expectation,
H is misconceived. Legitimate expectation is based on the

**principles of natural justice. There has to be a basis for giving effect to the doctrine of legitimate expectation. It must not be based on mere anticipation. When this Court directed the appellants to frame a scheme, the same was required to be framed having regard to the provisions of Articles 14 and 16 of the Constitution of India. In the facts and circumstances of this case, the doctrine of legitimate expectation cannot be said to have any application whatsoever. Submissions had also been made that failure to take into account or giving due weight to a relevant criterion would be contrary to the doctrine of legitimate expectation. However, respondents singularly failed to demonstrate as to what are the relevant criteria which had not been taken into consideration and how due weight had not been granted to a relevant consideration. [Paras 33, 34 and 35] [1407-C-E; 1409-B-C]**

*University Grants Commission v. Sadhana Chaudhary and Ors.* **(1996) 10 SCC 536, Distinguished.**

*Dr. Ami Lal Bhat v. State of Rajasthan and Ors.* **(1997) 6 SCC 614;** *Union of India and Ors. v. Lieut (Mrs.) E. Iacats* **(1997) 7 SCC 334;** *Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and ETIO and Ors.* **(2007) 5 SCC 447;** *Jitendra Kumar and Ors. v. State of Haryana and Anr.* **(2008) 2 SCC 161 and** *Food Corporation of India v. Kamdehenu Cattle Feed Industries* **(1993) 1 SCC 71, Referred to.**

**1.8. Regularization cannot be a mode of recruitment. It does not mean permanence. Only an irregularity can be regularized; an illegality cannot be. The submission that the rules were unworkable is equally meritless apart from the fact that that at least fifty candidates had been found eligible for consideration, out of whom eight had been selected. Even according to the respondents themselves they have been working for more than 13 years. Thus, it is not correct to contend that the period of 15 years which was fixed, was an unreasonable one. [Para 37] [1409-E-G]**

A **1.9. The High Court committed a serious error insofar as it failed to take into consideration that the respondents did not have any legal right for regularization. Furthermore, it is one thing to say that a public authority may exercise its discretionary jurisdiction to grant relaxation in a particular case but it is another thing to say that the superior court shall direct it to exercise its discretionary jurisdiction of relaxation in a particular manner. Relaxation can be granted only when there exists a provision therefor. If the provision to grant relaxation is circumscribed by conditions, those conditions must be fulfilled before an order in that regard can be passed. However, in the instant case, paragraph 9 of the scheme although does not contain any limitation in the matter of exercise of power, it was for the authority concerned to lay down a principle as to in which case the power of relaxation should be exercised and in which case it would not be. If sufficient number of candidates were available who had worked for more than 15 years, keeping in view the requirements of the appellant itself the Director could take a further policy decision that no relaxation shall be granted to an applicant who did not fulfill that criterion. Ordinarily, the court would not interfere with such discretionary power in exercise of its jurisdiction of judicial review. [Para 38] [1409-H; 1410-A-E]**

*Secretary, State of Karnataka and Ors. v. Umadevi (3) Ors.* **(2006) 4 SCC 1, Followed.**

*Kendriya Vidyalaya Sangathan and Ors. v. Sajal Kumar Roy and Ors.* **(2006) 8 SCC 671;** *Union of India and Ors. v. R.N. Hegde and Ors.* **(1998) 8 SCC 731 and** *Director, Doordarshan Kendra, Trivandrum and Ors. v. S. Kuttan Pillai and Ors.* **(1998) 8 SCC 736, referred to.**

**Case Law Reference:**

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|---|---|---|
| **AIR 1975 SC 1329** | **Referred to.** | **Para 3** |
| **(2002) 5 SCC 111** | **Referred to.** | **Para 3** |
| **(1983) 1 SCC 305** | **Referred to.** | **Para 32** |

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|---|---|---|---|
| **(1996) 10 SCC 536** | **Distinguished.** | **Para 33** | A |
| **(1997) 6 SCC 614** | **Referred to.** | **Para 33** | |
| **(1997) 7 SCC 334** | **Referred to.** | **Para 33** | |
| **(2007) 5 SCC 447** | **Referred to.** | **Para 34** | |
| **(2008) 2 SCC 161** | **Referred to.** | **Para 34** | |
| **(1993) 1 SCC 71** | **Referred to.** | **Para 36** | B |
| **(2006) 4 SCC 1** | **Followed.** | **Para 38** | |
| **(2006) 8 SCC 671** | **Referred to.** | **Para 38** | |
| **(1998) 8 SCC 731** | **Referred to.** | **Para 38** | |
| **(1998) 8 SCC 736** | **Referred to.** | **Para 38** | C |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1716 of 2004

From the final Judgment and Order dated 7.5.2003 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Writ Petition No. 68 (SB) of 2001. D

WITH

Civil Appeal Nos.1717, 1718, 1719, 1720, 1721, 1722, 1723 and 1724 of 2004.

P.S. Patwalia, R. Venkataramani, Jaideep Gupta, Praveen Swarup, Devesh Tripathi, Vijay Kumar, Vishwajit Singh, J.M. Sharma, Satya Mitra Garg, Mukesh Verma, Yash Pal Dhingra, M.P. Shorawala, Mridula Ray Bharadwaj for the appearing parties and Dr. (Ms.) Kumkum Rani, Caveator-in-person (N.P.). E

The Judgment of the Court was delivered by F

**S.B. SINHA, J.** 1. These appeals are directed against a judgment and order dated 7.5.2003 passed by a Division Bench of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow whereby and whereunder an order dated 22..12.2000 passed by the Central Administrative Tribunal in Original Application No.151 of 1995 as also the office memorandum dated 22.12.2000 were set aside and the appellants herein were directed to consider the case of absorption of the respondents in terms of the scheme by considering the question of relaxation with respect to their length of experience in accordance with the provisions of clause 9 thereof. It was G H

A furthermore directed that benefit with respect to breaks shall also be given to the petitioners as had been done in the case of other researchers who had been absorbed.

2. The basic fact of the matter is not in dispute.

Appellant is a society registered under the Societies B Registration Act. It has laboratories situated in different parts of the country. For carrying out research works, it employs qualified persons in the post of Junior Research Fellows, Senior Research Fellows, Junior Research Associates and Senior Research Associates. Appointments for carrying out C researches are also made on the basis of a scheme known as 'Quick Hire Scheme'. Research works are also carried out at the instance of the outsiders.

3. Appellant No. 1 was held to be not State by a Constitution Bench of this Court in *Sabhajit Tewary v. Union* D *of India and Others* [AIR 1975 SC 1329]. It is only at a much later date, inter alia, having regard to the fact that the Central Government issued notification in terms of Section 14 of the Administrative Tribunal Act, 1985 that the service disputes may be adjudicated upon by the Central Administrative Tribunal. A E Seven-Judge Bench of this Court in *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and Others* [(2002) 5 SCC 111] overruled *Sabhajit Tewary* (supra)

4. One Dr. Pratibha Mishra was working with the appellant. She was not absorbed in the services. She prayed F for her appointment in the regular cadre of CSIR in the post of Scientist B. She had also prayed for regularization of her services. As her prayers in that behalf were rejected, she filed an original application before the Central Administrative Tribunal, Lucknow Bench, Lucknow. By reason of a judgment and order dated 25.9.1996, the Tribunal while lamenting that G the services of Dr. Mishra had not been regularized despite the fact that she had worked for 15 years, directed the appellant to formulate a scheme for absorption of scientific researchers at suitable levels, stating :

"Considering therefore, the conspectus of the case in the

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background of the foregoing discussions and also keeping in view the principles of equity and justice while we reject the reliefs prayed for by the applicant, we simultaneously order as below :

(i) The applicant shall continue to be paid at the existing rate until she is absorbed in one of the Scientific posts under the CSIR and her services may be utilized by the respondents during this period in an appropriate manner.

(ii) The case of the applicant shall be considered for appointment as Scientist in an existing or future vacancy, if necessary by granting age relaxation, as per CSIR Service Rules.

(iii) The respondents shall formulate a scheme for absorption of scientific researchers at suitable levels in respect of those who have put in long years of research particularly those with 15 years or more.

Or in the alternative the respondents may suitably amend CSIR Service Rules, 1994 so as to include a provision for absorption of Scientific Researchers at suitable levels in respect of those who have put in long years of research work, particularly, 15 years or more. Modifications to be made in the Service Rules may provide for grant of weightage as may be considered appropriate to the period of research work already put in, especially for purposes of relaxation in age and qualifications. Provisions of weightage for purposes of fixation of seniority and for grant of advance increments could also be considered."

5. An appeal was preferred thereagainst before this Court. By reason of an order dated 2.5.1997, this Court, upon hearing counsel for both the parties, directed as under :

"We feel that having regard to the facts and circumstances of this case, the direction of the Tribunal given in respect of the respondent-Dr. Pratibha Misra, should not be

A disturbed. However, so far as the formulation of scheme is concerned, we direct the petitioners to consider the question of formulating a scheme for people who are working on contract basis. The Special Leave is disposed of."

B 6. The order of this Court was implemented. A scheme was framed in the year 1997 known as 'Scheme for absorption of researchers working in CSIR Laboratories/Institutes'. It was with the aforementioned backdrop materials, the scheme was placed before the Governing Body of the appellant for approval C in its 144th meeting which was held on 18.2.1998 and the same was accepted. The scheme was circulated by an order dated 3.7.1998. It was to come into force from the date of the issuance of the said circular letter.

The scheme started with the background materials, namely, D as to why the same had to be framed as also the directions of the Central Administrative Tribunal as also this Court. It considered the current status of the employees. The issue for consideration was stated to be as under :

"Whether the 'Scheme for Absorption of Researchers in E CSIR Labs./Instts. 1997' should be implemented for absorption/regularization of Researchers who have put in 15 years or more of research in CSIR Labs/Instts."

7. We may refer to some of the salient features thereof :

"2. *Administration of Scheme*

F The Council of Scientific & Industrial Research (CSIR), hereinafter referred, as Council will administer the scheme. The scheme would be a one-time measure and is for eligible researchers.

3. *Definitions :*

G (i) to (v) ...

(vi) The eligible Researcher shall mean persons who has put in 15 years of continuous research as Fellow/Associate/Project Associate on monthly payment basis on 02.05.1997 and is/was in

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position as on that date.

(vii) The Fellow/Associate means the persons working in CSIR Laboratories/Institutes who have been awarded the Fellowship/ Associateship under the CSIR Research. A Fellowship and Associateship Schemes and Senior Research Associateship (Scientists Pool) Scheme i.e. the scheme operated through Human Resource Development Group (HRDG) of the Council. Project Associate means the person engaged as JRF/ SRF/Associate in CSIR Laboratories/ Institutes under the externally funded projects/schemes.

(viii) For continuous research purpose, a period of two months shall be condoned for counting the period of 15 years and this will not be treated as break for this purpose. The period of two months may be in different spells but the total period shall not be more than two months."

8. The scheme was framed as a one-time measure. It was applicable to the eligible researchers engaged on full time basis in CSIR Laboratories/ Institutes under the Scheme operated through HRDG of the Council or under externally funded projects/schemes of the Council in its Laboratories Institutes.

9. Some of the terms and conditions for absorption are :

"(a) As per 'Rules', the maximum age limit for recruitment to Group IV(1) and Group IV(2) is 35 years. However, in the case of Researchers covered by this Scheme, relaxation upto 10 years would be considered in the upper age limit as on 02.05.1997, over and above the maximum age limit prescribed under the rules for recruitment to Group IV(1) and IV(2).

(b) The eligible researchers concerned should possess the educational qualifications prescribed for the Group IV(1) and Group IV(2). No relaxation in educational qualification shall be permissible.

A (c) Orders on reservation for SC/ST/OBC, etc. issued by Government of India from time to time shall apply in operation of this Scheme.

(d) The selection of the concerned researchers for their absorption shall be determined by a Central
B Selection Committee constituted by DG, CSIR on the lines of the constitution of the Selection Committee prescribed in the 'Rules'. The Central Selection Committee shall determine their suitability for absorption after interviewing the candidates.
C Non-availability of posts shall not be a constraint for implementation of this Scheme."

10. The scheme provided for a power of relaxation in the Director, stating:

"9. DG, CSIR shall have the power to relax/ modify/amend
D any of the conditions/provisions of the Scheme except relating to educational qualification mentioned in para 6(b)."

The cut off date fixed therein was 2.5.2007.

11. Pursuant to or in furtherance of the said scheme, 51
E persons applied therefor. Eight of them were selected. Respondents allegedly were denied even an application form. They filed an Original Application before the Tribunal. The said application was dismissed by the Tribunal stating :

"... we are of the view that the decision for grant of
F fellowship and associateship and conditions laid down thereof, is a policy matter and the Tribunal cannot interfere with the same."

12. As indicated hereinbefore, the said order of the Tribunal was subject matter of the writ petitions filed before the
G High Court. Before the High Court principally two contentions were raised :

(a). Ordinary tenure of researchers in the posts JRF/ SRF/RA/SRA being 5+5+3 = 13 years, the condition of 15 years of service is arbitrary.

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(b) Quick Hire Service which is a stopgap arrangement against a post/ vacancy of the scientist to make regular appointment having been taken into consideration in the case of some of the applicants, the same was discriminatory in nature.

13. The High Court answered both the question in favour of the respondent holding that the cut off date being 2.5.1997 is unreasonable and the same should have been fixed as on the date of issuance of the notification. It was furthermore opined that the Director General of the appellant having been conferred with the general power of relaxation, his decision not to consider the case of any candidate whatsoever who had not worked for a period of 15 years of continuous research was arbitrary, stating:

> "The scope and import of clause 9 had to be considered by the Tribunal in its correct perspective for the simple reason that the scheme was framed as per directions issued by the Tribunal itself and when non-absorption of the petitioners was in question before the Tribunal, the Tribunal ought to have considered the provisions of the Scheme and its implementation in a manner which was in consonance with the provisions of the scheme and also ought to have scrutinized the reasons for which the petitioners were excluded from being considered for absorption."

14. Mr. P.S. Patwalia, learned senior counsel, in support of this appeal, would submit :

(i) Appellant had an unfettered right to lay down the criteria for absorption.

(ii) 15 years' service must be held to be a reasonable period, as a large number of persons were found eligible therefor. Furthermore even the Tribunal in its judgment dated 25.9.1996 issued such a direction.

(iii) Cut off date fixed at 2:5.1997 is rational and has a nexus with the date of dismissal of the *special*

A leave petition. By reason thereof larger scope for regularization had been created.

(iv) The High Court committed a serious error of law in directing application of the exemption clause to all the candidates as no mandamus for relaxation can
B be issued.

(v) Respondents had no legal right to be appointed in view of this Court's decision in *Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors.* [(2006) 4 SCC 1].

C 15. Mr. R. Venkataramani, learned senior counsel appearing on behalf of Respondent No.1, on the other hand, would urge :

(a) By including unreasonable condition(s), the purpose of the directions of the Tribunal and this
D Court as regards framing of a scheme for absorption was frustrated.

(b) Fixing of 15 years of scientific research work as the eligibility criteria was without any basis and is in total disregard of the history of engagement of
E scientific research personnel and the rules in vogue in this regard which permit only a maximum of 13 years of engagement.

(c) Inclusion of services rendered in certain schemes, such as the Quick Hire Scheme, in the permissible
F or available category of engagement was an afterthought and in effect and substance contrary to and inconsistent with the spirit of the scheme. But if the benefit of services of Quick Hire Schemes and certain other engagements are taken out of
G reckoning, even the cases of eight persons absorbed will also go out of the scheme as they would have only less than 15 years to their credit.

(d) The High Court by reason of its impugned judgment has merely read down the scope of the scheme
H instead of declaring it ultra vires by taking recourse

to paragraph 9 thereof providing for relaxation giving it a meaningful intent and scope.

(e) The Director General, CSIR acted arbitrarily in refusing to exercise his discretionary jurisdiction conferred on him under paragraph 9.

(f) Issuance of a direction to exercise discretionary jurisdiction by the High Court must be held to be an integral part of the scheme of absorption.

16. Mr. Jaideep Gupta, learned senior counsel appearing for the respondent in CA No.2041 of 2004, supplementing Mr. Venkataramani, would contend :

(i) Prescribing of 15 years' service was unworkable as Quick Hire Scheme was not a part thereof having regard to the definition contained in clause 3(vi) and 3(7). Any appointment made in violation of the scheme must be held to be unreasonable.

(ii) Fixation of a cut off date being subject to judicial review, it was permissible for the court to direct that the cut off date should be considered as 3.7.1998 on which the scheme came into force.

(iii) The scheme, as originally framed, was unreasonable as only two chances were given for filing an application.

(iv) Having regard to the scheme that nobody had a right to be absorbed and as it was found that out of 51 candidates, only eight had been found to be eligible therefor, the power of relaxation could be directed to be exercised by the Director. One of the applicants had completed 14 years and 9 months as on 2.5.1997 and if 3.7.1998 is considered to be the cut off date, the applicants could have been found to be eligible.

(v) In view of the decision of the Tribunal as also the High Court, the applicants had a legitimate expectation of absorption and, thus, the cut off date should have been fixed having regard to the

A principles attached thereto and particularly when the scope of the said doctrine had recently been expanded by this Court.

(vi) The Court can read down a statute and necessary direction if the rule is found to be unworkable. No B mandamus has been issued to regularize the services of the respondents and having regard to the fact that the scheme was postulated as a one-time measure and all applicants were not to be absorbed, the High Court could issue the requisite C guidelines.

17. Mr. Sharma, learned counsel appearing on behalf of the respondents in CA No.1716 of 2004, submitted that the concerned respondents had put in more than 13 years of service as on 2.7.1997.

D 18. The principal question which, thus, arises for consideration was as to whether those appointed for a fixed period as JRF, SRF, RA and SRA would have not more than 13 years' service even if they are appointed on a regular basis.

19. Appellant is a society registered under the Societies E Registration Act. It was not enacted under the Parliamentary Act. It has its own bye-laws. The terms and conditions of its employees are not governed by any statute. Fellowships provide opportunities to bright young men and women for training in methods of the research under the expert guidance F of faculty members/scientists working in University departments/National Laboratory and Institutes in various fields of science and technology including medical sciences. Preference is given to subject/topic of research relevant to the research programmes of CSIR laboratories and nationally important S&T areas.

G Junior Research Fellows are granted stipend for a period of two years. On completion thereof, the stipend is increased for the third year on the basis of assessment of his/her research progress achievements. The total tenure of Junior Research Fellowship and Senior Research Fellowship is not to exceed

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five years. Senior Research Fellowship is also granted in almost similar terms although the stipend and tenure may be different. Although the total tenure of JRF and SRF could not exceed five years but extension orders for 4 to 5 years are to be issued according to the procedure outlined therein.

Associateships are awarded by various authorities including UGC/ DST/ICMR/ICAR. The total tenure of Research Associate ordinarily would not exceed five years.

20. We may, however, notice that aforementioned terms and conditions fixing the tenure for Junior and Senior Research Fellowships and research associates limiting the period of tenure had been brought into force only w.e.f. 1.1.1990. Prior thereto, the period was five years in each post which would mean that one could work for 20 years. Apart from CSIR, research work done in other institutions is also taken into consideration. As noticed hereinbefore, it would include the period of fellowship by UGC/DST/ICMR/ICAR etc. If decision as regards tenure was taken as in its affidavit before the High Court, the appellant contended that more qualified persons were available in 1990. When 15 years' period was fixed in 1997, it would relate back to 1982 or earlier dates when, as indicated hereinbefore, the terms and conditions of CSIR research grants were not applicable. Furthermore, the appellant recognized fellowship and associateship not only in regard to the internally funded scheme but also externally funded ones.

21. Thus, a person may obtain a grant for research associateship or research fellowship from other departments also.

We may notice that in the supplementary counter affidavit affirmed by one Anil Kumar before the High Court, it was stated :

> "That as on 02.05.1997 and 03.07.1998, total number of researchers of the Human Resources Development Group, CSIR, earlier named as Extra Mural Research Division, CSIR, New Delhi are as follows :

| S.No. | Name of Fellowship | As on 02.05.1997 | As on 03.07.1998 |
|---|---|---|---|
| 01 | Sr. Research Associate (Pool Officer) | 361* | 346** |
| 02. | Research Associate | 1,547 | 1,018 |
| 03. | Sr. Research Fellow | 3,152 | 2,082 |
| 04. | Jr. Research Fellow | 1,278 | 969 |
| | **TOTAL** | 6,238 | 4,415 |

* Position as on 30.06.1997
** Position as on 30.09.1998

The aforesaid figure does not include the researchers of the Externally Funded Project/Scheme and also those researchers who were working as researcher in major projects under Quick Hire Scheme. However, the aforesaid information is being sought from individual 39 laboratories/institutes of CSIR all over India."

22. Details of research experience of those absorbed under 1997 scheme were also annexed which are as under : as on page.....

23. We will advert to the said chart a little later but we may hereto notice the explanatory note appended thereto, which reads as under :

"CSIR was awarding various research fellowships and associateships like Jr. Research Fellowship (JRF), Sr. Research Fellowship (SRF), Research Associateship (RA) and Sr. Research Associateship (SRA). SRA was earlier known as Pool Officer.

Similarly, many other organizations like UGC, ICMR, ICAR, DBT and DST etc. had also been awarding similar research fellowships and associateships. SRA/Pool Officer is awarded only by CSIR.

*Tenure:*

| Details of research experience of those absorbed under 1997 Scheme | | | | | | | |
|---|---|---|---|---|---|---|---|
| Sl | Name of Applicant | Award by | Fellowship | Duration | At | Duration | As on 2.5.97 Total |
| | | | | | | y/m/d | y-m-d |
| 1. | Dr. Pratibha Mishra | INSA | JRF | 12.06.81-30.06.84 | NBRI | 03-00-00 | 15-04-15 |
| | | RANBAXY | JRF | 1.7.84 – 31.12.84 | NBRI | 00-06-00 | |
| | | CSIR | SRF | 1.1.85 – 31.12.87 | NBRI | 03-00-00 | |
| | | | RA | 17.05.88-31.05.93 | NBRI | 05-00-14 | |
| | | | SRA | 29.6.93-02.05.97 | NBRI | 03-10-03 | |
| | | | | | | | |
| 2. | Dr. Tripti De | DST | JRF | 6/77-11/77 | IICB | 00-05-00 | 15-05-00 |
| | | CSIR | JRF | 12/77-11/79 | IICB | 02-00-00 | |
| | | | SRF | 12/79-11/80 | IICB | 01-00-00 | |
| | | | Pre PD | 12/80-2/82 | IICB | | |
| | | | Post Doct | 5/82-4/83 | IICB | 01-00-00 | |
| | | ND Univ | PDF | 4/83-12/85 | USA | | |
| | | CSIR | SRA | 1986-1989 | IICB | 03-00-00 | |
| | | | RF-UNDP | 1989-1995 | IICB | 06-00-00 | |

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|---|---|---|---|---|---|---|---|
| | | | Quick Hire | 1995-1997 | IICB | 02-00-00 | |
| | | | | | | | |
| 3. | Dr. GK Padam | NPL | GW | 27.7.74-10/76 | NPL | | 19-07-16 |
| | | DAE | JRF | 28.10.76-29.2.82 | NPL | 05-04-01 | |
| | | NPL | PDF | 1.3.82-29.2.83 | NPL | 01-00-00 | |
| | | NPL | RA | 1.3.83-29.2.88 | NPL | 05-00-00 | |
| | | CSIR | SRA | 14.4.88-15.4.91 | NPL | 03-00-00 | |
| | | CSIR | RA | 16.4.91-31.7.96 | NPL | 05-03-15 | |
| | | NPL | RW | 1.8.96-31.10.96 | NPL | | |
| | | NPL | RW | 21.8.96-27.2.97 | NPL | | |
| | | NPL | RW | 2.4.97-5.6.97 | NPL | | |
| | | DAE | RA | 6.6.97-1999 | NPL | | |
| | | | | | | | |
| 4. | Dr. Farhat Nigar Jaffrey | ICMR | JRF | 1.4.79-30.4.81 | ITRC | 02-00-29 | 17.10.11 |
| | | DST | SRF | 1.5.81-31.3.87 | ITRC | 05-10-03 | |
| | | ITRC | TO | 1.4.87-21.6.88 | ITRC | 1.2.21 | |
| | | ITRC | Quick Hire | 21.6.88-20.6.91 | ITRC | 3.0.20 | |
| | | ITRC | PO | 21.6.91-5/97 | ITRC | 6.0.21 | |
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|---|---|---|---|---|---|---|---|
| 5. | Dr. PKS Visen | ICMR | JRF | 23.6.80-22.6.83 | CDRI | 03-00-00 | 17-05-05 |
| | | | SRF | 1.12.83-31.12.85 | CDRI | 02-01-00 | |
| | | | RA | 1.1.86-22.8.88 | CDRI | 02-07-27 | |
| | | | RO | 23.8.88-20.10.91 | CDRI | 03-01-27 | |
| | | | SRO | 21.10.91-02.05.97 | CDRI | 06-06-11 | |
| | | | | | | | |
| 6. | Dr. Kumkum Srivastava | CSIR | JRF | 31.5.79-31.8.79 | CDRI | 00-03-00 | 17-08-24 |
| | | ICMR | JRF | 1.9.79-31.8.82 | CDRI | 03-00-00 | |
| | | | SRF | 1.9.82-4.8.86 | CDRI | 03-11-03 | |
| | | | RA | 5.8.86-31.12.86 | CDRI | 00-04-26 | |
| | | CDRI | Quick Hire | 1.1.87-31.12.89 | CDRI | 03-00-00 | |
| | | CSIR | RA | 9.1.90-31.1.95 | CDRI | 05-00-00 | |
| | | CSIR | SRA | 7.3.95-2.5.97 | CDRI | 02-01-25 | |
| | | | | | | | |
| 7. | Dr. Anju Puri | ICMR | JRF | 1.9.79-31.8.82 | CDRI | 03-00-00 | 16-04-26 |
| | | | SRF | 1.9.82-30.8.83 | CDRI | 01-00-00 | |
| | | DBT | RA | 1.7.84-30.6.89 | CDRI | 05-00-00 | |
| | | CSIR | RA | 1.7.89-30.6.94 | CDRI | 05-00-00 | |
| | | CSIR | SRA | 6.12.94-2.5.97 | CDRI | 02-04-26 | |

A JRF plus SRF – 5 years

RA – 5 years

SRA – Not specifically prescribed, dependent on case to case.

B PDF – Post Doctoral Fellowship scheme was operated by HRDG during 1980 and was later discontinued. Therefore, this tenure also counts.

Prior to 01.01.1990 these Fellowships/ Associateships could be availed by the same individual from more than one organization. In other words the same C individual could have availed JRF + SRF of 5 years from UGC and again JRF + SRF of 5 years from CSIR. Similarly RA could have been availed from two organizations.

*Ceiling of tenure: JRF+SRF – 5 years;*

D *RA – 5 years; and SRA – 3 years*

Effective from 01.01.1990 CSIR incorporated a regulation that JRF plus SRF put together cannot exceed 5 years including the awards from UGC, ICMR, ICAR, DBT, and DST etc.

E Effective from 01.01.1990 CSIR incorporated a regulation that RA cannot exceed 5 years including the awards from UGC, ICMR, ICAR, DBT, and DST etc.

Effective from 1990 CSIR incorporated a regulation that SRA cannot exceed 3 years. As of now SRA is F awarded only by CSIR.

*Quick Hire Scheme:* This is a Scheme of CSIR for appointment of scientists for major projects. The scientists are to do R&D work in projects.

*Meaning of the term Project Associate:*

G

Para 3(vii) of the Scheme defines as *"Project Associate means the person engaged as JRF/SRF/ Associate in CSIR Laboratories/ Institutes under the externally funded projects/ schemes."*

H CSIR has not prescribed any standard designations

for staff appointed under the externally funded projects/ schemes. Various names/designations have been used in Labs and keeping in view the spirit of the Scheme, the word Associate shall mean to include all those associated with the research work in such projects including major projects for which scientists are appointed under Quick Hire Scheme."

24. It has been pointed out before us that Dr. Pratibha Mishra did not render any service under the Quick Hire Scheme. Dr. Tripti De rendered Quick Hire Service only for a period of two years. Dr. G.K. Padam did not render any service under the Quick Hire Scheme and he was in service for a period of about 19 years. Dr. Farhat Nigar Jaffrey had rendered only three years in the quick hire scheme service whereas Dr. P.K.S. Visen did not render any such service. It is, however accepted that Dr. Kumkum Srivastava has rendered three years Quick Hire Service while Dr. Anju Puri did not render any quick hire service.

25. It is with the aforementioned backround, we may notice the definition of 'eligible researcher' as contained in paragraph 3(6). Clause (7) of paragraph 3 even provides for a service under external funded project scheme. According to the appellants quick hire service was a part of it. It may be a separate externally funded scheme.

26. Yet, there is another aspect of the matter which cannot be lost sight of. Respondents and/or some of them have contended that as on the cut off date fixed, they had completed about 14 years' service and still they had been continuing in service.

We have noticed hereinbefore the specific contention raised by the learned counsel for the respondents to the effect that had the cut off date been fixed as 3.5.1998, they would have completed more than 15 years. There is, thus, an inherent contradiction in the said submission. The High Court, as noticed hereinbefore proceeded on the premise that the 13 years' service is the maximum. The Tribunal in Dr. Pratibha's case

A noticed that she had been serving the appellant for more than fifteen years. In its judgment, it recommended framing of a scheme for regularization in respect of these employees who had put in more than fifteen years of service. We may also take a look at the scheme for quick recruitment of scientist for major
B projects which are as under :

"(11.4.2) Scheme for Quick Recruitment of Scientist for Major Projects

(1) Appointments of Fellows

(a) Selection Procedure:

C When a Scientist of talent is identified in India or abroad, and is known to be available immediately or in the near future, the Director of the Laboratories may proceed as follows:

If the Scientists in India:

D The Director may constitute a Committee with himself as Chairman, and the following as Members:

- Two outside expert members of RAC

- Area Coordinator/Group Leader of the concerned area
E in the laboratory.

- Another senior scientist of the Laboratory in the concerned or related areas.

: The Committee may interview the Scientist, who may, if considered necessary, be required to give a talk before
F the Committee and other Scientist of the Laboratory.

If the Committee finds the Scientist to be outstanding and highly suitable for the required work, they may recommend the induction of the scientist as fellow and also suggest the emoluments and the range within which the appointment
G is to be made:

The Director may make the appointment accordingly, and report it to the Executive Committee in its next meeting.

If, however, the prescribed length of experience vide (f) below is to be relaxed in any case, the prior concurrence
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of DG, CSIR must be taken before the appointment is made. A

(b) Appointing Authority:

The Director of the Laboratory/Institutes will be the Appointing Authority.

(c) Designation of the Scientists: B

The Scientists concerned will be designated as a "Fellow" of the Laboratory.

(d) Levels of Emoluments:

The levels of pay in which the Scientists can be appointed under the New Scheme will be as follows Range (1) Rs. 2400/2500/2600/2800/2900/3000 C

Range (2): Rs. 3000/3100/3200/3400/3500/3600/3800/ .4000

Range (3): Rs. 3600/3800/4000/4300/4600/5000 D

The above scales do not envisage grant of annual increments of Rs. 100/- per month. The object of indicating the scales in the above manner is that the scientists can be appointed at any stage in the above three different ranges of pay; E

The above ranges may be reviewed in the event of any revision in the present pay structures in respect of regular scientific cadres

Review of emoluments will be undertaken at the end of two years. At this time all cases can be reviewed by the above Committee as to whether a scientist deserves higher emoluments within the same range. On the recommendations of the Committee, the Director may grant higher rate of emoluments. F

(e) Duration of Tenure: G

The appointment of such Fellows will be on contract for a period not exceeding three years, and it may be terminated by a notice of three months from either side (or three month's emoluments in lieu thereof). The contract H

A cannot be extended beyond the above maximum period.

(f) Qualifications:

Qualifications for scientists recruited under the New Scheme will be as follows:

B (i) Range No. 1.

M.Tech. or equivalent degree/MBBS with one year internship/Ph.D(Sc.), with uniformly outstanding academic record, and clear potential for high quality R&D work.

(ii) Range No. 2.

C M.Tech. or equivalent degree with three years experience,/ MD/Ph.D.(Se.)/ Ph.D(Engg.). with outstanding academic record, and proven ability for high quality R&D work.

(iii)

D M.Tech./MD/Ph.D. or equivalent degree in respective discipline, with original work as evidence by highly innovative patents or outstanding publications – evidence of leadership, with minimum of 5 year R&D experience.

(g) Police Verification of Scientists on initial appointments

E Police verification prior to actual appointments need not be insisted upon in non-sensitive jobs. If, however a particular scientist is being appointed in a project or projects which is/are of sensitive or strategic nature from the view point of security, prior police verification may be done.

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(h) Applicability of conduct and other rules :

The Scientists recruited under the new scheme will be subject to the operation of the CCS (Conduct) Rules, 1964 and CCS (CCA) Rules, 1965, as made applicable to other G employee of the CSIR and subject to other Rules and Regulations of the CSIR in force.

(i) Strength of Fellows in a Laboratories/Institutes:

The number of positions of Fellows in each Laboratory will be fixed by the DGSIR, normally between 5 and 10 having H regard to the needs of the Lab. and the number and

expertise of the Scientific Personnel already available." A

Thus, quick higher service is also a part of the scheme in respect of the major projects.

28. The High Court, therefore, in our opinion committed a factual error in opining that 13 years' period is the maximum period for which the respondents could work as fellows and B associates, both as junior and senior.

29. A 'State' is entitled to fix a cut off date. Such a decision can be struck down only when it is arbitrary. Its invalidation may also depend upon the question as to whether it has a rational nexus with the object sought to be achieved. 2.5.1997 was the C date fixed as the cut off date in terms of the scheme. The reason assigned therefor was that this was the date when this Court directed the appellants to consider framing of a regularization scheme. They could have picked up any other date. They could have even picked up the date of the judgment passed by the D Central Administrative Tribunal. As rightly contended by Mr. Patwalia, by choosing 2.5.1997 as the cut off date, no illegality was committed. Ex facie, it cannot be said to be arbitrary. The High Court, however, proceeded on the basis that the cut off date should have been the date of issuance of the notification. E The employer in this behalf has a choice. Its discretion can be held to be arbitrary but then the High Court only with a view to show sympathy to some of the candidates could not have fixed another date, only because according to it, another date was more suitable. In law it was not necessary. The court's power of judicial review in this behalf although exists but is limited in F the sense that the impugned action can be struck down only when it is found to be arbitrary. It is possible that by reason of such a cut off date an employee misses his chance very narrowly. Such hazards would be there in all the services. Only because it causes hardship to a few persons or a section of G the employees may not by itself be a good ground for directing fixation of another cut off date.

The scheme was a one-time measure. The number of posts was not confined to the posts which have been

H

A sanctioned.

30. The validity of the scheme has been challenged as unrealistic, illusive, arbitrary or unworkable.

We may at this juncture notice that whereas the Tribunal directed framing of a scheme, this Court directed the appellants B to consider the same.

31. Cut off date has been fixed for those who are eligible as per the criteria laid down by the scheme. The service rules were framed in terms of the bye-laws of the society. It would bear repetition to state that the appellant No. 1 is not a statutory C authority. It is a research oriented organization. It knows its needs. The research fellows and research associates because of their involvement in the research work are to get priority in their appointments. Particular projects whether funded by the Ministry concerned or others would depend upon the nature D thereof. It, by a judicial fiat, could not have been made a continuous scheme.

Indisputably, a policy decision is not beyond the pale of judicial review. But, the court must invalidate a policy on some legal principles. It can do so, inter alia, on the premise that it is E wholly irrational and not otherwise. The contention of the respondents that only two chances are granted for consideration of the candidature of the employees for the purpose of regularization is, in our opinion, misconceived. The scheme being a one-time measure, even one opportunity could F have been granted.

32. It was with a view to give benefit to the concerned employees that their services are continued so that they can avail another opportunity. Indisputably, the quantity/ quality of research work done by a researcher is a very important G consideration for assessing the suitability. But, that would not mean that any researcher as on 2.5.1997 may not be in a position to complete 15 years of the service but would do so on 3.7.1998 and, thus, may be deprived of the opportunity of two chances by itself. This could not have been a ground to strike down the cut off date fixed by the appellants. It is H

reiterated that a person may get, having regard to the scheme, one chance or two chances.

It is not necessary that irrespective of the fact that as to whether they are eligible for consideration in terms of the scheme or not, must be given two chances. It is not a case where the cut off date is given a retrospective effect. We fail to understand how that would be inconsistent with the spirit of two chances or otherwise discriminatory unlike *D.S. Nakara and Ors. v. Union of India (UOI)* [(1983) 1 SCC 305]. It is also not a case where persons similarly situated are being treated differently.

33. Another aspect of the matter cannot also be lost sight of. Researchers are not selected on the basis of the tenure of research work alone but also on the basis of their performance in the interview by the selection board.

Submission to the effect that cut off date should have been fixed keeping in view the principles of *legitimate expectation*, to say the least, is misconceived. Legitimate expectation is based on the principles of natural justice. There has to be a basis for giving effect to the doctrine of legitimate expectation. It must not be based on mere anticipation. When this Court directed the appellants to frame a scheme, the same was required to be framed having regard to the provisions of Articles 14 and 16 of the Constitution of India.

Reliance has been placed on *University Grants Commission v. Sadhana Chaudhary and Others* [(1996) 10 SCC 536] (which in our opinion otherwise has no application to the facts of the present case), wherein this Court held:

> "Prior to the making of the 1991 Regulations there was no statutory requirement regarding clearing the eligibility test for the purpose of appointment on the post of Lecturer. Such a requirement was introduced for the first time by the 1991 Regulations. At the time when the 1991 Regulations were made the provisions contained in the 1982 Regulations had given rise to a legitimate expectation that a person having a Ph.D or M.Phil degree and having good

A academic record as prescribed under the 1982 Regulations would be eligible for appointment on the post of Lecturer without anything more. While introducing the requirement of clearing the eligibility test in the 1991 Regulation's, the UGC did not intend to deprive the B persons who had obtained M.Phil degree or Ph.D degree prior to the making of the 1991 Regulations of their legitimate expectation in the matter of appointment on the post of Lecturer in universities or colleges."

The ratio of the said decision does not support the C contention of the respondents.

Strong reliance has been placed by the learned counsel appearing on behalf of the respondent on *Dr. Ami Lal Bhat v. State of Rajasthan & Ors.* [(1997) 6 SCC 614], wherein it has been opined :

D "In the first place the fixing of a cut-off date for determining the maximum or minimum age prescribed for a post is not, per se, arbitrary. Basically, the fixing of a cut-off date for determining the maximum or minimum age required for a post, is in the discretion of the rule-making authority or the E employer as the case may be. One must accept that such a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. As soon as a cut-off date cannot be fixed with any mathematical precision and in such a manner as would avoid hardship in all conceivable cases. F As soon as a cut-off date is fixed there will be some persons who fall on the right side of the cut-off date and some persons who will fall on the wrong side of the cut off date. That cannot make the cut-off date, per se, arbitrary unless the cut-off date is so wide off the mark as to make G it wholly unreasonable."

{See also *Union of India & Ors. v. Lieut (Mrs.) E. Iacats* [(1997) 7 SCC 334 – para 4]}.

34. We may, however, notice that recently the doctrine of legitimate expectation has been applied by this Court in H

*Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO and Others* (2007) 5 SCC 447 and *Jitendra Kumar and Others v. State of Haryana and Another* [(2008) 2 SCC 161] wherein a clear distinction has been made between legitimate expectation and an anticipation.

We, therefore, are of the opinion that in the facts and circumstances of this case, the doctrine of legitimate expectation cannot be said to have any application whatsoever.

35. Submissions had also been made that failure to take into account or giving due weight to a relevant criterion would be contrary to the doctrine of legitimate expectation. Respondents, however, singularly failed to demonstrate as to what are the relevant criteria which had not been taken into consideration and how due weight had not been granted to a relevant consideration.

36. It is not a case unlike *Food Corporation of India v. M/s Kamdhenu Cattle Feed Industries* [(1993) 1 SCC 71] where a contract was to be awarded. Different considerations would arise for framing a scheme for regularization and not for the purpose of grant of a contract. Ordinarily, recruitment must be made in consonance with the equality clause contained in Articles 14 and 16 of the Constitution of India.

37. Regularization, as is well-known, cannot be a mode of recruitment. It does not mean permanence. Only an irregularity can be regularized; an illegality cannot be. Contention raised by the learned counsel for the parties that the rules were unworkable is equally meritless apart from the fact that that at least fifty candidates had been found eligible for consideration, out of whom eight had been selected. Even according to the respondents themselves they have been working for more than 13 years.

Thus, it is not correct to contend that the period of 15 years which was fixed, was an unreasonable one.

38. The High Court, in our opinion, furthermore committed a serious error insofar as it failed to take into consideration that the respondents did not have any legal right for regularization

having regard to the decision of the Constitution Bench of this Court in Umadevi (3) (supra). Furthermore, it is one thing to say that a public authority may exercise its discretionary jurisdiction to grant relaxation in a particular case but it is another thing to say that the superior court shall direct it to exercise its discretionary jurisdiction of relaxation in a particular manner. Relaxation can be granted only when there exists a provision therefor. If the provision to grant relaxation is circumscribed by conditions, those conditions must be fulfilled before an order in that regard can be passed.

However, in this case, paragraph 9 of the scheme although does not contain any limitation in the matter of exercise of power, it was for the authority concerned to lay down a principle as to in which case the power of relaxation should be exercised and in which case it would not be. If sufficient number of candidates were available who had worked for more than 15 years, keeping in view the requirements of the appellant itself the Director could take a further policy decision that no relaxation shall be granted to an applicant who did not fulfill that criterion. Ordinarily, the court, it is trite, would not interfere with such discretionary power in exercise of its jurisdiction of judicial review.

In *Kendriya Vidyalaya Sangathan and Others v. Sajal Kumar Roy and Others* [(2006) 8 SCC 671], this Court held:

> "11...The appointing authorities are required to apply their mind while exercising their discretionary jurisdiction to relax the age limits. Discretion of the authorities is required to be exercised only for deserving candidates and upon recommendations of the Appointing Committee/ Selection Committee. The requirements to comply with the rules, it is trite, were required to be complied with fairly and reasonably. They were bound by the rules. The discretionary jurisdiction could be exercised for relaxation of age provided for in the rules and within the four corners thereof. As Respondents do not come within the purview of the exception contained in Article 45 of the Education Code, in our opinion, the Tribunal and consequently, the

High Court committed a manifest error in issuing the aforementioned directions." A

In *Union of India and Others v. R.N. Hegde and Others* [(1998) 8 SCC 731], this Court held:

"6. By the impugned judgment, the Tribunal has given direction for regularisation of the respondents by giving the relaxation in the upper age limit by treating the minimum period of 40 days for the calendar year 1989 and no period for the calendar year 1990 for such of the Casual Staff Artistes who were recruited prior to 1988 and were not assigned work in the calendar years 1988 and 1989 in pursuance of the note dated 26-5-1989 (sic). The said direction of the Tribunal is not in consonance with the scheme as notified vide OM dated 9-6-1992 and it cannot be upheld. The matter of regularisation of the respondents, including the question whether they should be given relaxation in the matter of age, has to be considered only in accordance with the provisions contained in the scheme as notified vide OM dated 9-6-1992." B C D

Similar view has been taken by this Court in *Director, Doordarshan Kendra, Trivandrum and Others v. S. Kuttan Pillai and Others* [(1998) 8 SCC 736]. E

39. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeals are allowed. However, in the facts and circumstances of this case, there shall be no order as to costs. F

N.J. Appeals allowed.