

**AFR**  
**Reserved on 2<sup>nd</sup> September, 2013**  
**Delivered on 18<sup>th</sup> September, 2013**

**PUBLIC INTEREST LITIGATION No. - 54860 of 2004**  
In Re:Regularization Of Class IV Employees Of The High Court Of  
Judicature At Allahabad

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**Hon'ble Laxmi Kanta Mohapatra,J.**  
**Hon'ble Sunil Ambwani,J.**  
**Hon'ble Amreshwar Pratap Sahi,J.**  
**Hon'ble Bharati Sapru,J.**  
**Hon'ble Manoj Misra,J.**

(By the Court)

The facts in a nutshell are that the High Court had raised a demand for sanction of additional posts of class-IV employees in order to meet the exigencies of the establishment. This demand was met by the State Government with the sanction of 355 temporary posts under the Government Order dated 10.12.2004. As soon as the said sanction order was received, the then Hon'ble the Acting Chief Justice vide order dated 12.12.2004 directed the Registrar General to take necessary action forthwith and send a copy to the Registrar at Lucknow in this regard. The Registrar General and the Registrar at Lucknow were directed to submit a report by 14.12.2004. The report was submitted indicating primarily that the bifurcation of the deployment of the posts between Allahabad and Lucknow are determined on the strength of Hon'ble Judges sitting at both places in the ratio of 70 : 30 or as directed by Hon'ble the Chief Justice. At the very outset we may mention that the present controversy relates to the appointments and regular engagements of Class IV employees and Drivers under the powers exercisable under Article 229 of the Constitution read with the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 and the Allahabad High Court Staff Car Drivers (Conditions of Service and

Conduct) Rules, 2000.

The then Hon'ble Acting Chief Justice perused the report that was submitted and passed the following order on 13.12.2004:-

"Seen the report. It is approved.

Re: Proposal No.1:- Bifurcation of the sanctioned 23 posts (21 + 2 leave reserved posts) of drivers be made as far as possible as per engagements of D.L./C.L. Drivers at Allahabad and Lucknow as on today, because earlier no post of driver out of the 19 sanctioned posts was given to Lucknow Bench.

Re: Proposal No.2:- A committee consisting of Registrar (Budget), Registrar (Establishment) and Joint Registrar (Protocol) is constituted for the aforesaid recruitment of drivers in accordance with the Drivers Service Conduct Rules 2000.

However, for Lucknow Bench there will be a separate Committee for this purpose to be approved by Hon'ble the Acting Chief Justice.

Re: Proposal No.3:- For the recruitment of the remaining 332 Class IV posts sanctioned by the Government as mentioned in the office note the Committee consisting of the aforesaid officers **shall make recruitment in accordance with the relevant rules.**

However, for Lucknow Bench there will be a separate Committee for this purpose to be approved by Hon'ble the Acting Chief Justice.

The bifurcation in respect of the aforesaid 332 Class IV posts be also made as far as possible as per engagements of D.L./C.L. At Allahabad and Lucknow today. The bifurcation is based on data contained in the accompanying office report.

The report be submitted by 11 a.m. Tomorrow.

Acting Chief Justice  
Dt. 13.12.2004"

The said order directed that a comprehensive report be submitted by 11.00 A.M., the very next day. Accordingly, a report was prepared and the same was submitted in terms of the directions contained therein on 14.12.2004. The said report is Annexure-7 to the Affidavit dated 23.7.2013 filed on behalf of the High Court.

Three proposals were made by the Registrar that were accepted by the then Hon'ble Acting Chief Justice vide order dated 14.12.2004 which is extracted here under:-

“Proposal at 1 and 2 approved.

As regards proposal No.3 by virtue of the powers vested in me by Rule 45 of Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976, since the candidates today admittedly are over 18 years of age, they shall continue in service.

The above would also apply to Sri Sandeep Patil.

Acting Chief Justice  
Dt. 13.12.2004”

It is after these orders were passed by the then Hon'ble Acting Chief Justice that the controversy sparked off with the passing of the suo motu orders by the Division Bench at Allahabad on 17.12.2004 to the following effect:-

“It has been brought to our notice that **355 posts** of class IV employees have been **sanctioned by the State Government** on 10.12.2004 and the process of regularisation of casual labourers, daily wage employees and daily wage drivers has been **completed within 3 days**. It has also been brought to our notice that out of 355 posts, **192 posts have been earmarked for Lucknow Bench**. It is surprising that about **19 Judges hold court at Lucknow and about 56 Judges are at Allahabad**, but the number of daily wage class IV employees is alarmingly very high at Lucknow than at Allahabad. It is **not known**.

**how these persons have been recruited and appointed** as daily wagers etc. and **who was responsible for their recruitment.** We have also been informed that **7 daily wage class IV** employees at Allahabad **have not been regularized on the ground that they are over age.** In the past the persons engaged as daily wagers, who were **appointed by the Judges, have been regularized** even though they were over age. It is also surprising that these seven daily wagers have not been regularized. Further in the **cadre of drivers** also we notice that **only 7 drivers are being regularized at Allahabad** whereas **16 drivers are being regularized at Lucknow Bench.**

We have also been informed that **persons have been appointed on class-III posts** though no employee could be appointed **on ad hoc basis without there being any written examination.** It has also come to our notice that there is also **mal-practice in the allotment of quarters to class IV employees** working in the High Court, which is being allotted out of turn without considering the seniority of employees. Even daily wagers had been allotted quarters.

We have taken **suo moto cognizance** of the matter **in public interest** and the registry is directed to allot a number to this case. We called for the Registrar General of this Court, but we were informed by Sri G.K. Chaturvedi, Registrar (Budget) that he had already proceeded to Lucknow.

The Registrar General and Registrar, Lucknow Bench, are directed **to place** the entire records of Allahabad as well as of the Lucknow Bench of all daily wagers, casual labourers and class III ad hoc employees, as directed above, **before us** on 20.12.2004.

Considering the entire facts and circumstances narrated above, until further orders of this Court, **regularization** of 355 class IV employees viz. Casual labourers, daily labourers and daily wage drivers made by the High Court pursuant to sanction of 355 posts by order of the State Government dated 10.12.2004 **shall remain stayed.** Till this matter is decided, **no appointment of daily wage employees or casual labourers shall be made.**

Sri G.K. Chaturvedi, Registrar (B) is directed to inform the order passed by us to the Registrar General today. **The Registrar General shall also bring this order to the**

**notice of Hon'ble the Acting Chief Justice.**

Sd/- Hon. V.M. Sahai, J  
Sd/- Hon. Tarun Agarwala, J  
Dt. 17.12.04"

A perusal of the said order indicates that the Bench expressed its view that the regularisation had been hurriedly completed within 3 days and that the bifurcation of 355 posts between Allahabad and Lucknow was alarmingly disproportionate when 56 Judges were at that time sitting at Allahabad and 19 at Lucknow. A doubt was also cast with regard to the process of recruitment and out of 16 drivers, who were regularised, only 7 were given this benefit at Allahabad.

The Bench also indicated two additional issues namely the appointment of class-III ad hoc employees without holding of any written exams and the unauthorised allotment of residence to class-IV employees including ad hoc employees when permanent employees, who were senior, were already standing in the queue.

The Bench had directed that the order should be placed before the Registrar General and a report had been called for with a direction that the matter will be taken up on the next date fixed before the same Bench.

When this order was brought to the notice of Hon'ble the Acting Chief Justice, the following order was passed on 18.12.2004 on the administrative side:-

**ORDER**

(In Re: Regularisation of Class IV employees of High Court)

"I have perused the order dated 17.12.2004 passed by a Division Bench of this Court comprising of Hon. V.M. Sahai and Hon. Tarun Agrawala, JJ, which **as directed by**

**the said Bench was placed before me** by the Registrar General of the Court.

A perusal of the said order would show that the Division Bench has directed the Registrar General and the Registrar, Lucknow Bench, Lucknow, to place the entire records of Allahabad and Lucknow of all daily wagers, casual labourers and class-III ad-hoc employees before them on 20.12.2004.

In my opinion, in view of the provisions contained in Rule-14 of Chapter-V of the Allahabad High Court Rules, 1952 and the ratio laid down by a Full Bench of this Court in Para 36 in the case of **Sanjay Kumar Srivastava Vs. Acting Chief Justice and others, reported in Allahabad Weekly Cases 1996 at page 644**, the case cannot be treated as tied-up or part-heard of the aforesaid Bench.

Rule 14 of Chapter V of the Allahabad High Court Rules, 1952 read thus:-

**14. Tied up cases** – (1) A case partly heard by a Bench shall ordinarily be laid before the same Bench for disposal. A case in which a Bench has merely directed notice to issue to the opposite party or passed an ex-parte order shall not be deemed to be a case partly heard by such Bench.

(2) When a criminal revision has been admitted on the question of severity of sentence only, it shall ordinarily be heard by the Bench admitting it.

A perusal of Rule-14 (1) would make it manifest that a case in which a Bench has merely directed notice to be issued to the opposite party or passed an ex-parte order, shall not be deemed to be a case partly heard by such Bench.

A perusal of the order dated 17.12.2004 passed by Hon. V.M. Sahai and Hon. Tarun Agrawala, JJ, shows that it merely directed the Registrar General and the Registrar, Lucknow Bench, Lucknow, to place the entire records of Allahabad as well as Lucknow Bench, of all daily wagers, casual labourers and class-III ad hoc employees before them on 20.12.2004 and the aforesaid order, which was passed by them, was an ex-parte order. Since it was an ex-parte order, in view of the provisions contained in Rule 14 (1), it would not be deemed to be a part heard case of the aforesaid Bench.

I am fortified in my view by the observations contained in para 36 of the Full Bench decision of this Court rendered in the case of Sanjay Kumar Srivastava Vs. Acting Chief Justice and others (supra), which were made while interpreting Rule 14 (1) of the Allahabad High Court Rules, which read thus:-

"The other part of sub rule (1) lays down in clear terms that the case in which the Bench has merely issued notice to the opposite party or had passed an ex-parte order shall not be deemed to be a case partly heard by that Bench. This provision has been made to specify that a case does not become part-heard merely by passing of interim order. It also lays down that if notices are directed to be issued to the opposite party, the case does not become part-heard case of that Bench. The consequences are obvious. If the Division Bench which has merely passed an ex parte order or directed notice to be issued to the opposite party locate it as a part heard case or passed an order that it will come up before that Bench for "further hearing" or as a "part heard" or as a "tied up" case, the order would be in violation of the Rules of Court and, therefore, a nullity. Such an order would be without jurisdiction and would not confer any jurisdiction on the Bench concerned to proceed with that case unless the case is listed before them again under the orders of the Chief Justice. In a situation, where any order has been passed indicating such a case on the order sheet or on the main writ petition to be a part heard or tied up case, the Chief Justice inspite of that order would retain his jurisdiction to list it before the appropriate Bench for hearing as the order limiting the case to be a part-heard or tied up would be in violation of the Rules of Court and would not bind the hands of the Chief Justice from listing that case as a "seen" case before any other Bench rather than as a "tied up" case before that very Bench."

(emphasis supplied)

In the circumstances, ***I withdraw the case*** (in Re: Regularisation of class IV employees of High Court) from the Division Bench of Hon. V.M. Sahai and Hon. Tarun Agrawala, JJ. ***Considering the importance of the matter and the issues raised in the order dated 17.12.2004 passed by the said Bench including the jurisdiction of a Division Bench of the High Court of suo motu taking***

**cognizance as a Public Interest Litigation, I assign it to a larger Bench** comprising of:- (1) Hon. S.R. Alam, J (2) Hon. Pradeep Kant, J (3) Hon. U.K. Dhaon, J (4) Hon. Sushil Harkauli J and (5) Hon. Khem Karan, J.

The larger Bench shall hear the case on 20.12.2004, at 10.00 a.m., at Allahabad. The relevant records stipulated in the order dated 17.12.2004 shall be produced by the Registrar General and the Registrar, Lucknow Bench, Lucknow before it.”

This administrative order gains importance keeping in view the questions that have been argued before this Court relating to the maintainability of the reference and taking of Suo Motu cognizance by the Division Bench. Relying on the decision in the case of Sanjay Kumar Srivastava Vs. Acting the Chief Justice (supra), the case was **withdrawn from the Division Bench and then assigned to a larger Bench of five Hon'ble Judges keeping in view the importance of the issues raised in the order dated 17.12.2004 and the entire matter including the jurisdiction of the Division Bench to take Suo Motu cognizance as a public interest litigation.** The case was directed to be taken up on 20.12.2004 on which date the 5 Judges Full Bench for the first time assembled and proceeded to vacate the interim order dated 17.12.2004 but at the same time keeping in view the questions involved and the issues raised had called upon the High Court to file a detailed report in the matter. The Bench further observed that the question of maintainability of the reference and the Suo Motu cognizance shall also be considered with a direction that the process of regularisation and appointment as per the orders of Hon'ble Acting Chief Justice shall go on but the same shall be subject to the final orders in the present proceedings. The order dated 20.12.2004 is extracted hereunder:-

“We have heard Sri Sudhir Agarwal, learned Additional

Advocate General, who has appeared on behalf of the High Court. We have also perused the order of the learned Division Bench dated 17<sup>th</sup> December, 2004.

Having considered **the questions involved and the issues raised in the order of the Division Bench under reference**, we are of the view that no interim order was required to be passed by the learned Division Bench. We, therefore, **discharge and vacate the interim order dated 17<sup>th</sup> December, 2004** passed by the Division Bench. It is, accordingly, provided that **the process for regularisation/regular appointment/absorption of Class-IV Employees may be completed which would be subject to the final orders of this case.**

Sri Agarwal, learned Additional Advocate General appearing for the Allahabad High Court may file detailed report. **The question regarding maintainability of the writ petition and taking suo moto cognizance in the facts and circumstances of the case as appears from the order of the learned Division Bench shall also be considered on the next date.**

List the matter on 21.1.2005.”

It is thereafter that this case remained sine die for seven years without being taken up and orders for fresh appointments and regularisation came to be passed from time to time that have been mentioned in the reports that have been filed in the present proceedings.

After almost 8 years, the Bench was finally reconstituted with certain Members of the Bench not being available. The counsel for the High Court on 14.5.2012, when the Bench first met after this long spell, sought time to submit a report in compliance of the order dated 20.12.2004.

The reports that were submitted in compliance of the order dated 20.12.2004 and the order dated 14.5.2012 are broadly 7 in number. The first report dated 8.7.2012 which was submitted before the Court by the Registrar General was taken notice of on

9.7.2012. The said report poses 7 queries and then proceeds to answer them one by one. The first query was about the sanctioned strength of Class-IV employees of the High Court prior to the creation of the new posts on 10.12.2004. In response thereto, the Registrar (Accounts) submitted a report that for the **principal seat at Allahabad 811 posts** were sanctioned, the details whereof provided in Annexure 1 to the said report. It is to be noted that the aforesaid figures related only to the principal seat at Allahabad.

It is thereafter that the State Government vide G.O. dated 10.12.2004 created 355 temporary posts for Class-IV employees in the High Court including Lucknow Bench.

The **second query** raised in the said report was with regard to the number of Class-IV employees working as casual labourers, daily labourers and daily wage drivers as on 9.12.2004, i.e. immediately prior to the newly sanctioned 355 posts. The said query has been answered by a note of the Deputy Registrar (Nazarat) indicating through Annexure 2 to the said report that 144 daily labourers had been engaged up to 9.12.2004, 13 casual labourers were engaged up to the said date and 17 sweepers were engaged in the same capacity up to the said date. Thus, 174 Class-IV employees in the aforesaid category had been engaged.

The **third query** raised was with regard to the number of such employees having been regularised against the 355 posts that came to be sanctioned on 10.12.2004. To the said query the response given was that **143 such employees** whose names were given in Annexure 3 to the said report were regularised under orders of Hon'ble the Acting Chief Justice.

The report recites that no drivers on daily wage basis were engaged between 10.12.2004 and 20.12.2004 and no daily labourers were engaged between the said period.

The report against **query no. 5 indicates** that 7 Class-IV employees had not been regularised on account of a deficiency, namely, being overage at the time of their engagements. The said list is Annexure 4 to the said report.

The report then discloses that the 7 employees on daily wages who had not been regularised on account of being overage were extended the benefit of regular appointment by the order of Hon'ble the Chief Justice on 31.8.2005. Subsequently, 49 daily labourers were regularised on 15.12.2009 and 9 daily labourers including 2 sweepers were regularised on 20.11.2010. The list of these employees is filed as Annexures 7, 8 and 9 to the said report. Thus, a total of 65 employees were regularised after the interim order was vacated on 20.12.2004.

The Court having gone through the said report passed an order on 9.7.2012 that the same does not reflect the entire correct position including the current status at Lucknow and that the information was incomplete. The report vaguely signified the requirements in a generalised form and lacked administrative precision. The order passed is extracted hereinunder.

"Sri Yashwant Varma, has submitted the report in a sealed cover, which has been opened and perused by this Court. The Court finds that even though the figures of the sanctioned strength of the appointment of the casual and the daily labour given is in respect of the Principal Seat at Allahabad only, **the figures of the Lucknow Bench has not been incorporated** in the report and merely it has been stated that the report received from the Lucknow Bench is enclosed as Annexure 11. **The correct picture is, therefore, not reflected.**

As prayed by Sri Yashwant Varma, let another report be submitted by 20th July 2012 incorporating the figures provided by the Lucknow Bench.

**The Registrar General shall also give the details of the sanctioned strength as on date and the appointment made as against that sanctioned strength and also how many ad hoc, daily and casual labours are working against the sanctioned post or not.**

List on 20th July 2012 at 10:00 A.M.

The Bench Secretary is directed to place the report again in a sealed cover which shall be kept in the safe custody by the Registrar General to be produced again before the Court on the date fixed."

Consequently, a fresh report was submitted by the Registrar General which is dated 19.7.2012. This report gave facts and figures afresh indicating the status of the sanctioned strength as on 9.7.2012. Thus, a consolidated report with regard to Allahabad and Lucknow was filed along with charts indicating the sanctioned and working strength of the Class-IV employees in different categories.

This report was also treated to be not full and complete. A further query was raised by the Court with regard to the mode and manner of appointment with a specific query as to whether the appointments were made in accordance with the 1976 Rules. The Court on 20.7.2012 also took notice of the Government Order dated 8.9.2010, whereby the State Government had called upon the High Court to introduce outsourcing of such posts. Upon being satisfied that the engagements and appointments during the period from 2004 to 2012 being not prima facie conforming to rules, and the facts and figures not being transparent, **a fresh interim order was passed on 20.7.2012** restraining the High

Court from making any further engagement or regularisation against either any permanent or temporary posts of daily labourers, casual labourers, drivers and the like in the Class-IV category. The order passed is reproduced hereinunder:-

"This Bench has been constituted for answering the reference made by Hon'ble the Chief Justice and the related questions arising out of the issues that have been now raised keeping in view the two reports submitted by the High Court through its counsel Sri Yashwant Verma on the previous as well as one of the reports which has been placed in a sealed cover in compliance of the order dated 9th July, 2012.

We have carefully perused both the reports and **we find that they do not reflect the correct status of the posts, sanctioned strength, mode and manner of appointments against these posts, date of appointment including that of DL/ CL and DL/CL drivers. Further it is also not clear as to whether these appointments have been made by following the procedure prescribed in the Allahabad High Court Officers and Staff Rules, 1976 and in what manner.** The Bench, therefore, finds that the reports are **deficient on several counts** and during the course of arguments learned counsel for the High Court, Sri Yashwant Verma, could not reconcile the figures of permanent and temporary posts as reflected from the chart appended to the report from 2004 to 2012.

It is further on record that the State government has issued a **Government Order dated 8th September, 2010** whereby all such appointments, prima facie, have been directed/recommended to be **outsourced** and the State Government simultaneously decided not to sanction any post for appointment against Class IV Cadre. Further the Bench finds from the report that there were a large number of permanent and temporary vacancies existing but **there is no explanation as to why despite these vacancies, DL/CL's have been engaged for which prima facie, there is no justification.** The report also reflects that payment of wages to DL/CL's are being made under the Head "Preliminary Unit" "02-Justice\_wages- (Mazdoori)" under the Grant No. 42 Accounts Head 2014, Administration of Justice- 102 High Court 03-High Court. The report spells out that **there is no sanction of the State Government as well as there is no administrative or financial**

**approval against these posts of DL/CL's. The report also admits that it is not in consonance with the sanctioned posts.** The Bench would, therefore, require a clarification from the High Court as to whether such appointments can be made when there is no sanction and financial approval of the State Government.

Sri Yashwant Verma prays that he may be permitted to bring on record the facts and figures as desired by the Bench by way of an affidavit. We grant him a weeks time to file such an affidavit and the matter shall be placed before us on 27th July, 2012 at 10. A.M.

In view of the aforesaid facts that have emerged from record we are prima facie satisfied and find it imperative to issue an ad interim direction whereby **the High Court is restrained from making any further appointment, engagement, confirmation or regularization against any permanent/temporary/DL/CL// CL/DL drivers posts in the establishment of the High Court either at the Principal seat at Allahabad or at Lucknow Bench of this Court.**

The two reports shall be retained in a sealed cover to be again placed before us on the date fixed."

In between another supplementary compliance report was filed, but that was in regard to Class-III employees as the issue of Class-III employees had also been indicated in the order dated 17.12.2004.

The matter was fixed thereafter for 17.8.2012 but could not be taken up and in between an application was filed on 26.9.2012 making a request for appointment of some labourers. On receiving this application, the Court took up the matter on 28.9.2012 and directed the High Court to file an Affidavit alongwith a chart of deployment including duty hours of the existing class-IV employees either on permanent/temporary/daily or casual basis. The order is extracted hereinunder:-

**"Supplementary compliance report filed today** be taken on record.

The Registrar General is directed to keep it in a sealed cover.

An application No.291678 of 2012 dated 26.09.2012 has been filed seeking permission of the Court **for recruitment and posting of additional mazdoors.**

There are already sufficient number of Class IV employees including casual labours and daily labours in the High Court. Learned counsel for the **High Court is directed to file an affidavit enclosing a chart indicating the deployment of all the Class IV employees whether permanent, temporary, casual/daily labours working in this Court as also in Lucknow Bench of the High Court including the nature of work and duty hours,** so that we may be in a position to consider and pass appropriate orders on this application.

As prayed, ten days' time is granted for filing the aforesaid affidavit. List on 12th October 2012 at 10:00 A.M.

An impression is being created by the Registry that this Court has directed for stopping the payment of salary to the temporary employees including the casual/daily labours.

We may clarify that our order does not prohibit the payment of salary/wages to such existing staff. It is made clear that on that day, the Court shall hear the matter finally.

Order Date: 28.9.2012"

A supplementary affidavit was filed on 10.10.2012 in relation to Class-IV employees which did not disclose the full deployment of the Class-IV employees whereafter the Court passed an order on 12.10.2012 to submit another report with regard to details of deployment of Class-IV employees including those posted at the residence of Hon'ble Judges. The order is extracted hereinafter:-

"Supplementary affidavit filed today be taken on record.

The Court has perused the supplementary affidavit and finds that the **deployment of all the Class IV employees working in the Lucknow Bench of this Court has not been given.**

Sri Yashwant Varma, prays for and is granted two weeks for filing another affidavit giving the details of deployment of all the Class IV employees whether permanent/temporary/daily labour/casual labour/sewaks, etc. **including the Class IV employees posted at the residence of Hon'ble Judges.**

As prayed, list on 31st October 2012.

It is made clear that on that day the Court shall hear the matter finally.

The Registrar General is directed to **keep all the report in a sealed cover.**

Order Date: 12.10.2012"

A report dated 30.10.2012 was filed by the Officer on Special Duty (Litigation). The said report encloses the reply to the queries raised by the Nazarat Department. This report is quite revealing and indicates the manner in which the deployment on the directions of some of the Hon'ble Judges and the transfer of the employees from here to Lucknow did take place. It also indicates the placement of daily labourers and casual labourers at the residence and office of the officials of the Registry including the Registrar at Lucknow. The details of deployment at the residence of Judges including the camp office at Lucknow of the Hon'ble Senior Judge and the residence of the Hon'ble the Chief Justice has also been indicated. Apart from this the Class-IV employees at the guest house at Lal Bahadur Shastri Marg Lucknow and Class-IV kept in the pool have been indicated in a separate list. The deployment of regular and casual and daily employees in the various sections have been indicated in a separate list. A list of three employees who were reported to be absconding without leave or information was also enclosed therewith.

There is another revealing information in the said report that there is no record of the orders in respect of posting Class-IV employees at the residences of former Hon'ble Chief Justices, Hon'ble Judges of the Supreme Court as well as Senior Officers of the Registry such as the Officer on Special Duty. It has been further stated therein that it is only a prevailing practice since long being followed from time to time. The report further states that in view of the sensitive nature of the aforesaid information the file may be placed before the Registrar General to report on such deployment.

The said report was taken notice of by the Court on 31.10.2012 and since the aforesaid deployments were found to be irregular, the learned counsel for the High Court was called upon to submit his suggestions so that some appropriate opinion may be formed in this respect to rationalize the requirement of the number of employees, their deployment and posting in accordance with the work requirement of the High Court.

The order dated 31.10.2012 is extracted hereinunder:-

"In compliance of the Court's order dated 12.10.2012, Sri Yashwant Varma, learned counsel appearing for the High Court has submitted a report dated 30.10.2012 regarding deployment of all the Class IV employees employed in this Court as also in the Lucknow Bench.

The Registrar General is directed to **keep the original report in a sealed cover and produce it** before the Court when the case is listed next.

The Court has perused the said report and is of the opinion that the **Malis, Sweepers, Firemen, etc. appointed by the High Court are not deployed at the relevant places but their services are being utilised as peons** in various Sections/Departments of the High Court.

Sri Yashwant Varma is, therefore, directed to give

suggestions in the form of **an affidavit regarding the total number of Class IV employees required in various sections/departments, residence of Hon'ble Judges, their deployment and also as to what process the High Court intends to adopt for their recruitment.**

As prayed, list on 21st November 2012 at 10:00 A.M.

Order Date: 31.10.2012"

A **report dated 8.11.2012** was again submitted indicating certain **additional demands** that were raised for the purpose of staffing the High Court both in the office, the Court and the residence of Hon'ble Judges. A **report dated 19.11.2012** was also submitted indicating that the request of the State Government for **outsourcing such employees was not feasible** keeping in view the nature of the work in the High Court and the decision was accordingly conveyed to the State Government.

An affidavit dated 20.11.2012 was filed where after the matter was again adjourned on the request of learned Counsel on 12.12.2012. An application was moved on 17.12.2012 making a request for deployment of 20 temporary hands for the coming Kumbh Mela 2012 -13. The said application was considered and a temporary engagement was allowed by this Bench fixing 16.1.2013 in the matter.

The Registrar on the administrative side on 15.1.2013 passed an order constituting a Committee of 4 Officers to submit a report in the light of the directions issued on 31.10.2012 by the Bench. An **affidavit dated 26.2.2013** was filed along with an **interim report dated 22.2.2013** of the said 4 Member Committee constituted by the Registrar. The figures therein were apparently overbearing and aggressively over flowing. The form and relevancy were doubtful.

The Bench accordingly did not find the said interim report to be justifiable as it was still un-clear on facts and in a state of happy confusion as a result whereof an order was passed directing the Registrar General to coordinate with the two court Managers of the High Court and get a report submitted after verification. The order dated 26.2.2013 is quoted below:-

"An affidavit has been filed in Court today by the Registrar General. It is indicated in Page 14 of the affidavit that the **total number of posts required to be created is 993.**

This figure appears to have been arrived at on the basis of the report submitted by different Sections. **There is nothing in the affidavit to show that these demands raised by different Sections for creation of different number of posts, had been verified by any Authority.**

**We, therefore direct that two Court Managers** appointed by the High Court **shall verify the records of each Section and submit a detailed report** with regard to number of posts to be created in each Section. The respective Sections shall co-operate with the Court Managers for the above purpose.

This exercise be completed within forty five days and the report be submitted before the Registrar General. **The Registrar General shall make further verification of the report and submit his comments thereon.**

This case be listed on 7th May, 2013.

In the mean time, the entire exercise be done and an affidavit be filed in Court."

The two Court Managers were directed to submit a report in order to rationalize the demands that had been raised for sanction of additional strength of employees for the principal seat at

Allahabad and Lucknow and further to indicate justification for such rationalisation.

The Court Managers submitted a report dated 3.5.2013 alongwith a summary of the major findings indicating justification of the present deployment and the number of posts that may be required for the entire establishment. The said reports have been taken on record when the matter was heard on 7.5.2013.

A request was made on behalf of the High Court that an Affidavit be permitted to be filed in response to the facts and figures as disclosed in the report of the Court Managers. The order dated 7.5.2013 is extracted hereinunder:-

**"In compliance of the order dated 26.2.2013, two Court Managers have prepared a detailed report, which is filed in Court today. Learned Chief Standing Counsel prays for sometime to file affidavits on behalf of Registry in response to the said report.**

List on 20th May, 2013.

Affidavits be filed by 17th May, 2013 and copies of the affidavits be made available to the Bench by 17th May, 2013.

The report filed by two Court Managers be kept on record."

The Court Managers performed, and it was so signal a service that it really helped the establishment to give a second serious and thoughtful look at the problem. The subsequent reports started reflecting reality.

The Registrar General vide Affidavit dated 15.5.2013 assisted the Court when the matter was heard on 20.5.2013 alongwith a report from the Nazarat and their comments on the

report submitted by the Court Managers. A request was made that the said report shall be placed before Hon'ble The Chief Justice for necessary orders. The order passed on 20.5.2013 is reproduced below:-

"Heard Sri Yashwant Verma, learned Chief Standing Counsel, appearing for the High Court.

In compliance of the earlier dated 7.5.2013, the Registrar General of the Court has filed an affidavit. **It is stated in para 8 that issuance of rationalization, consideration of the measures indicated in the report of the Court Managers as well as the comments and suggestions received in respect of the same are all issues, which shall be considered by the Hon'ble Chief Justice or His Lordship's delegate. It is further stated that process of consideration and implementation of appropriate measures shall take some time.** Accordingly, prayer for further adjournment is made by Sri Yaswant Verma.

Put up on 15.07.2013.

In the meantime, entire exercise be completed and affidavit be filed in compliance of the order dated 7.5.2013, failing which, the Court will have no option, except to accept the report of the Court Managers, and to proceed with the case."

In the circumstances, it appears that the Registrar General vide order dated 2.7.2013 again constituted a 5 Member Committee which submitted a report dated 8.7.2013 stated to have been **approved** by Hon'ble the Chief Justice on 12.7.2013.

Confronted with the facts, the registry rationalised the requirement substantially confirming the reports of the court managers and also calibrated the number of posts and reduced the said number of 993 as projected earlier to 321 as per the

report aforesaid.

Noticing the said facts in an Affidavit filed by the Registrar General dated 13.7.2013, the Bench again assembled on 15.7.2013 on which date a direction was given to submit a similar report with regard to the establishment at Lucknow as the same was wanting in the earlier report. The order dated 15.7.2013 is quoted below:-

"In compliance of the order dated 20.5.2013, an Affidavit has been filed by the Registrar General before this Court enclosing the report regarding rationalizing the demand of Class-IV posts at Allahabad. The said Affidavit be kept on record.

So far as the **requirement at Lucknow Bench** is concerned, in the month of May, 2013, an Affidavit had been filed but, **the demand does not appear to be rationale, especially, when compared with the demand made by Allahabad Bench and the report of the Court Managers.**

We, therefore, direct the Registrar General, who is present in Court, **to examine the demand made by the Lucknow Bench with regard to rationalization of Class-IV posts and submit an Affidavit on the next date indicating the exact number of posts required.**

List this case on 22nd July, 2013.

The Registrar General at Allahabad Bench and Registrar at Lucknow Bench shall remain present in the Court along with the Court Managers of this Court."

From the facts on record, it appears that some report was prepared on 19.7.2013 and further time was sought from the Bench on 22.7.2013 to submit the same. It is stated by the Registrar General in his Affidavit dated 23.7.2013 that the report was placed before Hon'ble the Chief Justice who has **seen** the

same and the same was finally filed on 29.7.2013 when the following order was passed:-

"In compliance of the previous order dated 22.7.2013, Sri Yashwant Verma, learned Chief Standing Counsel, has filed an Affidavit of Sri Anant Kumar, Registrar General of the Allahabad High Court annexing therewith a report dated 19.7.2013, and charts showing the demand/requisition of class-IV employees for High Court at Allahabad, as well as, it's Lucknow Bench at Lucknow.

**From the additional demand of concerned departments of 289 class-IV employees for Lucknow Bench, the Committee appointed by Registrar General has rationalised and reduced the requirement to 92 class-IV employees.**

The report is accepted in compliance of the order dated 22.7.2013.

List on 19.8.2013 for hearing.

Sri Yashwant Verma will file written arguments with compilation of all the reports in advance.

The personal presence of Registrar General of the Court as well as Registrar at Lucknow Bench is dispensed with."

This being the status of the reports that were given from time to time have to be coordinated with the affidavits that have been filed on record by the High Court. As noted in the above quoted order, the demand at Lucknow was rationalized by reducing it from 289 as claimed earlier to 92.

The matter had thereafter been fixed on 19.8.2013 but unfortunately the lawyers were abstaining from work, as such, the Bench had to reassemble and the case was finally heard on 2.9.2013 whereupon the judgment was reserved.

Sri Yashwant Verma, learned Senior Counsel, for the High Court has broadly segregated his arguments in two categories, namely the contentious issues and non-contentious ones. The former are in relation to the jurisdiction of the Division Bench to take Suo Motu cognizance on the ground that the Bench had journeyed beyond its roster, and even assuming for the sake of arguments, though not admitting that such a course was permissible, then at the best it could have been placed before the Bench of Hon'ble the Chief Justice to register it as a Public Interest Litigation. He, however, puts in a caveat that legally a Public Interest Litigation in a service matter relating to the establishment of the High Court is not maintainable. He contends that issues of actual lis can arise for adjudication at the instance of aggrieved persons and it cannot be treated to be a matter of public interest. Consequently, if the very genesis of the initiation of the entire dispute is legally not sustainable, then Bench may decline to decide this reference.

Apart from this, he contends that the powers of Hon'ble the Chief Justice under Article 229 of the Constitution read with Rules 1976 are sufficiently protected and the arrangement of the infrastructure of class-IV employees can be looked into by Hon'ble the Chief Justice in the exercise of his administrative powers, as such, no adjudication may be necessary for undertaking any such exercise as a substitute for the same.

On the non-contentious issues, Sri Verma contends that no exercise for rationalisation of any Class-IV post or any requirement in relation thereto was undertaken for the past almost two decades except for the regular engagements made as per the directions of the Division Bench in the 1993 case. He, however, submits that the High Court undertakes to invoke such

exercises periodically as per norms in future and if any directions are given, the same shall be abided by.

He submits that as per the Affidavits of the High Court, it appears that bifurcation of posts between the principal seat at Allahabad and Lucknow was adjusted from time to time keeping in view the historical reason of the consequences of the United Provinces High Court (Amalgamation) Order, 1948. Clause-6 of the 1948 Order amalgamated the status of all employees and, thus, all employees were put under a common banner and after the constitution was enforced, the powers came to be vested under Article 229 of the Constitution in the Chief Justice of the High Court.

Thereafter, Rules have been framed but so far as the ratio is concerned, the stand of the High Court has been that broadly the bifurcation of the posts, have been made between Allahabad and Lucknow in the ratio of 70 : 30 and the said ratio is presently being maintained. Nonetheless any serious exercise, looking to the work load at both the places, the number of Judges, the number of revenue districts that fall within the territorial jurisdiction of Allahabad and Lucknow, and justification for the posts at both places as per requirement, does not appear to have been done which has now been undertaken during the progress of the hearing of this case. He submits that whatever suggestions came forward have been placed before the Hon'ble Chief Justice for perusal and the reports thereon have been filed along with the Affidavits that are on record.

Sri Verma has also relied on his Written Submissions contained in 2 parts to urge that the exercise of rationalization of posts has been carried out to a great extent and in the event there is any shortcoming therein, the same shall also be rectified

accordingly. Part-I of the Written Submissions sketches out the facts and we may put on record that had those facts not been stated so clearly in the submissions made by Sri Verma, we would have lost familiarity with the past without having any clear idea of the present or the future.

From the facts on record as contained in the reports and affidavits that we have traversed; it would not be unsafe to assume that there had been no honest attempt to diagnose the infirmities that have seeped into the system primarily on account of non-observance of the statutory rules namely the 1976 and 2000 Rules referred to hereinabove. They have been observed partially but mostly there has been a breach thereof. The fact of non-observance of the rules is admitted in para 13 of the affidavit dated 16.8.2012 which has been extracted and dealt with hereinafter.

There does not appear to be any serious exercise having been undertaken prior to these proceedings by the High Court in the past two decades for laying down a blue print to define the requirement of the infrastructural Class IV staff for catering to the various requirements of the High Court. The staffing pattern and the structure, department wise, that may indicate the actual or approximate requirement, does not appear to have been investigated or analysed. Daily Labourers and Casual Labourers have been conveniently introduced followed by attempts to regularize them under the powers of Hon'ble the Chief Justice enshrined under Article 229 of the Constitution of India.

Appointments have been made against Class IV posts as and when the necessity arose or as and when the powers were invoked under Article 229 or under the residuary powers and extraordinary powers preserved with Hon'ble the Chief Justice

under Rule 41 and Rule 45 of the 1976 Rules. A similar position emerges in relation to the drivers under the 2000 Rules where also the same provisions exist. Orders were passed by Hon'ble the Chief Justice either himself or even at times on the recommendations of Hon'ble Judges. Regular appointments through such methods became a routine.

The State Government has been sanctioning posts from time to time that have been filled up by the High Court to meet various exigencies. The procedure however adopted indicates an improper method of discretion being exercised when the rules specify a particular mode to be adopted. It is these disturbing facts that led to the *suo motu* cognizance of this matter by the Division Bench that was referred to be heard like a public interest litigation.

In the said background the first and foremost issue that has to be clarified is the taking of *suo motu* cognizance and the registering of the case as a public interest litigation. The jurisdiction of the bench to initiate this process was questioned directly in the administrative order dated 18.12.2004 of Hon'ble the Acting Chief Justice who assigned and placed the reference before a five judges bench that has also been mentioned in the judicial order passed on 20<sup>th</sup> of December, 2004. We would therefore advert to this primal issue before delving into the merits of the facts that have been placed before us in relation to the staffing pattern and structure of the Class IV employees and drivers of the Allahabad High Court at its principal seat and Lucknow Bench respectively.

The cognizance of a public interest litigation can be taken if the initiation is *pro bono publico*. The issue involved relates to public employment on the establishment of one of the organs of

the State namely the Judiciary. The powers, in so far as the High Court is concerned, for controlling the service conditions of its employees vests in the Chief Justice of the High Court as per Article 229 of the Constitution of India. The power therefore has to be exercised in the interest of the institution and for its smooth running. There cannot be any doubt that the employment of Class IV employees in the High Court therefore falls within the definition of public employment. Such employment therefore has to be made under Rules and under Orders of the competent authority. The question of exercise of such powers in public interest and in the larger interest of the institution is what with which this reference is concerned.

The present case is not one of adversarial litigation. It is to streamline the use of the powers conferred under the Constitution, and the rules framed thereunder. The reference has been made to rectify a genuine wrong that has crept into the system and therefore a public interest litigation is the right method that can be utilized in order to establish transparency and credibility of the institution.

We are aware that in service matters public interest litigations are rarely admissible and the guidelines that have been framed for dealing with public interest litigation have been laid down from time to time. In the instant case it is no citizen of this country who has come up before the court and who has to satisfy us about his locus-standi. Here the High Court on the judicial side itself has taken cognizance for redeeming its past and setting its own house in order. It is not the bonafides of any individual that are to be tested but it is the cause of the High Court itself that has been noticed by the Judges for resolving an intricate problem relating to the workforce of the High Court. Public interest in the present matter has to be viewed from the angle of a public image

namely the interest of an average citizen.

One of the submissions raised on behalf of the High court is with regard to the jurisdiction of the division bench taking cognizance suo-motu and then proceeding to frame several questions to be answered by the High Court.

Taking objection to the same Sri Yashwant Varma, learned Senior Counsel for the High Court contends that the division bench on its own had not been assigned the roster by Hon'ble the Chief Justice to hear any such matter including any issue relating to public interest or public importance. He therefore submitted that this being a pure service matter relating to the Establishment of the High Court and its infrastructure, the litigation could not have been initiated by exercising any such suo-motu power. In the absence of any such authority to deal with any such issue the order passed on 17<sup>th</sup> December, 2004 was an exercise coram-non-judice, and therefore, the entire reference deserves to be turned down. He therefore contends that in view of the powers conferred on the Chief Justice and as defined under Chapter V of the Allahabad High Court Rules, 1952, the entire proceedings were without authority.

The question of public importance and the matter being referred to a larger bench in the circumstances given above have already been explained by us, and we therefore, find that it would not be further necessary to delve into this aspect in view of the conclusions drawn in the judgment.

The jurisdiction of Judges, sitting alone or in divisions, is provided for under Chapter V of the 1952 Rules. Rule 1 clearly empowers the Chief Justice to pass orders constituting benches with orders allowing Judges to sit alone or in such division courts

under his orders or directions. The jurisdiction of a Single Judge or a division bench has been further defined in Rules 2 to 8. The other Rules also indicate the manner in which cases will be heard by the respective benches.

The second proviso to Rule 2(aa) recites that the Chief Justice may direct that any case or class of cases which may be heard by a Judge sitting alone shall be heard by a bench of two or more Judges or that any case or class of cases which may be heard by a bench of two or more Judges or a Judge sitting alone. This is in addition to the general powers as defined under Rule 1. Apart from this, sub-clause (b) of the aforesaid second proviso, empowers a Judge sitting alone to refer a case on any question of law arising therein for a decision to a larger bench as he thinks fit. This is further coupled by Rule 6 of Chapter – V which empowers the Chief Justice to constitute a bench of two or more Judges to decide a case or any question of law formulated by a bench hearing a case. In the latter event the decision of such bench on the question so formulated shall be returned to the bench hearing the case and that bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any, arising therein.

At this juncture, it would be relevant to note that the order of Hon'ble the Chief Justice referring a matter to be decided by a bench of at least five Judges, cannot be subject matter of judicial scrutiny as held by the full bench of this Court in the case of **State of U.P. and others Vs. Firm Deo Datt Lakhani Lal reported in AIR 1966 Allahabad Pg. 73.**

Having traversed the powers of the Chief Justice as defined aforesaid and the jurisdiction to hear a reference, the facts of the present case reveal that the division bench suo-motu took notice

of the improper bifurcation of the 355 posts that were sanctioned by the State Government between the Principal Seat at Allahabad and the Lucknow Bench keeping in view the number of Judges sitting and the workload at both places, and treating it to be alarmingly disproportionate, called for a report from the Registrar, simultaneously passing an interim order. This order was brought to the notice of the Acting Chief Justice who exercising his powers under Chapter – V and the Rules referred to hereinabove and relying on the full bench decision in the case of Sanjay Kumar Srivastava Vs. ACJ (supra) withdrew the case entirely from the division bench and assigned it to the five Judges bench constituted under the order dated 18.12.2004.

A closer look at the said order would demonstrate that the Acting Chief Justice after withdrawing the case appears to have exercised his powers as contained in **Chapter V Rule 1 and the second proviso to Rule 2 (aa) of the 1952 Rules**. The second aspect is that the entire case was **assigned to the five Judges bench**. Thirdly, the nature of the order clearly indicates that **the case was to be decided** by the five Judges bench **and the questions that had been raised on the issues of importance** as indicated in the order of the division bench dated 17.12.2004, including the issue of jurisdiction of the division bench to take suo-motu cognizance of the issue in public interest. Thus to our mind, Hon'ble the Acting Chief Justice having withdrawn the entire case had assigned it to a five Judges bench to decide the entire case and it was not an assignment for deciding only a particular question on reference so as to be returned to the division bench for further decision. Thus the entire case having been withdrawn and then assigned afresh, the issue relating to the powers of the division bench to take suo-motu notice of the issues raised, pales into insignificance.

We may explain this with the aid of Clause (b) of the second proviso to Rule 2 (aa) where any Judge if he thinks fit can refer a case to be heard by a Single Judge or any question of law arising therein for a decision to a larger bench coupled with Rule 6 where the Chief Justice can constitute a bench of two or more Judges to decide a case or any question of law formulated by a bench hearing a case. Thus the power and authority to refer a case on a question of importance or any question of law exists and the Chief Justice is empowered to constitute a larger bench for deciding such a reference or the entire case.

Even assuming for the sake of arguments that the interim order passed by the division bench on 17.12.2004 was not an appropriate exercise of discretion by taking suo-motu cognizance, yet the power to refer any case or any question of law and the constitution of a larger bench on such an issue is well within the powers of the Judges and Hon'ble the Chief Justice respectively. As noted by us hereinabove, the issue which has been raised was in vital public interest and of public importance as it related to public employment in one of the most important organs of governance, namely, the Establishment of the High Court. Hon'ble the Acting Chief Justice after having taking notice of the said direction did take notice of the importance of the matter and then withdrew the case followed by an assignment constituting a five Judges bench, not only to hear the jurisdiction of the division bench to deal with the matter, but also to decide the important issues raised therein.

In our opinion, once the Hon'ble Acting Chief Justice had withdrawn the case from the division bench and assigned the issues raised therein to be decided by constituting a five Judges bench, the power and jurisdiction of the division bench to hear the same loses its significance. The order of Hon'ble the Acting Chief

Justice dated 18.12.2004 assigning the entire case clothed the five Judges bench with the jurisdiction to hear the case. In this background and for what has been concluded hereinunder, the contention about the division bench taking cognizance defies relevance.

The constitutional mandate by which the appointments are governed is quoted hereinunder:-

"Article 229:- Officers and servants and the expenses of High Courts. - (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the High Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidation Fund of the State, and any fees or other moneys taken by the Court shall part of that Fund."

The Chief Justice of a High Court has the authority and his supremacy has been acknowledged in matters of employment on the Establishment of the High Court through several decisions of the apex court. The following decisions and orders are a living testimony to the said proposition:-

1. Pradyat Kumar Bose Vs. The Hon'ble Chief Justice of Calcutta High Court  
**AIR 1956 SC Pg 285**
2. Powers under Article 229 of the Chief Justice  
**M Gurumoorthy Vs. A G Assam, AIR 1971 SC 1850**
3. State of Assam Vs. Bhubhan C Dutta  
**AIR 1975 SC 889**
4. State of A.P. Vs. T. Gopalkrishnamurthy  
**AIR 1976 SC 123, 133**
- 4.A. Chief Justice A.P. Vs. LVA Dikshitulu  
**AIR 1979 SC 193**
5. Regularisation/Same Pay Scale/Equal Work Ald. High Court (DB)  
**W.P. No. 4956/1985 Vishwanath & Ors. Vs. State decided on 8.3.1986**
6. J.M. Mishra Vs. State  
**1987 (2) U.P.L.B.E.C 1133**
7. Supreme Court Employees Welfare Association Vs. Union of India  
**AIR 1990 SC 334**
8. Puttuswamy HC Vs. State of Karnataka  
**1991 (Supp)(2) SCC 421**
9. Supreme Court Employees Welfare Association Vs. Union of India  
**1993 JT (2) Pg. 271**
10. Sunil Kumar Vs. State Dress Allowance  
**W.P. No. 2672/93 (DB) decided on 28.4.1993**
11. State of U.P. Vs. Class IV Employees HC  
**1993 (3) U.P.L.B.E.C 2083**
12. High Court of Judicature at Rajasthan Vs. R.C. Paliwal  
**1998 (3) SCC Pg. 72  
= 1998 (2) JY Pg. 1**
13. State of U.P. Vs. C.L. Agarwal  
**1997 (5) JT 551**
14. Union of India Vs. Kali Dass Batish

**2006 (1) SCC Pg. 779**

15. Devendra Kumar Pandey Vs. High Court (Single Judge)  
**2007 (7) ADJ 720; 2007 (8) ADJ 95**
16. Diwakar Singh Vs. State (Single Judge)  
**Interim order + Reference  
2010 (4) ADJ 571**
17. Radheyshyam Tiwari Vs. State (Single Judge)  
**Interim order + Reference  
2010 (4) ADJ 628**
18. High Court Vs. Diwakar Singh (FB)  
**Interim order, 2010 (4) ADJ 584**
19. High Court Vs. Diwakar Singh (FB)  
**2010 (9) ADJ 292, Final Order**
20. State of West Bengal Vs. Debashish Mukerjee  
**2011 (11) JT Pg. 1  
Decided on 14.9.2011**
21. Hon'ble High Court of Judicature at Allahabad Vs. Devendra Kumar Pandey  
**2011 ADJ (9) Pg. 385  
Decided on 20.9.2011.**

The question is, how is this power to be exercised, and the limitations if any. The exercise of powers cannot be unguided or unbridled. There is no authority under the Constitution, who has not been specified the extent of the powers conferred, hedged with its limitations. To our mind, the powers are subject to the limitations being exercised not beyond the purpose for which they have been conferred. The powers are to be exercised within the framework of the Constitution.

This being the position, the powers cannot be exercised in violation of the basic structure of the Constitution of India of which the chapter of fundamental rights is one of the limitations. The reason is that our country is a democracy that is governed by rule of law. It is the supremacy of law that is acknowledged in

order to supervise the functioning of the governmental set up. The doctrine of separation of powers between the organs of the State and the doctrine of distribution of powers within the authorities under the Constitution are therefore subject to the rule of law. The apex court has time and again ruled that the absence of arbitrariness is the essence of rule of law and therefore the powers have to be canalised and not unbridled, so as to breach the basic structure of the constitution, particularly the fundamental rights guaranteed under Part III of the Constitution of India.

It need not be pointed out by us that in matters of public employment what keeps on being discussed by courts, is the infringement of the fundamental rights guaranteed under Article 14 and 16 of the Constitution of India. Equality of opportunity in matters of employment being a constitutional mandate, has to be observed even if the powers are being exercised by the Chief Justice under Article 229 of the Constitution of India and the rules framed thereunder.

In our opinion howsoever supreme the authority of the Chief Justice may be, the same is subject to judicial scrutiny on the anvil of Fundamental Rights of Part III of the Constitution as well as the rules framed by the authority under the constitutional provisions. The unquestionable authority is always subject to the authority of the Constitution. The Chief Justice under Article 229 of the Constitution read with the rules framed thereunder does not act as an extra constitutional authority. To the contrary he derives his powers under the same constitution which guarantees the fundamental rights to the citizens of this country. We therefore are of the opinion that the exercise of such powers, with its limitations, is subject to judicial review on the abovementioned parameters. We are fortified in our view by the ratio of the

decisions in the case of **H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice, Bangalore and others reported in 1991 Supp (2) SCC 421** and the latest decision of the apex court in the case of State of **West Bengal and others Vs. Devasis Mukherji and others reported in 2011 JT (11) Pg. 1.**

We have been reminded of the decisions in the case of **High Court of Judicature for Rajasthan Vs. Ramesh Chandra Paliwal and another reported in 1998 (3) SCC 72**, and it has been urged by the High Court that such powers cannot be questioned by any Judge or the number of Judges on the administrative side. The powers of the Chief Justice as culled out therein and then subsequently asserted more vehemently in the case of High Court of Judicature at Allahabad Vs. Diwakar Singh reported at the interim stage in 2010 (4) ADJ 584 and finally in 2010 (9) ADJ Pg. 292 and the division bench judgment in Special Appeal No. 563 of 2008 decided on 20<sup>th</sup> of September, 2011 Hon'ble High Court of Judicature at Allahabad through its Registrar Vs. Devendra Kumar Pandey and others [2011 (9) ADJ Pg. 385] have been heavily relied on. We are therefore under an obligation to answer the submission as to the impact of the same on the issues presently raised.

We have gone through these decisions as well as other decisions relied on, but at the same time it would be appropriate for us to point out that the issue that has been raised, and has come up for consideration before us, had already been visualized long back in the year 1993 when a learned single judge had issued directions for the regularisation of Class IV Daily and Casual Labourers against permanent posts that came up for consideration in Special Appeal No. 269 of 1993 decided on 22.9.1993 **State of U.P. Vs. Class IV Employees Association, High Court of Judicature at Allahabad reported in 1993 (3)**

**U.P.L.B.E.C. Pg. 2083.**

From the facts that have been set out in the various affidavits and the reports on record, we did not find any exercise worth the name in the present matter to have been undertaken by the High Court to sort out this problem of defining the structure of the staffing pattern of the High Court in correct perspective as visualized as far back as in 1993 in the aforesaid decision which however has now been attempted during the pendency of these proceedings on our insistence.

The High Court seems to be more concerned with the powers of the Chief Justice and its exercise thereof with its unquestionable discretion. We, having carefully examined the same, are unable to subscribe to the view of the high pedestal on which it has been placed, both in the decisions of the Full Bench in the case of High Court of Judicature Vs. Diwakar Singh (supra) and the division bench judgment in the case of Hon'ble High Court of Judicature Vs. Devendra Kumar Pandey (supra). The logic given in both judgments is palpably at odds with the purpose. To our mind it would be perilous to risk an interpretation on the parameters of absolute superior powers that would be fraught with danger, as it involves the management and administration of one of the main organs of governmental function, that too even of the most essential component of governance – the judiciary.

The reason is the supremacy of the rule of law – its paramount majesty in which the people of this country have reposed their faith while accepting the declaration in the opening words of the preamble 'We the people of India.....give to ourselves....". The other reason is that this faith in the "sense of justice" and its administration, is founded on the obligation cast on this institution as the sole arbiter of laws, to apply the laws

correctly and faithfully, so as to rest the logic of law on surer foundations. This creates responsibility on the High Court and its judges including the Chief Justice to administer the laws constitutionally on the judicial side and observe and obey the laws on the administrative side.

The principles governing public employment that flow constitutionally, including the protection of Article 14, have to be observed as held by the apex court in the decisions of Puttaswamy H.C. (supra) and State of West Bengal Vs. Debashish (supra). Thus the exclusive powers residually conferred on the Chief Justice are subject to constitutional controls under Chapter III thereof. It is this part that we wish to emphasize without intending in any way to diminish the authority and powers of the Chief Justice under Article 229 and the rules framed thereunder.

Sri Verma learned Senior Counsel for the High Court submits that in Diwakar Singh's case (supra) this issue had not been decided and therefore it would not be correct to read down any part of the said judgment. For this, one has to necessarily refer to Paras 38 to 42 of the said judgment that are extracted hereinunder:-

38. After referring to the aforesaid aspect in respect to the grounds and the reliefs claimed in the writ petitions filed by the writ petitioners we are to again quote the concession made by the learned Advocate for the High Court as is noticed in the order of this Bench dated 16.4.2010. The statement as made, as referred above, is quoted hereinafter:

"Sri S.P. Gupta, learned Senior Advocate during course of argument made statement that the High Court is ready to consider the claim of the petitioner as and when occasion will arise and thus writ petition needs to be dismissed as infructuous

with the aforesaid direction."

39. On 27.8.2010, during the course of argument again counsel for both the sides gave a clear concession in the open court which was so recorded on separate sheet.

40. The statement/concession of both sides already noticed, is just to be repeated for convenience :

"During the course of argument, apart from arguing the matter on the merits about various observations of the learned Single Judges, Sri Upadhyay again reiterated the earlier submission so advanced by Sri S. P. Gupta, learned Senior Advocate that the High Court is ready to consider the claim of the petitioner as and when occasion will arise and thus irrespective of various issues which are said to be involved, writ petition be disposed of in the light of the aforesaid stands/statement.

Sri Yashwant Varma, learned Advocate being very fair to the Court, to the appellant side and to his client submits that if that consideration is directed and there is statement in this respect from the appellant side then practically relief so claimed in the writ petition stands received and thus the matter may be dealt with accordingly."

41. Here is the simple matter where the petitioners of both writ petitions have prayed for a direction to the respondents to permit their consideration in the interview for the recruitment of Car Driver and for other class IV staff.

42. When the writ petitions were filed selection process was all complete.

A perusal thereof does not reflect any exact ratio by the said Full Bench in the background in which the same was decided

but both at the interim and final stages a lot was said about the paramountcy of the office of Hon'ble the Chief Justice. The facts giving rise to the said reference are elaborately dealt with in the orders of the learned Single Judges reported in 2010 (4) ADJ Pg. 571 (supra) and 2010 (4) ADJ Pg. 628 (supra).

The full bench appears to have, with the aid of a concession made by the learned counsel for the High Court, disposed of the matter by observing that the reference was not justified, that too even through or on the basis of an order expressing difference of opinion at the interim stage. The full bench ruled that a reference could have been made only if there was conflict between opinions expressed finally. A disapproving note was written on the jurisdiction of the learned single judges by the FB without touching the merits of the case and treating the whole issue to have been unnecessarily raised. Yet the judgment proceeds to spell out the powers under Article 229 of the Constitution that have been voiced both at the interim stage, the order whereof is reported in 2010 (4) ADJ 584, and in the final judgment quoted above.

Coming to the ratio of the judgment of the division bench in the case of Devendra Kumar Pandey (supra), a sweeping observation has been made that the Chief Justice is empowered under Article 229 (2) to make appointments as per rules and therefore the appointment cannot be illegal or irregular. This presumptive proposition has been culled out by placing reliance on the judgment of the apex court in the case of M. Gurumoorthy (supra). Further the bench has observed that if the Chief Justice has taken a decision to appoint some persons to serve the High Court, it can be presupposed that it has been consciously done for the benefit of the institution and faith is required to be reposed by all judges in the Chief Justice as he being the head of the

institution is definitely worried about the necessity of appointments. It has been observed that if the Chief Justice is under a pressure of workload, he cannot be debarred from making appointments. According to the bench, it is absurd to believe that the Chief Justice would be swayed away by favouritism and any criticism should be avoided.

Having given our thoughtful considerations, but with due deference to the aforesaid observations of the full bench in Diwakar Singh's case and the division bench judgment in the case of High Court Vs. Devendra Kumar Pandey (*supra*), we are the least persuaded to approve the same. The pronouncement appears to be authoritative but it lacks the substance of consideration of Article 14 and Article 16 of the Constitution of India. Howsoever high a dignitary may be, once the power conferred is governed by the Constitution, the laws made thereunder and the rules framed, then the authority is bound to act within the rules and not ascribe to himself an authority to act beyond it or else the exercise of power will be a camouflage to act arbitrarily in the solemn name of discretion.

The higher the dignitary, the more objectivity is expected to be observed. This does not mean that the power should be curtailed, but at the same time it should be stretched only to the width of the constitutional and legal limits. The observance of law has to be calibrated – doing what you need to, no more no less. The presumption and the presupposition of the validity of orders on the administrative side are dependant on the alleged constitutional violation and its judicial scrutiny. They are not immune to law nor to judicial review. The residuary powers of the Chief Justice under Rule 8, Rule 41 and Rule 45 of the 1976 Rules and similar powers under the 2000 Rules are supposed to be exercised notwithstanding contained in the rules, but the same

cannot be construed to mean notwithstanding the fundamental rights and obligations under the Constitution. Giving the interpretation as suggested by the said decisions would belittle the esteem of the office of the Chief Justice thereby reducing its respect.

We would like to clarify that the observations made by the Division Bench in the case of High Court of Judicature at Allahabad Vs. Devendra Kumar Pandey (*supra*) to the effect that Uma Devi's case has not touched the ratio of the decision of the Apex Court in the Constitution Bench judgment of M. Gurumoorthy (*supra*) is not correctly stated in the context of the Division Bench judgment, inasmuch as the decision in the case of M. Gurumoorthy only spells out the powers of the Chief Justice but the same does not in any way hold that the Chief Justice can exercise powers that may run-counter to Articles 14 and 16 of the Constitution while making appointments in the establishment of the High Court. Consequently, the case of Uma Devi (*supra*) is a decision on the limitations prescribed while making appointment against public posts in terms of Articles 14 and 16 of the Constitution of India. What Uma Devi's case has deprecated is back door appointment or appointment de-hors the Rules. The present is clearly a case which involves these issues and, therefore, the reliance by the learned Counsel for the High Court on the Division Bench judgement seeking to clarify the ratio of Uma Devi's case is misplaced.

The question relating to the rules for employment that are to be framed in respect of Class IV employees and drivers flow from the powers under Article 229 of the Constitution of India. The powers of the Chief Justice, and the judgements relating thereto, have already been noticed by us that indicate that the exercise of such powers are subject to the limitations of Article 14

and 16 of the Constitution of India.

The source of recruitment of the employees and the method has been prescribed in Rule 4 of the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976. The rules for drivers at pari materia are contained in Rule 5 read with Rule 14 of the Allahabad High Court Staff Car Drivers (Conditions of Service and Conduct) Rules, 2000. The sources of recruitment came to be incorporated in the said rules and in order to define the method of recruitment for the lowest category of Class IV employees as defined under Rule 4(a), a proviso was added vide Notification dated 10<sup>th</sup> October, 2002 which reads that **“provided that in making such recruitment preference shall first be given to suitable persons already engaged by the High Court as daily Labourers. If after making recruitment from this source some vacancies are left unfilled for want of suitable persons, the remaining vacant posts shall be filled by inviting applications through Employment Exchange”**.

The 2000 Rules for drivers contains a similar proviso in Rule 14 thereof.

After repeated trials and failures the rule was framed and subjected to the aforesaid amendment but again with the inadequacies and risks of violating the constitutional mandate. Permanency to a daily labourer was easily predictable.

It is at this juncture that the above quoted proviso to Rule 4 (a) and Rule 14 of the 2000 Rules has to be considered. The same, in our opinion, can be read only to the extent of giving preference when the recruitment process is initiated under the said Rules. A preferential treatment cannot be an exclusive source of recruitment. The said proviso, therefore, will have to be

understood, not as a source of recruitment but only giving a right of preference to such Daily Labourers, who are already engaged in the High Court. Learned Counsel for the High Court has urged that the said proviso is an exception to the mode of direct recruitment to the extent that applications from the employment exchange or from any outside candidates would be invited only if posts are vacant and are left unfilled after recruiting the Daily Labourers working already in the High Court.

The aforesaid proviso to Rule 4(a) of the 1976 Rules and to Rule 14 of the 2000 Rules gives absolute certainty and guarantee of regular engagement to a daily labourer without following any process of selection till the list of all such daily labourers gets exhausted. It is this infirmity which had been pointed out by the learned Single Judges while referring the matter to the larger Bench in the case of High Court of Judicature Vs. Diwakar Singh (supra), but the Full Bench did not answer the reference for the reasons given in the said decision. According to us the aforesaid rule clearly prohibits and excludes all candidates as against the daily labourers of the High Court from the zone of consideration till such daily labourers are available in the High Court. Articles 14 and 16, therefore, clearly step in and the rule to that extent cannot be supported in law as a separate source of recruitment avoiding any general competition and selection. The rule, therefore, assures employment to a daily labourer once he is engaged as such by excluding competition, selection and denying equality of opportunity of employment to the public at large by this method that would violate the equality clause of the Constitution.

To our mind, the said rules, if put to test on the anvil of Articles 14 and 16, run the risk of being struck down of being violative of Articles 14 and 16 of the Constitution of India as it

amounts to virtually reserving the posts for recruitment only from amongst the Daily Labourers already engaged by the High Court. If this method is permitted then Daily Labourers would be perennially available and no Class-IV posts or the post of drivers would ever be advertised for direct recruitment from the open market. The aforesaid provisos were added vide Notification dated 10.10.2002 prior to the decision in the case of Uma Devi (supra). The Rules are not under challenge but we have to pronounce upon the source and method of recruitment under the proviso to Rule 4 (a) and Rule 14 in view of the submissions that have been raised on behalf of the High Court.

In our considered opinion, interpreting the Rules as aforesaid would also save the Rules from being declared ultra vires and would simultaneously protect its operation within the fold of Articles 14 and 16. Rule 25 of the 1976 Rules and Rule 8 of the 2000 Rules clearly mandate an advertisement to be made for the public at large to know about the vacancies so that eligible candidates may apply. With there being no advertisement, the others can never get an entry. If the method of recruitment as suggested in the proviso is adhered too, then no situation would arrive for inviting applications through the Employment Exchange or from the general public as is evident from the experience of the past and presently reflected in all the reports of the High Court. We are fortified in our view from the said fact having been admitted by the High Court in para 13 of the affidavit dated 16.8.2012 extracted hereinunder:-

"13. It is submitted that no specific procedure has been laid down in the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 for the appointment to the post of Class IV employees. While the Rule 7 of the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 says that the post of Jamadar, Daftari & Bundle lifter or Head Mali of the promotional post.

**It appears that to fill up the permanent and temporary vacancies of class IV employees in the establishment of Allahabad High Court, no regular procedure, viz, advertisement and taking some test/examination and making provision for reservation, etc., has been observed. Perhaps because of the reason that this procedure was cumbersome, hence, to meet the exigencies D.L., C.L., D.L. (Drivers) have been appointed by the Hon'ble Chief Justice, who were thereafter given preference in regularization to the class IV post for which rule 4 (a) of the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976, empowers the Hon'ble Chief Justice."**

The said facts had also been reiterated in the affidavits filed by the Registrar before the learned Single Judges in the case of Radhey Shyam Tiwari (supra) and Diwakar Singh (supra).

It is for this reason that in the entire history of 137 years of the High Court that no advertisement was made particularly after 1976 in the post constitution period when the Rules were framed and adopted. The rules appear to have gone unnoticed.

The other ancillary rules relating to reservations and qualifications are provided for in Part-VII of the rules that are applicable to the recruitment of various categories of posts including Class IV posts on the Establishment of the High court. Rule 23 to 29, therefore, in matters of the method of recruitment, are in addition to the aforesaid Rule 4, referred to hereinabove. Part-VIII and Part-IX, relate to post-appointment conditions of service. Part-X of the said rules under the heading "other provisions" recites that the regulation of other matters under Rule 40 shall be subject to the superintendence, control of the Chief Justice with a further provision that the rules for government servants holding corresponding posts in the government shall apply to the officers and servants of the court subject to the

modifications, variations and exceptions as the Chief Justice from time to time may specify, except the conditions relating to salary, allowance, leave or pension shall be made by the Chief Justice with the approval of the Governor.

Over and above this, residuary powers are defined under Rule 41 which are general in nature for making provision for incidental or ancillary matters not specifically provided for with the riders aforesaid in financial matters.

**The most important rule that attains significance in the present dispute is Rule 45 which opens with a *non-obstante-clause* empowering the Chief Justice to make such orders as he may consider fit in respect of recruitment, promotion, confirmation or any other matter.**

It is in this context that the powers of the Chief Justice under Article 229 of the Constitution of India and Rules 41 and 45 of the 1976 Rules have to be considered. To our mind, Rule 41 and 45 are powers available to be utilised when the smooth implementation of the Rules get impeded. They are not as a substitute for the rules of regular employment. They are to remove rare and occasional difficulties. We have already indicated that Rule 41 and Rule 45 coupled with the powers under Article 229 are subject to Articles 14 and 16 of the Constitution of India. To this extent, we have already indicated that the interim order and the judgment of the full bench in the case of High Court of Judicature at Allahabad Vs. Diwaker Singh (supra) has not explained the law correctly.

Secondly the process of regular appointment through advertisement or through the known methods of public employment was not followed. Even if preference was to be given

to the existing daily labourers/casual labourers/DL drivers, the same ought to have been after an advertisement as per Rule 25 of the 1976 Rules and Rule 8 of the 2000 Rules. The entire exercise was completed within three days which fact remains undisputed. The regularisation is sought to be justified on the basis of the Class IV Employees Association case (supra) of the year 1993 where directions had been given by the division bench to undertake this exercise on the basis of the guidelines mentioned therein. Consequently, the posts that were created in 2004 and the method of recruitment of such employees who were regularised was sought to be protected in terms of the proviso to Rule 4(a) and Rule 14 that came to be added on 10<sup>th</sup> October, 2002 coupled with the 1993 judgment referred to hereinabove.

We have carefully examined all the affidavits that have been filed and it is evident that all the appointments that were sought to be regularised prior to sanction of the post on 10<sup>th</sup> December, 2004 had been made by engaging daily labourers and casual labourers including the post of Drivers without following the procedure prescribed for recruitment under Part-VII of the 1976 Rules, particularly, Rule 25 and Rule 8 of the 2000 Rules which mandates the calculation of the age of the candidate to be not less than 18 years and not more than 35 years for a Class IV post on the 1<sup>st</sup> day of July of the year in which the advertisement is published. We would like to emphasise the words "advertisement is published" which leaves no room for doubt that after the promulgation of the 1976 and 2000 Rules an appointment has to be made only after an advertisement. It would not be a futile repetition to say that no advertisement was ever made in the High Court for appointment on the post of a Class IV employee or a driver, except for one insignificant advertisement at Lucknow in 2011 that we have noted in this judgment. No other advertisement for such engagement was ever made either at the

principal seat at Allahabad or at the bench at Lucknow including their appointments in 2004 presently involved.

We have examined the 1976 and 2000 Rules carefully but we do not find any separate provision for regularisation of such engagements that have been made and are presently involved.

The only guidance that was available in 2004 was the judgment in the case of State of U.P. Vs. Class-IV Employees Association (supra). The said judgment in paragraph Nos. 18 to 26 dealt with the issue of regularisation. The Division Bench, while referring the case of State of Haryana and others Vs. Piara Singh and others, AIR 1992 SC 2130, Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi, and others, AIR 1992 SC 789 and the decision in the case of Dharwad Distt. PWD Literate Daily Wages Employees Association and others Vs. State of Karnataka and another, AIR 1990 SC 883, came to the conclusion that employees, who had been continuously functioning for a considerably long period, deserve to be regularised. The Bench in paragraph No.24 ruled that non-regularisation of such employees will be a negation of the Rule of Law but at the same time in paragraph No.26 of the judgment, the Bench formulating guidelines held, that though not exhaustive, the same should be followed to determine the benchmark of regularisation. The guidelines formulated by the Division Bench are worth extracting:-

"1. A work Study Team shall be set up the Chief Justice to assess the quantum of work required to be done by Class IV employees will be required for that work. While assessing the quantum of work, work of casual nature will not be taken into consideration. Year of appointment of the employee who will be considered for the last newly created post will be a safer guideline to determine the cut off year for regularising the services of daily/casual employees. To illustrate the point, suppose the work study team reports

that the magnitude of the work is such as to require 400 Class IV employees and suppose sanctioned posts are only 200 in the Class IV cadre, then steps will be taken to create 200 extra posts to cope with the work. The year of appointment of the daily/casual labourer as per the list of daily/casual labourer whose name may be considered for being appointed on last newly created post out of 200, will represent the cut off year upto which regularisation will be directed and the employees having rendered service till that year can be said to have rendered service of several years, qualifying for regularisation. If the last candidates whose name is considered for being appointed on the last newly created post from the list of daily/casual labourers out of 200 is an appointee, say of 1989, then 1989 will be taken to be the cut off year and service rendered till that year by the employees will tantamount to service of several years. Fixation of cut off year and regularisation of service should have a direct and live link with the number of extra posts required for the total work.

2. Once the cut off year qualifying for regularisation is determined then daily/casual labourers will be regularised against the newly created posts, subject, of course, to fulfilling eligibility conditions and the requirement of fitness following the basis of suitability-cum-seniority. Suitability will be judged having regard to conduct and efficiency. Seniority will be determined taking into consideration the total period of service which the daily/casual labourers have to their credit and not the date of appointment. Daily/casual labourers are paid as and when they come to work. They may come to work with a gap sometimes considerable gap. If seniority is reckoned simply on the norm of the date of appointment then an unanimous situation may arise in that a daily/casual labourer appointed much earlier but working intermittently with gaps, may render total service much less than his counterpart appointed later but working continuously without any gap; the former having lesser total period of service to his credit cannot be permitted to steal march over the later having more service to his credit though within a short span.

3. Before regularising the service in newly created posts, the eligible employees will thus be subjected to through screening and only those who fulfil all the norms and are found fit, will be regularised.

4. The daily/casual labourers who are not regularised in newly created posts and are left out will be empanelled subjecting them to the same norms applicable to their

predecessors and future vacancy in the cadre of Class IV employees will be filled in only from such panel. The panel will continue until it is exhausted. Those who do not fulfil the aforesaid norms will cease to work.

5. Recruitment in future in the cadre of Class IV employees shall be made strictly as per the rules calling up the names from the Employment Exchange and after duly notifying the vacancy(s). However, it is made clear that daily/casual labourers may be engaged in future only for doing work of casual nature.

6. There is, however, one aspect we should emphasize here. Daily/casual workers working at the residence of the Judges from a separate category. Tracing the genesis of such employees, it is to be recalled that it was considered expedient several years before to employ daily rated persons to attend the house hold chores at the residence of the Judges when it was felt that the peons falling in the category of regular employees, were reluctant to do domestic work. A free hand was given to the Judges to employ any person who was subjectively considered suitable by the Judges for the domestic work without having regard to the eligibility conditions, necessary in the case of regular employee. As a matter of fact such daily rated persons/Sewaks were employed on the 'hire and fire' principle leaving to the Judges to show the door to any such employee as and when he failed to discharge duties to their satisfaction. Vide judgment dated 8-3-1986 (Annexure No.4 to the petition), the daily rated persons/Sewaks were not equated with the peons, but the Bench remarked that the daily rated persons/Sewaks "assigned to the residence of Judges are at least entitled to be paid the scale of Rs.305-390/-, and shall be paid in that scale". Without equating daily rated persons/Sewaks with the peon, the Bench from the point of 390/-. Looking to the genesis of this class of employees, they have to be treated separately and Rule 4(a) of the Rules of 1976 is required to be suitably amended including them as a separate class therein. It is, therefore, open to the Chief Justice to suitably amend the said Rules in respect of them. Whatever rules are framed in respect of such a class, the Chief Justice will do good if he bears in mind the genesis of their employment and the fact that two employees called as Sewak too-are part of the essential accoutrement of the Judges and absence of willing workers of this category will be a constant irritation, distracting and disturbance to the Judges having a telling effect on their onerous duties ultimately impeding the administration of justice.

7. Reposing full faith in the Chief Justice, it is hoped that he shall ensure that job will be finished by the work study Team and by the Screening Committee within a period of six months. Thereafter steps shall be taken by him for creating new posts with due approval of the Governor under the proviso to Clause (2) of article 229 of the Constitution and then regularisation process shall be completed within the reasonable time, limit whereof is not prescribed herein considering the fact that the Chief Justice being a high dignitary, a constitutional functionary and supreme appointing is expected to discharge his constitutional duties adhering to Rule of law as expeditiously as possible."

It is on the strength of such guidelines that steps were undertaken to extend the benefit of regularisation in the past. The aforesaid judgement came to be implemented when 500 posts were sanctioned way back vide Government Order dated 5.12.1995 against the request of the High Court to sanction 855 posts.

In addition to those posts, 355 posts were subsequently sanctioned on 10.12.2004 which is subject matter of present controversy where again the aforesaid judgment appears to have been pressed into service keeping in view the 1976 and 2000 Rules. It is worth mentioning that when 855 posts were demanded and only 500 posts were sanctioned in 1995, a proposal approved by Hon'ble the Chief Justice on 5.3.1994 was sent to the State Government reflecting the position that existed then.

In the instant case, when the Hon'ble Acting Chief Justice passed orders on 13.12.2004, a proposal was submitted and an exercise was undertaken for interviewing about 150 Daily Labourers and Casual Labourers to assess their performance appraisal on 13.12.2004 in tune with the judgment in the case of State of U.P. Vs. Class-IV Employees Association. It was also

stated in the report then that when 500 posts were sanctioned in 1995, a Committee comprising of the then Hon'ble Judges (Mr. Justice A.K. Banerjee and Mr. Justice S.R. Singh) had regularised Daily Labourers and Casual Labourers on the basis of number of working days coupled with the assessment of their work appraisal. The report in the present case that was prepared and submitted on 14.12.2004 and accompanies the Affidavit dated 23.7.2013, indicates that the assessment was carried out on the same day and on 14.12.2004, the same was also approved by Hon'ble the Acting Chief Justice.

To our mind, such an exercise, within 24 hours that was carried out, does not conform to any serious exercise having been undertaken in terms of the judgment of 1993 referred to herein above and the conditions mentioned therein.

The issue that still remains to be answered by us is the issue of regularisation. After the Division Bench judgment in the case of State of U.P. Vs. Class-IV Employees Association (supra), the law on this issue went a sea change with the pronouncement of the Apex Court from time to time. The judgment, which stares at the face of such claims of regularisation in matters of public employment, is the leading case of Secretary, State of Karnataka and others Vs. Uma Devi (3) and others, (2006)4 SCC 1. Practically for all purposes appointments without following the Rules and described as back door entries were clearly deprecated and it was held that no such rights exists for being enforced in view of the clear mandate of Articles 14 and 16 of the Constitution of India. The ratio of the said decision has been spelled out in paragraph Nos. 43 to 54 of the said judgment. If the ratio of the said decision is applied herein, then the observations made in the Division Bench judgment in the case of State of U.P. Vs. Class-IV Employees Association (supra) would stand diluted. In the said

circumstances, it would not be possible now to extend any benefit of regularisation in view of the mandate contained in the aforesaid judgment of Uma Devi (supra). The only concession that was made was contained in paragraph Nos. 53 that is extracted here under:-

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. NARAYANAPPA (supra), R.N. NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

The Apex Court clarified in paragraph No.54 as follows:-

“54. It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.”

Thus, the regularisation and regular appointment that had been made prior to taking of cognizance by the Division Bench on

17.12.2004 need not be re-opened by us in view of the aforesaid ratio of the Apex Court but the Division Bench judgment of 1993 of our Court now cannot be pressed into service for an exercise of any further regularisation.

So far as the appointments and orders of regularisation made after 17.12.2004 are concerned, the same have been made subject to the orders of the present proceedings as per the order dated 20.12.2004 itself. Such appointments and regularisation or orders that have been made during the pendency of these proceedings, therefore, will have to be judged as per the law laid down in the case of Uma Devi (*supra*) and in the event any such appointment or regularisation orders have been made *dehors* the rules, the same would not have any legal effect, subject to the directions given hereinafter.

We are, however, not entering into the merits of the regularisation orders of the appointees against the 355 posts sanctioned by the State Government on 10.10.2004 as that are not parties before us, nor their appointment has been assailed or challenged. The Division Bench, while taking cognizance, had commented upon the ratio of the bifurcation as also the procedure for such engagement but in view of the fact that all the 355 appointees are not before us, who were given regular appointments under the orders of Hon'ble the Acting Chief Justice or the Chief Justice we would not like to add anything further in this respect.

There is yet one disturbing feature with regard to actual deployments of Class IV employees as per their categorisation. We find that the deployment is against the structural set up, for e.g. A bhisti being asked to do the job of a peon and a peon being asked to perform the job of a driver. There are other examples to

say the least but what is more astonishing is deployment outside the establishment, particularly at the service of former Judges. The details do not deserve to be recounted with any pride. Apart from this, officers of the establishment who are otherwise not entitled to any such benefit under their statutory service rules have been favoured with such deployment.

It appears that some order dated 14.3.2011 was passed by Hon'ble the Chief Justice as is evident from the order dated 21.1.2012 of the then Registrar at Lucknow for engagement of 12 Daily Labourers and 10 Casual Labourers. Referring to the procedure as approved of a 3 member selection committee for District Judgeship, a report on the basis of the said order of the Chief Justice was submitted indicating a 3 member committee constituted for engagement in the High Court. The said report was entertained by Hon'ble the Senior Judge at Lucknow and approved on 6.4.2011 whereafter the process commenced. It is then that a notice is said to have been published in "Workers Herald" which according to the District Judgeship of Lucknow, and not the High Court, is an approved newspaper. After applications were invited, a similar notice was published in the same newspaper on 17.5.2011 calling upon candidates who had applied to appear in the interview between 24.5.2011 and 28.5.2011. This timing was extended upto 31.5.2011 with the approval of the Senior Judge without any further notice. These facts were borne out from the affidavit and its annexures dated 16.8.2012. The order dated 21.1.2012 reflects approval by the then Senior Judge at Lucknow.

This procedure speaks for itself and the newspaper chosen is an insignificant newspaper and neither a known local daily nor a national daily or a newspaper of wide circulation in the State. It is not understood as to why the Registrar at Lucknow chose to rely on such a list when reputed newspapers of Hindi like "Dainik

Jagran", Amar Ujala, Nav Bharat Times, Hindustan and English dailies like Hindustan Times, Pioneer etc. are all published from Lucknow and are the most widely circulated newspapers throughout the State including Lucknow. The High Court has all the resources of the State to publish advertisements for all appointments as is being done and was also done in the past for all other posts. The Registrar appears to have completed a formality to justify the advertisement which does not inspire any confidence worth mentioning. We are not satisfied with the said procedure and the matter will have to be re-examined de-novo in its entirety including any orders that were required by the competent authority including the Hon'ble Chief Justice.

One of the issues that has been also indicated in the reports is of the deployment of Sewaks at the residence of Judges. This necessity has to be viewed from the angle that after the 1993 Judgment in the case of State of U.P. Vs. Class-IV Employees (supra), such engagements of domestics at the residence of Judges were on a lesser salary, when the matter was taken up on the judicial side by a Division Bench in the case of Vishwanath (supra) where it was held, and directions were issued that Daily Wage labourers, who are assigned to the residence of Judges are at least entitled to the revised pay scale of regular class-IV employees working in the establishment of the High Court. The arrears were also directed to be paid with effect from the date of filing of the writ petition. This judgment was delivered on 8.3.1986 and was also complied with.

It is these domestics, who were deployed at the residence of Judges, were seeking parity but looking to the past experience of the Judges themselves, a directive was given by the Division Bench in the judgment of State of U.P. Vs. Class-IV Employees' case (supra) wherein direction No.6 deals with this matter. The

same has been extracted herein above and, therefore, need not be reproduced.

The position that was then existing continued even thereafter and these Sewaks were being deployed at the residence of Hon'ble Judges. It appears that the inclusion of these Sewaks was proposed by introduction of their cadre alongwith Peons by an amendment in Rule (4-a) of the 1976 Rules. The same was accordingly incorporated vide notification dated 21.8.2003 that was published on 23.8.2003. By virtue of the said notification, Sewaks were included within the class IV post in the establishment but the second and the third proviso to the said Rule were introduced by the said Notification defining the terms & conditions particularly that their services would be terminable without any notice on the recommendation of the Hon'ble Judge concerned with whom the Sewak was employed if his services were not satisfactory. The third proviso specified the nature of the duties of the Sewaks. Amendments were also made in Rule 5 and Rule 7 thereof in relation to these Sewaks.

With regard to their claim of payment at par with other employees, the matter was considered by two successive Hon'ble the Chief Justices and on the report of the Registrar General and on a consideration of the matter, the benefit of revised pay scale was given to them as Daily Labourers vide order dated 20.5.2009 and subsequently vide order dated 12.9.2011. Thus, the Sewaks were being paid from the concerned financial head as per the aforesaid directions.

The Sewaks are appointed according to the policy adopted under the orders of Hon'ble the Chief Justice and their appointments are approved by Hon'ble the Chief Justice in exercise of powers under Rule 41 and Rule 45 of the 1976 Rules.

Thus, their source and method of recruitment is clearly distinct and separate from those Class-IV Employees with which we are presently concerned. In the circumstances, the present judgment would not in any way either come to their aid or to their disadvantage and they will continue to be governed unless otherwise provided for by the aforesaid or any other executive arrangement.

We have gone through the reports submitted on 3<sup>rd</sup> May, 2013 by the Court Managers and then the affidavits filed by the Registrar General dated 13.7.2013 and 23.7.2013 which contain the report of the Registrar General for Allahabad and Lucknow respectively. The report in relation to Allahabad which has been filed alongwith the affidavit dated 13.7.2013 is stated to have been **approved** by Hon'ble the Chief Justice whereas the report dated 23.7.2013 in relation to Lucknow indicates that it has been **seen** by the Chief Justice.

To our mind, both the reports have to be coordinated keeping in view the fact that the broad distribution of posts between Allahabad and Lucknow in the ratio of 70:30 is projected to be maintained in relation to the Class IV employees deployed at both places. There are some deployments which are necessary both at Allahabad and Lucknow, particularly, in relation to the Guest Houses and the Official Residences of Hon'ble the Chief Justice and Hon'ble Judges. This may therefore require a further scrutiny in the light of the aforesaid reports to finalize the deployment at both places.

This will also necessarily entail the exercise of withdrawing any surplus staff as per the justification given for deployment in the reports referred to hereinabove. The deployments made beyond the Establishment of the High Court for which there is no

provision and has been discussed hereinabove has also to be withdrawn.

This entire exercise has to be undertaken under the umbrella of Article 229 of the Constitution of India by Hon'ble the Chief Justice in whom such powers are reposed. The bifurcation therefore would ultimately depend upon the outcome of all the aforesaid factors and sorting out unnecessary postings and deployment against the categorisation of posts. To adjust the existing employees accordingly would in our opinion be yet another exercise to be finally handled with precision so that extra hands, if any, are made available at the appropriate place and the surplusage may be weeded out.

We may place on record that according to the affidavits the exercise prior to 2004 had been done by Hon'ble the Chief Justice in 1997 by constituting a two judges committee when 500 posts were sanctioned by the State Government in 1995 to be filled up by regular appointment. The exercise undertaken in 2004 was through the officials of the Registry within three days which deserves to be taken notice of and it is for this reason that the matter was referred to this five judges full bench. We do not in any way intend to mantle ourselves with the authority of carrying out this administrative exercise and our only effort has been to bring on record that such an effort is necessary to be undertaken periodically.

The date of retirement of employees is well known in advance and therefore the number of vacancies that are likely to occur each year in these cadres is known to the High Court. In our opinion such an exercise should be taken at least every six months in order to ensure that the smooth functioning of the High Court is not hampered on account of non-availability of regular

employees. If such an exercise is undertaken honestly any such problem can be safely avoided by providing hands at the appropriate time. To wait till the last moment and then to induct Daily Labourers, who are ensured of a regular appointment by the methods that have been adopted uptill now cannot be said to be a fair procedure and to avoid this, as has been happening in the past, the aforesaid exercise has to be undertaken.

Consequently, we are of the opinion, that the reports which are accompanied with the affidavits should now be given a relook in the light of the principles that we have laid down in the present judgment and then after examining the sanctioned strength, the adjustments to be made in accordance with the ratio currently invoked and the appropriate deployments.

The matter be placed by the Registrar alongwith a comprehensive report for the entire Establishment both at Allahabad and Lucknow before Hon'ble the Chief Justice alongwith a copy of this judgment for setting the process into motion in the light of what has been said above. This exercise may be desirable within a period of three months or even earlier as may be convenient to Hon'ble the Chief Justice for passing appropriate orders. It is only thereafter that the High Court may proceed to make appointments as per rules keeping in view the ratio of this judgment. No appointments of DL/CL/Ad-hoc/Temporary/Permanent Class IV employees including drivers shall be made unless the matter is finalized as directed hereinabove and hereinafter.

We accordingly answer the reference as per issues raised in the order dated 17.12.2004 and 20.12.2004 coupled with the assigning and referring order dated 18.12.2004 in the light of what has been said hereinabove.

We further direct that the bifurcation shall henceforth be made in the ratio which has been maintained uptill now and indicated above subject to any further modifications that may be required in an administrative exigency.

The requirement of future posts as reflected in the reports shall also be finalized and the matter shall be sent to the State Government for sanction keeping in view the requirements as reflected therein.

The process of regular appointments shall be made in accordance with the 1976 and 2000 Rules read with the interpretation given by us in the present judgment by following the due process of advertisement and fair selection. The Daily Labourer or Casual Labourer engaged by the High Court shall only have a preferential consideration at the time of recruitment and shall not be a permanent source of recruitment for regular appointment. The same would also apply equally to the cadre of Drivers who are governed by the 2000 Rules.

The regular appointments through the inducted method as per the proviso to Rule 4(a) and Rule 14 after December, 2004, were made subject to the result of the present proceedings. We accordingly, hold that any appointments de-hors the rules and as indicated hereinabove contrary to the principles laid down in State of Karnataka Vs. Uma Devi's case (supra) can not be treated to be regular appointments.

At the same time we clarify, that by toning severity with leniency, as was finally done by the Apex Court in Puttaswami H.C.'s case (supra), regular engagements already made against the 355 posts shall not be disturbed as the said 355 appointees

against the sanctioned posts are not before us. We are simply inclined to be forgiving but the same shall not be treated as a precedent as, to be amiable at the expense of a rule, would be to sacrifice the principle that would defy the constitutional mandate.

The other issue relating to Class III posts as referred to in the order dated 17.12.2004 can be examined by Hon'ble the Chief Justice after going through the supplementary compliance report dated 16.8.2012 furnished by Sri S.K. Singh, the Incharge Registrar General and is on record. The issue relating to malpractice in the allotment of quarters to Class IV employees being also appears to be an administrative matter that may also be looked into by the Hon'ble Chief justice after calling for a report in this regard.

Having said so we may add for the benefit of the registry that the High Court has to carry its own sack of rocks and a little bit of insight would improve everybody's lot inasmuch as the credibility of any institution depends upon the transparent action of its functionaries. It is for this reason that we have indicated the principles on which the High Court should proceed to put to rest this burden that has been cast on account of the mismanagement as noted by us hereinabove. Our view expressed for undertaking regular exercises every six months would ensure regularity and, therefore, we would lay to rest this decision with the aforesaid directions by remembering Angelique Arnauld who said :-

“Perfection consists not in doing extraordinary things, but in doing ordinary things extraordinarily well. Neglect nothing; the most trivial action may be performed to God.”

**Order Dated:** September 18, 2013

Sahu/Anand