

'Cannot Be Equated With Regular Recruitment Process': Kerala HC Dismisses PILs Challenging Special Rules For Appointment Of Ministers' Personal Staff

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

S. MANIKUMAR, CJ & SHAJI P. CHALY, J.

W.P.(C) Nos. 9420, 10400 & 10661 of 2021 & 8015 & 13181 of 2022; 1 December, 2022

ANTI-CORRUPTION PEOPLES MOVEMENT *versus* STATE OF KERALA

Petitioners by Advs. M.R. Rajendran Nair (Sr.), M.R. Hariraj, Thanuja Roshan, Viswajith C.K, Ganga A. Sankar, Chackochen Vithayathil, Gisha G. Raj, Rejivue, Vishnu Rajagopal, K. Rajan (Kollam) Shaijan Joseph

Respondents by Advs. R2 by P.C. Sasidharan, SC, Kerala Public Service Commission, R4 by B.G. Harindranath, V. Manu, Senior Government Pleader, R1 by Gopalakrishna Kurup, Advocate General, Antony Mukkath, Senior Government Pleader

J U D G M E N T

SHAJI P. CHALY, J.

The captioned Public Interest writ petitions are materially connected, challenging the constitutional validity of the appointment of personal staff to the office of the Chief Minister, Ministers, leader of the opposition, and the Chief Whip by the Special Rules dated 03.03.1959 amended from time to time. Therefore, we heard them together and proposed to pass this common judgment.

2. In W.P.(C) No. 9420 of 2021, petitioners seek a declaration that entry 9 under 'State Service' and entry 10 under 'Subordinate service' in the Annexure to the Kerala public Service Commission (Consultation) Regulations, 1957 (hereinafter called Regulations, 1957'), is ultra vires the constitution; issue a direction to the State of Kerala represented by the Secretary, Department of Public Administration and the Kerala Public Service Commission, respondent Nos. 1 and 2, that all appointments made to the category of personal staff of Ministers/Leader of Opposition/Government Chief Whip ought to be made in consultation with the Kerala Public Service Commission on the suitability of the candidates to be so appointed; that Exhibit P2 rules to the extent it permits selection for appointment to the personal staff of Minister, Leader of Opposition and Government Chief Whip without following a transparent and fair procedure of notification of vacancies and opportunity to all qualified persons to apply and be considered for appointment is ultra vires and violative of Articles 14 and 16 of the Constitution of India and hence, void; for a direction to the respondents not to make any appointment under Exhibit P2 without a fair and transparent selection procedure; that the selections and appointments under Exhibit P2 ought to be made with proper notification and selection process giving equal opportunity to all qualified and to issue a writ of mandamus directing respondent 1 and 2 to make selection and appointment to the category of personal staff of Ministers, Leader of Opposition and Government Chief Whip only based on a fair, independent and transparent recruitment procedure giving full and equal opportunity to all qualified for appointment to such posts; that the power under the proviso to Rule 4 of Exhibit P2 Special Rules to exempt from qualification is arrived at in a proper manner; to issue a writ of mandamus directing respondents 1 and 2 not to make any appointment under the proviso to Rule 4, except in cases where such satisfaction is recorded in accordance with law and also that such selection and appointment under the proviso to Rule 4 of Exhibit P2 Special Rules be made only in accordance with a proper and transparent selection procedure; to quash the appointment made to the personal staff of the Chief Minister and the Ministers as violative of Articles 14 and 16 of the Constitution of India, since the same was done without following proper procedure; and also for a declaration that Rule 9 of the Special Rules as amended with effect from 23.09.1994 dealing with the payment of pension to the

persons directly recruited to the personal staff of the Ministers, Leader of Opposition and the Government Chief Whip having a minimum service of three years, with a rider that the qualifying service for maximum pension shall be 30 years.

3. W.P.(C) No. 10400 of 2021 is filed seeking a direction to the State of Kerala to delete/exclude entry 9 under the head 'State Service' and entry 10 under the 'Subordinate Service' in the Annexure to the Regulations, 1957 dealing with the members of the personal staff of the Ministers; to declare that the said entries are ultra vires; for a further writ of mandamus and direction to the State of Kerala to make selection and appointment to the category of personal staff of Ministers/Leader of Opposition/Government Chief Whip based on a fair, independent and transparent recruitment procedure giving full and equal opportunity to all qualified persons for appointment to such posts; to declare that the power under the proviso to Rule 4 of the Special Rules can be exercised only in special cases where, after consideration of facts and circumstances, the necessity to exercise such power under the proviso is arrived at properly; and further to declare that Rule 9 of the Special Rules dealing with 'pension' is void.

4. W.P.(C) No. 10661 of 2022 is filed seeking a mandamus commanding the State of Kerala to stop granting huge pensionary benefits to the personal staff of Ministers/Chief Whip and the Leader of opposition; and for a further writ of mandamus commanding the State Government to take appropriate steps to make the minimum period of four years continuous service necessary for the pensionary benefits to the personal staff of Ministers, Chief Whip and the Leader of Opposition.

5. In W.P.(C) No. 8015 of 2022, the petitioner seeks to declare that Exhibit P2 notification bearing No. G.O. (Ms.) No. 109/89/GAD dated 26.04.1989 issued by the State Government amending the Special Rules, 1959 and Rule 4A of the Special Rules, which stipulates that educational qualification for the common categories of posts like Assistant/Clerk/typist/Confidential Assistant shall be the same as those prescribed for similar posts in the Secretariat Service and the Government Departments, as the case may be, of the personal staffs of the Ministers, Leader of Opposition and the Chief Whip, as unconstitutional and ultra vires the Kerala Service Rules (KSR) and the Kerala State and Subordinate Service Rules (KS & SSR); for a declaration that Exhibit P3 amendment notification dated 23.09.1994 bearing No. G.O. (MS) No. 283/94/GAQD amending the Special Rules, and Rule 9 of the Special Rules, as unconstitutional and ultra vires; to quash Exhibit P3 Government Order and Rule 9 of the Special Rules granting pension and family pension to the personal staff; for a writ of mandamus directing the State Government and its officials to realise the illegal pension disbursed under Rule 9 of the Special Rules, to the personal staff of the Ministers, Leader of Opposition and the Chief Whip (Amendment) Rules, 1994; for a further writ of mandamus declaring that Rule 10 of the Allotment and Occupation of Government Servants Quarters, Rules 2006 as unconstitutional; to quash Exhibit P13 Government Order amending Rule 10 of the Allotment & Occupation of Government Servants Quarters Rules 2006; and also to declare that the personal staffs of the Ministers, Government Chief Whip and the Opposition Leader can only be appointed from among the existing Government Servants in the State service, Local Self Government Institutions, and other public sector undertakings.

6. W.P.(C) No. 13181 of 2022 is filed seeking to quash Exhibits P1 to P7 i.e., Special Rules dated 03.03.1959 and the consequential amendments made successively upto the year 2021, being arbitrary and violative of Articles 14, 16, 315 and 320 of the Constitution of India; and for a further declaration that the Special

Rules governing the personal staff of the Chief Minister, Ministers, Leader of Opposition and the Government Chief Whip as per Exhibits P1 to P7, are arbitrary and unconstitutional.

7. The contentions advanced in the writ petitions are fundamentally common, and by large on questions of law; and therefore, the separate narration of facts is not required.

8. According to the petitioners, when the power to select candidates for appointment is conferred on any individual, it must be presumed that the Rule demands the said power to be exercised in a fair, reasonable and just manner and further that any other interpretation of the Rules would render it void and unconstitutional. That apart, it is contended that the selection and appointments without following a proper procedure ought to be treated as null and void as inconsistent with the statutory provisions. It is also pointed out that it is now trite that even temporary or adhoc appointments cannot be made without inviting applications from all eligible candidates and any appointment made without following the said procedure is a nullity in law.

9. It is further contended that even the power conferred on the Hon'ble Chief Justice for making appointment to the staff of the High Court and Subordinate Judiciary has been held liable to be exercised in accordance with the requirements of transparency, equality and fairness, as is held by the Apex Court in **State of Orissa v. Mamatha Mohanty** [2011] 3 SCC 436]. The sum and substance of the contention is that the selection and appointment made without following transparent and legal procedure, and without giving full opportunity to the qualified citizens must be treated as void and violative of Articles 14, 16 and 21 of the Constitution of India. Therefore, it is contended that the appointment of the personal staff made in violation of the constitutional mandate under Articles 14 and 16 of the Constitution of India ought to be treated as void and no benefits to the appointees shall follow from the same.

10. In fact, in some of the writ petitions, Additional Private Secretaries of the Chief Minister of Kerala namely T. Velayudhan and C.M. Ravindran are made parties and seek their ouster, and also the other persons appointed to the personal staff of the Chief Minister, Ministers, Opposition Leader and Chief Whip, however without such persons in the party array. It is further contended that there is a requirement for a sanctioned cadre strength for the personal staff of the Ministers, Leader of Opposition and the Chief Whip and the appointments made without stipulating any cadre strength and without declaring the number of vacancies is unjust, arbitrary and discriminatory.

11. That apart, it is contended that the Special Rules confers unguided power of selection, and therefore, it is violative of Article 14 of the Constitution of India. It is also the contention of the petitioners that the appointments to the personal staff of the Ministers, Leader of Opposition and the Chief Whip are being made without consultation with the Kerala Public Service Commission based on the Kerala Public Service Commission (Consultation) Regulation, 1957, framed under the proviso to Article 320(3) of the Constitution of India.

12. It is also the submission that as per Regulation 4(b) of the said Regulation, 1957, the Commission need not be consulted in respect of matters mentioned in sub-clauses (a) and (b) of clause (3) of Article 320 of the Constitution of India in the case of the posts specified in Annexure to the Regulations, 1957 alone. Therefore, it is pointed out that those personnel, who are not gazetted officers and who became members of the personal staff, do not fall under the exclusion category.

13. It is also contended that the posts which are not covered under the Annexure to the Regulations, 1957 ought not to be filled without consultation with the Kerala Public Service Commission, and therefore, any appointment made without consulting the Kerala Public Service Commission must be deemed to be void and inoperative. It is also the submission that the power to deviate from the General Constitutional scheme and the decision to choose an alternative system for deciding matters covered under clauses (a) to (e) of Article 320(3) of the Constitution of India cannot be resorted to, unless an informed and reasoned decision is made to do so.

14. That apart, it is contended that the new entrants in the service of Kerala State are covered under the Contributory Pension Scheme. But, the earlier entrants in the service are entitled to statutory pension. According to the petitioners, in respect of those covered under statutory pension, a minimum service of ten years is necessary for getting minimum pension; but the persons recruited directly as per the Special Rules would get pension under the Special Rules with less than three years. That is to say, two years and one day service enables a person to have a minimum pension.

15. According to the petitioners, Rule 9 contained under the Special Rules to grant pension in that manner is grossly discriminatory and therefore, violative of Articles 14 and 16 of the Constitution of India. That apart, it is contended that the appointment is being made on political lines or other similar considerations and persons who do not have qualification for similar posts in the Secretarial service or Secretarial Subordinate Service are retained among personal staff, which is also discriminatory and arbitrary.

16. It is further contended that the Special Rules enables the personal staff appointed, to get his/her past service counted for reckoning pension ignoring the break in service, once they are terminated from a subsequent stint of appointment, which is arbitrary and illegal. It is also contended that G.O.(Rt.) No. 1578 of 2021/GAD dated 17.04.2021, revising pay of the personal staff appointed directly with effect from 01.07.2019 confers the same benefit applicable to regularly recruited Government Servants and therefore, it is arbitrary and illegal.

17. Further it is submitted that, the pay, pension, gratuity etc. are provided from the public funds and therefore, selection to the said post cannot be left to the personal discretion of anyone and since Rules empowers the Chief Minister, Minister, Leader of Opposition and the Chief Whip to select candidates of their choice, is arbitrary and illegal. It is also contended that when the Special Rules provide that the selection and appointment must be from among the full members and approved probationers of the Secretarial service and Secretarial subordinate service, only in special cases, the said rule can be deviated from, and appoint any personal staff directly through direct recruitment.

18. Therefore, the sum and substance of the contention is that the personal staff are appointed by the Chief Minister as well as the Ministers and others mostly by direct recruitment, which is an exclusion to the method of appointment from the secretarial service and on deputation basis from the public sector undertakings and the Local Self Government Institutions, is bad and illegal.

19. Therefore, it is the contention of the petitioners that the appointments made directly without resorting to the normal procedure of appointments being made from the secretarial service and deputation are arbitrary, and an outcome of unbridled exercise of the power; and therefore, interference is required to the appointments made. It is also contended that Article 309 of the Constitution of India has empowered the Union or the State under it for recruitment of employees by determining condition of service of such recruited persons

and the recruitment can only be done through the selection process against sanctioned vacancies.

20. It is also the submission that, Article 309 of the Constitution of India makes it clear that any Rules made by the State thereunder shall be subject to the other provisions of the Constitution of India; and therefore, any rules framed under the proviso to Article 309 of the Constitution of India or any enactment passed by the Union Parliament or the State Legislature should conform to the mandate of the Constitution; and that Article 14 speaks about the equality of law and equal protection of laws within the territory of India; whereas, Article 16 specifically stipulates that there should be equality of opportunity for all citizens in matters relating to the employment or appointment to any office under the State, which mandate is not followed in the instant case.

21. Therefore, it is contended that when law is so clear and patent, Special Rules framed and successively amended, as is evident from Exhibits P1 to P7 in W.P.(C) No. 13181 of 2022, are arbitrary, illegal and unconstitutional. Further it is argued that the State is under a debt trap and as per the latest figures discernible from the report of the Comptroller and Auditor General, the total debt of the State is Rs.3.08 Lakh Crores and additionally an amount of Rs.669 Crores is taken as a loan through Kerala Infrastructure Investment Fund Board (KIIFB) and a further amount of Rs. 8604 Crores is taken as loan from the Kerala Social Security Pension Fund. Other contentions are also raised based on a number of judgments of the Apex Court, which would be dealt with later.

22. Counter affidavits are filed in the writ petitions by the State as well as other parties basically denying all the allegations and claims and demands raised in the writ petitions, inter alia contending that the Regulations, 1957 provides for consultation with the Kerala Public Service Commission in the matter of Public employment in civil posts under the State. Rule 4(b) of the Regulations, 1957 exempts the categories in the Annexure to the said Regulations insofar as the posts for which the consultation with the Kerala Public Service Commission is not required.

23. It is further contended that item No. 9 under the State Service in Annexure to Regulation 4(b) relates to the Gazetted officers in the category of Private Secretaries of Ministers/Leader of Opposition/Government Chief Whip. Therefore, the above category of employees are excluded from the requirement of consultation with the Public Service Commission as provided in Regulation 4(b); Similarly under the Subordinate Service in the annexure, item No.10 is a similar provision in respect of the members of personal staff other than the Gazetted category in the personal staff of the Ministers, Leader of Opposition and the Government Chief Whip.

24. It is also stated that the posts of Private Secretaries and other members of the Personal Staff of Ministers/Leader of opposition/Chief whip covered by the Special Rules, 1957 are coterminous with that of the elected executive and are not one falling under the purview of PSC. The conditions of service of Government employees are not applicable to the Personal staff to the extent that they constitute distinct and separate categories in the Kerala Secretariat Service/Kerala Secretariat Subordinate Service/Kerala Last Grade Service. As and when the elected member demits office, the personal staff also vacates the offices and therefore, the appointment and conditions of service of the personal staff cannot be, in any manner, equated to that of the Government employees.

25. It is further submitted that, the Private Secretary/Additional Private Secretary and other officials in the personal staff are handling sensitive matters and most of the information received by them are of confidential nature and therefore, they need to enjoy the fullest confidence of the elected executives like Ministers/Leader of

Opposition/Government Chief Whip and hence, an element of personal choice is inevitable for reposing full confidence on the Private Secretaries. However, the same cannot be considered as whimsical and capricious for the reason that the action of the staff will reflect on the office of the Ministers/Leader of Opposition and Government Chief Whip and the same is always under public scrutiny.

26. It is stated that the Public Service Commission is discharging its constitutional functions in the matter of recruitment and advising successful candidates against the vacancies for regular public employment. The Private Secretaries and other personal staff of Ministers/Leader of Opposition/Government Chief Whip are not regular full time civil servants being co-terminus with the elected executive; and therefore, the status of the Personal staff may not be in the position of the Government Servants.

27. It is further argued that the Special Rules for the Personal staff was issued by the Government in exercise of the powers conferred under Article 309 of the Constitution of India; that the Government is competent to frame rules in exercise of the powers conferred under Article 309 of Constitution of India; and the Special Rules framed by the Government stood the test of the time from 1959 to 2022 and therefore, the challenge against the Special Rules at this distance of time is legally untenable.

28. The Kerala Public Service Act, 1968 ('Act, 1968' for short) came into force from 16.09.1968. As per Section 3 of the Act, 1968, all Rules made under the proviso to Article 309 of the Constitution, regulating the recruitment and conditions of service of persons appointed to Public Service and Posts in connection with the affairs of the State in force immediately before 17.09.1968 shall be deemed to have been made under the Act, 1968 and shall continue to be in force. Therefore, by force of Section 3 of Act, 1968, the Special Rules, 1959 continue to be in force, is the submission.

29. It is also pointed out that, there is no question of violation of Articles 14 and 16 in selecting the personal staff having full confidence of the elected executive for the reason that it is essentially a requirement of complete faith in the unique team for effective discharge of the office of the elected executive. The personal staff forms a distinct and separate class and therefore, the parameters for public employment are not applicable in the matter of appointment to personal staff, which is the broader contention.

30. It is also the submission that per the Regulation 4(b) of the Regulations, 1957, the Commission need not be consulted in the matters mentioned in sub-clauses (a) and (b) of clause (3) of Article 320 of the Constitution in the case of posts specified in Annexure to the Regulations. In the Annexure to Regulation, 1957, entry No.10 under the head 'Subordinate Service' relates to the members of personal staff and Entry No.9 under the State Service is in respect of Gazetted officers in the personal staff of the Ministers/Leader of Opposition/Government Chief Whip, and therefore no consultation is required.

31. It is further pointed out that, the State Government, as per GO(P) No.27/2021/Fin dated 10.02.2021, revised the pay and allowances of State Government employees and teachers with effect from 01.07.2019. As per paragraph 34 of the above order, the benefit of pay revision was also made applicable to the personal staff of Ministers/Leader of Opposition/Government Chief Whip to whom the said scale of pay apply. Since the scale of pay of categories appointed through direct recruitment were not specifically mentioned in the pay revision order, Government issued GO (Rt) No.1578/2021/GAD dated 17.04.2021 granting the corresponding revised scale of pay for the categories in the personal staffs in accordance with Annexure I of the Pay Revision Order. It is only a revision of pay and there is nothing illegal in it, it is contended.

32. It is further submitted that, as per Rule 3 of the Special Rules, the selection of candidates for appointment to the posts shall be made by the Ministers/Leader of Opposition/Government Chief Whip concerned as the case may be. Rule 3 stood the test of the time and therefore, the same is unassailable at this distance of time.

33. The appointment of personal staff is in the nature of a service contract and the same is co-terminus with the office of the Minister/Leader of Opposition/Government Chief Whip. Therefore, the appointment of the personal staff is covered by Article 310(2) of the Constitution of India and the tenure of service of such employees came to an end simultaneously with the end of tenure of Ministers/Leader of Opposition/Government Chief Whip.

34. The Apex Court in the decision in **State of Gujarat and another Vs. P.J Kampavat and others** [(1992) 3 SCC 226] considered the termination of personal staff attached to the office of the Chief Minister and other Ministers in Gujarat and has held that appointment of the respondents therein are purely a simple contractual appointment and that such appointment is outside the purview of the Bombay Civil Service Rules. The Apex Court has also held that clause (2) of Article 310 recognise the power of President/Governor to appoint a person to a Civil post on contract basis, if it is necessary to secure the service of a person having specific qualification.

35. In the case of the personal staff, the confidence of the concerned Minister is the relevant criteria and it is a specific qualification and therefore, the appointment can be done in terms of Article 310(2) of the Constitution. Since the appointment is coterminus with the appointment of the Ministers/Leader of Opposition/Government Chief Whip, all the necessary corollary of the appointment under Article 310(2) attracts in the case of personal staff, is the contention.

36. It is the further contention that the power under Article 309 of the constitution to frame the rules is the legislative power, and the power under the constitution has to be exercised by the President or the Governor of a State, as the case may be; that the High Courts or the Administrative Tribunals may not issue a mandate to the State Government to legislate under Article 309 of the Constitution of India. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner, is the sum and substance of the contention. The Courts cannot assume to itself a supervisory role over the rule making power of the executive under Article 309 of the Constitution of India as has been so held by the Hon'ble Supreme Court in **Mallikarjuna Rao and others Vs. State of Andhra Pradesh and others** ((1990) 2 SCC 707). Therefore, the Special Rules made under Article 309 of the constitution prescribing the method of recruitment to the posts falling under the category of personal staff is unassailable on all or any of the grounds raised in the writ petition.

37. When a State action is challenged, the function of the Court is to examine whether the action is in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action, is the further submission. While doing so, the court must remain within its selfimposed limits. In support of the said contention, the State has relied upon the decisions of the Apex Court in **Narinder Chand Hemraj Vs. Lft. Governor. Administrator. Union Territory** (1971) 2 SCC 747, **State of Himachal Pradesh Vs. A parent of a student of Medical College** (1985) 3 SCC 169 and **Asif Hameed Vs. State of Jammu & Kashmir** (1989) Supp. 2 SCC 364.

38. Therefore, it is contended that the Special Rules were framed by the Government in exercise of its legislative power and the legislature acted within its powers and functions assigned to them under the Constitution and therefore, the Special Rules are unassailable on all or any of the grounds raised in the writ petitions.

39. As per Rule 6 of the Special Rules, the service of persons recruited directly shall terminate, when the Minister or the Leader of opposition or the Government Chief Whip concerned vacates office, provided that the services of such persons may also be terminated at any time by the Minister or the Leader of Opposition or the Government Chief Whip concerned. According to the State, the contention raised by the petitioner that the personal staff is changing every two years with the intention of providing pension for the maximum number of party workers, cannot be sustained. The details of directly recruited personal staff members in the present Ministry are also mentioned therein, which is reproduced hereunder:

Portfolio	Number of directly recruited personal staff members
1. Chief Minister	22
2. Water Resources	16
3. Transport	17
4. Food and Civil Supplies	17
5. Law and Industries	14
6. Public Works and Tourism	17
7. Sports	18
8. Cooperation and Registration	15
9. General Education and Labour	18
10. Finance	15
11. Revenue and Housing	17
12. Electricity	15
13. Animal Husbandry	17
14. Forest and Wildlife Protection	13
15. Agriculture	16
16. LSGD	18
17. Fisheries & Culture	19
18. Health and Family Welfare	18
19. Higher Education and Social Justice	17
20. SC/ST and Devaswoms	18
21. Ports and Museums	18

40. Therefore, the predominant contention advanced by the State is that the appointments are made in accordance with the Special Rules framed on and with effect from 03.03.1959 and successively amended in terms of the proviso to Article 309 of the Constitution of India.

41. Sri. C.M. Ravindran has filed a counter affidavit in W.P.(C)No. 9420 of 2021, basically supporting the contentions advanced by the State Government and also stating that there is no manner of arbitrariness or illegality in appointing the personal staffs to the Chief Minister/Ministers/Opposition Leader and Chief Whip as per the Special Rules to satisfy their requirements, and to maintain and enjoy the full confidence while taking prudent and confidential decisions.

42. We have heard the learned Senior Counsel for the petitioners Sri. M. R. Rajendran Nair assisted by Adv. Hariraj; Sri. Raju Joseph assisted by Sri Julian Xavier; Sri. C. Rajendran, Sri. V. Sethunath and Smt. T.U. Anukrishna; learned Advocate General Sri. Gopalakrishna Kurup assisted by learned Senior Government Pleader Sri. Antony

Mukkath, for the State; Sri. B. G. Harindranath for one of the party respondents i.e., Sri. C.M. Ravindran, Additional Private Secretary to the Chief Minister; and Sri. P. C. Sasidharan for the Kerala Public Service Commission, and perused the pleadings and material on record.

43. The issue raised by the petitioners basically revolves around the notification issued by the Government of Kerala, as per G.O. (Ms.) No. 343 dated 03.03.1959, wherein the Governor of Kerala, in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, made Special Rules concerning personal staff of the Ministers and the Opposition Leader, and successive amendments were made to the said Special Rules, also incorporating the Chief Whip of the Assembly. Contentions are advanced by the respective counsel as per facts and law narrated above.

44. Rule 1 makes it clear that the personal staff employed under the Ministers or the Leader of Opposition shall constitute distinct categories in the Kerala Secretariat Subordinate Service or in the Kerala Last Grade Service as the case may be. The personal staff includes (1) Private Secretary/Additional Private Secretary; (2) Assistant Private Secretary; (3) Personal Assistant/Additional Personal Assistant; (4) Special Personal Assistant; (5) Superintendent/Section Officer; (6) Personal Clerk; (7) Clerk/Assistant; (8) Special Assistant; (9) Stenographer; (10) Typist; (11) Chauffeur; (12) Attender; (13) Duffedar/Head Peon/Peon; (14) Cook; (15) Gardener; (16) Sweeper; (17) Watchman/Watcher/Waiter; (18) Lascar; (19) Sweeper-cumScavenger; and (20) Night Watcher.

45. Rule 2 dealing with 'application of General Rules andOrders', stipulates that the General Rules and Orders applicable to holders of posts in the Kerala Secretariat Service or the Kerala Secretariat Subordinate Service or the Kerala Last Grade Service shall not apply to the posts specified in Rule 1, except to the extent specified in the Special Rules.

46. Rule 3 deals with the appointing authority and it stipulatesthat the appointing authority in case of non-gazetted officers shall be the Joint Secretary/Deputy Secretary to Government, Public Department, and the Gazetted Officers of the Government. The proviso thereto makes it clear that the selection of candidates for appointing to the posts shall be made by the Minister concerned or the Leader of the Opposition, as the case may be.

47. Rule 4 dealing with 'appointment' stipulates that the appointment to the posts shall ordinarily be made from among full members or approved probationers in the Kerala Secretariat Service or the Kerala Secretariat Subordinate Service.

48. However, the proviso thereto enumerates that in special cases, appointments to the posts may be made by recruitment by transfer from any other service or by direct recruitment, including recruitment from the service of a local authority. Rule 5 deals with 'probation and increment', and the second limb of Rule 5 specifies that a person not appointed in Government service already, if appointed in any post in the personal staff of Ministers or the Leader of Opposition shall not be regarded as a probationer in the Kerala Secretariat Service or the Kerala Secretariat Subordinate Service or in any other service and his appointment as such shall not confer on him any claim for future appointment to any of the services under the State Government, and that he may, however, be granted increment in the scale in which he is appointed unless it is withheld.

49. Rule 6 deals with 'tenure of appointment of direct recruits', which specifies that the service of persons recruited directly shall terminate when the Minister or the Leader of Opposition, as the case may be concerned, vacates. But, the proviso empowers the

Minister or the Opposition leader as the case may be to terminate the services of such persons.

50. Rule 6A which was brought into force on and with effect from 22.05.1972 states that in the case of persons coming under Rule 6, terminal gratuity at the rate of one month's basic pay for each year of service in the personal staff of the Minister or the Leader of Opposition shall be paid at the time of the termination of their service; the period of six months to one year being counted as one year of service.

51. Notes 1 and 2 thereto specify the manner in which the basic pay is to be treated for the purpose of determining the amount of terminal gratuity and the actual period of service, including all kinds of leave with or without allowance, but excluding the periods of break, to count for gratuity under the Rule. Other situations are also provided thereunder.

52. Rule 6AA introduced with effect from 17.04.1972 states that if a person recruited directly to a post in the personal staff of a Minister or the Leader of the Opposition dies while in service, terminal gratuity at the rate specified in Rule 6A shall be payable to his legal heirs. Other service benefits are offered under the Special Rules.

53. As per notification bearing No. G.O.(Ms) No. 109/89/GAD dated 26.04.1989, in exercise of the power conferred by subSection (1) of Section 2 of the Act, 1968 r/w Section 3 thereof, the Government of Kerala amended the Special Rules for the personal staff of the Ministers and the Leader of Opposition and others. As per the Notification dated 26.04.1989, Rule 4A is inserted in the Special Rules which states that the educational qualification for the common categories of posts like Assistant/Clerk/Typist/Confidential Assistant shall be the same as those prescribed for similar posts in the Secretariat Service and the Government Departments, as the case may be. Note 2 of Rule 4A specifies that the qualification prescribed under Rule 4A may be relaxed in deserving cases.

54. Apart from the same, Rule 1 was also amended by inserting 'Government Chief Whip' after the words 'Ministers and Leader of Opposition'. Accordingly, the word 'Chief Whip' is inserted in various Rules so as to have the benefit and advantage of the Special Rules.

55. Again, the Rule was amended as per G.O.(Ms.) No. 283/94/GAQD dated 23.09.1994, which is deemed to have come into force on and with effect from 1st April, 1982. As per the said notification, after Rule 8, certain Rules were inserted, dealing with 'pension' which stipulates that the persons appointed by direct recruitment to the personal staff of the Ministers, the Leader of Opposition and the Government Chief Whip having a minimum service of three years shall be eligible for pension and that qualifying service for maximum pension shall be 30 years.

56. A sub-Rule added therein, stipulates that, for reckoning, the qualifying service, a period of six months or above shall be taken as a completed year, and periods below six months shall be ignored. A proviso is incorporated thereto which stipulates that for reckoning the minimum service i.e., 3 years, and maximum service i.e., 30 years fraction of less than 6 months, if any, above two years and 29 years shall be rounded to 3 years and 30 years respectively. Other provisos are also brought in for the purpose of dealing with gratuity, family pension etc. Thereafter, various amendments were introduced during the year 2012 granting various benefits to the personal staff completing the qualifying service for pension such as commutation etc.

57. So also, a qualifying criteria is prescribed for the purpose of family pension at the rate of Rs.600 per month or as decided by the Government from time to time. Explanation was also brought in concerning the expression 'eligible family members.'

58. Again, orders were issued by the State Government enhancing pension/family pension etc. and finally in the year 2021, G.O. (P) No. 36/2021/Fin. dated 23.02.2021 is introduced revising pension/ family pension in respect of persons directly recruited to the personal staff of the Chief Minister, Ministers/Leader of Opposition and the Government Chief Whip.

59. It is the case of the petitioners that unmerited and unbridled power is conferred on the recruitment of the personal staff directly, in view of the proviso to Rule 4 and overlooking the normal method of appointment from among the full members or approved probationers in the Kerala Secretariat Service or the Kerala Subordinate Service Rules or by recruitment by transfer from any other service or by direct recruitment, including the recruitment from the service of local authority.

60. At the time of hearing, a statement of details of the personal staff — Ministers' Office wise, was made available for us to explain the kind of recruitment made as per the Special Rules. The facts and figures produced would show that out of the total 520 staff appointed to the office of the Chief Minister, Ministers and the Chief Whip, 375 were made by direct recruitment; 118 by deputation/other duty; and 27 by re-employment. So also, the qualifications of the staff directly recruited are also produced before us, which shows that in the Gazetted rank, except Sri. C.M. Ravindran, appointed as Additional Private Secretary in the Chief Minister's Office, has basic graduation and above, except the persons who are appointed as office Attendants, Chauffeurs, cooks, clerks, etc.

61. The paramount contention advanced by the petitioners is that all those appointments are made without consultation with the Kerala Public Service Commission as is contemplated under the Regulations, 1957 constituted as per Article 320(3) of the Constitution of India. Regulation 4 of the Regulations, 1957 enumerates that it shall not be necessary for the Commission to be consulted on various aspects, including as respects any of the matters mentioned in sub-clauses (a) to (e) of clause (3) of Article 320 of the Constitution in the case of the posts specified in Annexure to the Regulations, 1957 and other posts in respect of which the Government may with the concurrence of the Commission, direct that appointments may be made without reference to the Commission.

62. Annexure to Regulations, 1957 deals with State Services, Subordinate Services etc. Entry 9 under the head 'State Service' in the Annexure deals with Gazetted Officers in the personal staff of Ministers/Leader of Opposition/Government Chief Whip. Therefore, it can be seen that by virtue of Regulation 4 of the Regulations, 1957, gazetted officers in the personal staff of the Ministers/Leader of Opposition/Government Chief Whip are exempted from the consultation with the Public Service Commission.

63. So also, as per entry 10 under the head 'Subordinate Service' in the Annexure, the members of subordinate personal staff of the Ministers/Leader of Opposition/Government Chief Whip are exempted. It also clearly indicates that the appointment of such subordinate staff is also excluded from the consultation with the Public Service Commission.

64. Whatever that be, the contention advanced by the petitioners is that exemption from consultation provided as per the entries specified in the Annexure as above on the basis of the Regulations, 1957 is unconstitutional and arbitrary and therefore, violative of Articles 14 and 16 of the Constitution of India. However, it is clear from the Annexure that exclusion is given to 17 categories insofar as the State Service is concerned; and insofar as the Subordinate Service is concerned, 27 categories are given exemption. It is also quite clear and evident from the Annexure that amendments were made to the Annexures time and

again incorporating various categories to secure exemption from consultation with the Public Service Commission.

65. So also, Article 309 of the Constitution of India dealing with "the recruitment and conditions of service of persons serving the Union or a State", stipulates that subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. Therefore, it is quite clear and evident that the power is conferred on the State Legislature to regulate the recruitment and conditions of service of the persons appointed.

66. The contention advanced by the petitioners is that the manner in which the recruitment made by picking and choosing at the whims and fancies of the Chief Minister, Ministers etc. is violative of Article 14 of the Constitution of India dealing with 'equality before law'. The sum and substance of the contention is that by virtue of the imperative conditions mandated under Article 14, the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. So also, contentions are advanced on the basis of Article 16 dealing with 'equality of opportunity in matters of public employment' and it is submitted that all citizens are entitled to equality of opportunity in the matters relating to employment or any appointment to any office under the State.

67. In our considered opinion, Special Rules were framed for the appointment of personal staff to the office of the Ministers and others, which was subsequently amended by issuing various notifications/orders in accordance with Article 309 of the Constitution of India r/w Act, 1968, which was brought into force, to regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the State of Kerala.

68. It is true, Special Rules were brought into force on andwith effect from 03.03.1959 when the Kerala Public Services Act, was not in force, by virtue of the power conferred under Article 309 of the Constitution of India. However, Section 3 of the Act, 1968 makes it clear that all rules made under the proviso to Article 309 of the Constitution of India, regulating the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the State of Kerala and in force immediately before the 17th September, 1968, shall be deemed to have been made under the Act and shall continue to be in force unless and until they are superseded by rules made under the Act. Which thus means, the Special Rules, 1959 was also regularised by virtue of Section 3 of the Act 1968.

69. Section 4 makes it clear that notwithstanding anything contained in Chapter V-A or in any other provision of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) or in any other law for the time being in force, or in any judgment, decree or order of any court, the appointment of any person to any public service or post in connection with the affairs of the State of Kerala and the conditions of service (including termination of service) of any person appointed to any such service or post shall be governed by the provisions of the Act and the rules made or deemed to have been made thereunder.

70. However, Article 320(3)(a) of the Constitution of India dealing with 'the functions of the Public Service Commission', makes it emphatic that the Public Service Commission shall be consulted on all matters relating to methods of recruitment to civil services etc. But, the proviso thereto makes it clear that the President as respects the all-India services and also as respects other services and posts in connection with the affairs of the Union, and the Governor as respects other services and posts in connection with the affairs of a

State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted.

71. Therefore, it can be seen that it is by virtue of the constitutional empowerment contained under Article 320(3) of the Constitution of India, the Governor of Kerala has made the Regulations, 1957, wherein a provision is made to exempt certain classes or categories of services enumerated in the Annexure to Regulations, 1957. Even though entries in the Annexure are challenged by the petitioners, the empowerment as per Regulation 4 for granting exemption from consultation is not under challenge.

72. It is also quite clear and evident that not only the appointment of the personal staff of the Ministers etc. are exempted from consultation, but various other categories of posts, including the Governor's Secretariat are exempted from consultation with the Public Service Commission.

73. Yet another aspect that is raised by the petitioners is that there is no cadre strength fixed in the Special Rules. But, a perusal of the Rule shows that there are 20 categories of the personal staff included in the Special Rules as early as on 03.03.1959, but the activities of the Government have considerably increased during the course of time. Moreover, we are of the view that such a Special Rule was constituted and amended successively to ensure that Ministers, the Leader of the Opposition, and the Chief Whip may have to carry on their activities, in political, administrative, and official, by reposing confidence in such persons, and maintaining utmost confidentiality and secrecy.

74. Moreover, many sensitive issues would have to be considered by the Ministers etc, and therefore, without reposing absolute confidence in the personal staff, such persons would not be able to carry on their functions. That is why a Special Rule is made for the appointment of the personal staff and the Ministers are given the liberty to make selection of the candidates for appointment to the post, even though the appointment is made by the Joint Secretary/Deputy Secretary to Government, Public Department etc.

75. At first blush, even though the argument advanced by the petitioners in respect of the manner in which the appointments to be made to the posts as per Rule 4 of the Special Rules 1959 that ordinarily from among the full members or approved probationers in the Kerala Secretariat Service or the Kerala Subordinate Secretariat Service seems attractive; fact remains, in order to repose confidence, faith and trust, there may be circumstances where recruitments have to be made directly in terms of the proviso to Rule 4 of the Special Rules. Therefore, the special cases propounded in the proviso to Rule 4 of Rules 1959 could only be the aspects deliberated above. In that view of the matter, it cannot be said that only if the appointments are unable to be made from among the full members or approved probationers in the Kerala Secretariat Service or the Kerala Secretariat Subordinate Service or by recruitment by transfer from any other services, including the recruitment from the service of local authority, it can be made by direct recruitment.

76. In our view, the appointments made by direct recruitment by the Ministers etc. can only be treated as a special circumstance, enabling them to do so by direct recruitment at their choice. That is to say, insofar as the Special Rules are concerned, in respect of appointment of personal staff by virtue of the provisions contained under Articles 309 and 320(3) of the Constitution of India, the State Legislature is vested with ample powers to make the rules. Insofar as the contention with respect to the aspect that there is no qualification prescribed specifically under the Special Rules, we are of the view that, that by itself cannot be considered as an illegality to make the Special Rules unconstitutional.

77. In that regard, the learned Senior counsel Sri Raju Joseph has invited our attention to Articles 245 and 246 of the Constitution of India dealing with extent of laws made by Parliament and by the Legislatures of States and subject- matter of laws made by Parliament and by the Legislatures of States, and submitted that the Parliament and the State Legislatures are empowered to make the laws subject to the provisions of the Constitution of India. Even though a contention is advanced that in the other excluded category as per the Annexure to the Consultation Regulations 1957, selection is conducted by a process of selection and not by pick and choose, no material is produced before us to substantiate the said contention.

78. The sum and substance of the contention advanced is that the recruitment can only be made under the Special Rules by making recruitment in a process known to law i.e., by public advertisements enabling the eligible citizens to participate in the selection process in accordance with the qualifications prescribed thereunder.

79. But, as we have pointed out above, the selection and appointment is made to the personal staff and therefore, without the personal confidence of the Ministers, the Opposition Leader and the Chief Whip on the persons to be appointed, recruitment can be made to the personal staff. Which thus also means, without personal knowledge and satisfaction, such appointments can be made. Moreover, the State is vested with powers under entries 41 and 42 to make laws for the public services, State public Service Commission, and for the payment of pension etc.

80. Learned Senior Advocate Sri. Raju Joseph has invited our attention to the judgment of the Apex Court in **State of T.N and another v. P. Krishnamurthy and others** [AIR 2006 SC 1622] and submitted that a clear cut procedure is prescribed in the matter of ascertaining as to whether a particular rule is violated or not. The subject issue considered in the said case was the rule relating to the vesting of exclusive right to quarry sand in the State Government. It is held as follows at paragraph 12 thus:

“12. There is a presumption in favour of constitutionality or validity of a sub-ordinate Legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognized that a sub- ordinate legislation can be challenged under any of the following grounds :-

- a) Lack of legislative competence to make the sub-ordinate legislation.
- b) Violation of Fundamental Rights guaranteed under the Constitution of India.
- c) Violation of any provision of the Constitution of India.
- d) Failure to conform to the Statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- e) Repugnancy to the laws of the land, that is, any enactment .
- f) Manifest arbitrariness/unreasonableness.”

81. Learned Senior Counsel Sri. Raju Joseph has also relied upon the judgments of the Apex Court in **Secretary, State of Karnataka and others v. Umadevi (3) and others** [2006(4) SCC 1]; **State of U.P and another v. Ram Gopal Shukla** [(1981) 3 SCC 1]; and **State of Bihar V Upendra Narayanan Singh and others** (2009) 5 SCC 65 to drive home the points raised by the petitioners in the writ petition regarding the violation of Articles 14 and 16. So also, learned Senior Advocate Sri. M. R. Rajendran Nair has relied upon the judgments of the Apex Court in **Renu and others V. District and Sessions Judge, Tis Hazari, Delhi and another** [(2014) 14 SCC 50] **State of Orissa and another v. Mamata Mohanty** [(2011) 3 SCC 436] and **Ramit Singh Kardam and others v. Sanjeev Kumar and others** [(2020) 20 SCC 209] in respect of adherence to Articles 14 and 16, the

eligibility criteria/conditions and recruitment process; and submitted that the phraseology 'recruitment employed in the Special Rules is a process by itself and unless and until sufficient publicity is given to the appointments to be made, it violates Articles 14 and 16 of the Constitution of India. Learned counsel Sri C. Rajendran and Sri Sethunath have advanced arguments resulting to the dictionary meaning of the word 'recruitment' and the implication of Article 309 of the Constitution of India.

82. On the other hand, learned, Advocate General submitted that the Special Rules are made by the constitutional mandate contained under Articles 309 and 320(3) of the Constitution of India. It is also pointed out that even though a blunt contention is advanced that unqualified persons are occupying gazetted officers' posts, the statement with respect to the personal staff would clearly show that all are qualified persons to occupy the gazetted posts, except Sri. C. M. Raveendran, Additional Private Secretary to the Chief Minister, who is given exemption, by virtue of the rules, due to his immense experience in various ministries for the past several years.

83. It is also submitted that such a person is granted exemption from acquiring educational qualification by virtue of note to Rule 4A of the Special Rules amended as per G.O (Ms.) No. 109/89/GAD dated 26.04.1989. That apart, it is contended that even though an attempt is made to impress upon this Court that pension is provided to the personal staffs having service of two years and above as per the Special Rules, even the general Rules for pension concerning permanent employees were successively amended and as of now, minimum pension is provided to the employees of the State Services and Subordinate services below the minimum service qualification of ten years, and up to two years of service, and therefore, there is no discrimination, arbitrariness or illegality insofar as the payment of pension to the person to the personal staffs recruited by the Ministers etc. is concerned.

84. Learned Advocate General, on the other hand, has invited our attention to the five Member Constitution Bench judgment of the Apex Court in **State of Punjab v. Joginder Singh** [AIR 1963 SC 913] and specifically to paragraph 21 to canvass that the Special Rules, 1959 is not discriminatory or illegal or arbitrary, which reads thus:

21. It now remains to consider a point which was raised that the State cannot constitute two Services consisting of employees doing the same work but with different scales of pay or subject to different conditions of service and that the constitution of such services would be violative of Art. 14. Underlying this submission are two postulates: (1) equal work must receive equal pay, and (2) if there be equality in pay and work there have to be equal conditions of service. So far as the first proposition is concerned it has been definitely ruled out by this Court in *Kishori Mohanlal v. Union of India*, AIR 1962 SC 1139. Das Gupta, J. speaking for the Court said:

"The only other contention raised is that there is discrimination between Class I and Class II officers inasmuch as though they do the same kind of work their pay scales are different. This, it is said, violates Art. 14 of the Constitution. If this contention had any validity, there could be no incremental scales of pay fixed dependent on the duration of an officers service. The abstract doctrine of equal pay for equal work has nothing to do with Art. 14. The contention that Art. 14 of the Constitution has been violated, therefore, also fails.

The second also, is, in our opinion, unsound. If, for instance, an existing service is recruited on the basis of a certain qualification, the creation of another service for doing the same work, it might be in the same way but with better prospects of promotion cannot be said to be unconstitutional, and the fact that the rules framed permit free transfers of personnel of the two groups to places held by the other would not make any difference. We are not basing this answer on any theory that if a Government servant enters into any contract regulating the conditions of his service he cannot call in aid the constitutional guarantees because he is bound by his contract.

But this conclusion rests on different and wider public grounds, viz., that the Government which is carrying on the administration has necessarily to have a choice in the constitution of the services to man the administration and that the limitations imposed by the constitution are not such as to preclude the creation of such services. Besides, there might for instance, be a temporary recruitment to meet an exigency or an emergency which is not expected to last for any appreciable period of time. To deny to the Government the power to recruit temporary staff drawing the same pay and doing the same work as other permanent incumbents within the cadre strength but governed by different rules and conditions of service, it might be including promotions, would be to impose restraints on the manner of administration which we believe was not intended by the Constitution. For the purpose of the decision of this appeal the question here discussed is rather academic but we are expressing ourselves on it in view of the arguments addressed to us.”

85. Our attention was also drawn to a yet another Five Member Constitution Bench in **Ram Krishna Dalmia v. S.R. Tendolkar** [AIR 1958 SC 538], which considered the intricacies of Article 14 taking into account various judgments of the Apex Court and held as follows:

‘11. The principal ground urged in support of the contention as to the invalidity of the Act and/or the notification is founded on Art. 14 of the Constitution. In *Budhan Choudhry v. The State of Bihar*, 1955-1 S C R 1045 : ((S) A I R 1955 S C 191) (A) a Constitution Bench of seven Judges of this Court at pages 1048-49 (of S C R) : (at p. 193 of A I R) explained the true meaning and scope of Art. 14 as follows :

“The provisions of Art. 14 of the Constitution have come up for decision before this Court in a number of cases, namely, *Chiranjit Lal v. Union of India*, 1950 S C R 869 : (A I R 1951 S C 41) (B), *State of Bombay v. F. N. Balsara*, 1951 S C R 682 : (A I R 1951 S C 318) (C), *State of West Bengal v. Anwar Ali Sarkar*, 1952 S C R 284 : (A I R 1952 S C 75) (D), *Kathi Raning Rawat v. State of Saurashtra*, 1952 S C R 435 : (AIR 1952 S C 123) (E), *Lachmandas Kewalram v. State of Bombay*, 1952 S C R 710 : (A I R 1952 S C 235) (F), *Qasim Razvi v. State of Hyderabad*, 1953 S C R 589 : (AIR 1953 S C 156) (G) and *Habeeb Mohammad v. State of Hyderabad*, 1953, S C R 661 : AIR 1953 S C 287) (H). It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well established that while Art. 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Art. 14 condemns discrimination not only by a substantive law but by a law of procedure.”

The principle enunciated above has been consistently adopted and applied in subsequent cases. The decisions of this Court further establish -

- (a) that a law may be constitutional even though it relates to a single individual if, on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself ;
- (b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles ;
- (c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds ;

- (d) that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest
- (e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation ; and
- (f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

The above principles will have to be constantly borne in mind by the Court when it is called upon, to adjudge the constitutionality of any particular law attacked as discriminatory and violative of the equal protection of the laws.

12. A close perusal of the decisions of this Court in which the above principles have been enunciated and applied by this Court will also show that a statute which may come up for consideration on a question of its validity under Art. 14 of the Constitution may be placed in one or other of the following five classes :-

(1) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or things may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of the Court. In determining the validity or otherwise of such a statute the Court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be achieved by the statute, no matter whether the provisions of the statute are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the Court finds that the classification satisfies the tests, the Court will uphold the validity of the law, as it did in *Chiranjitlal v. Union of India* (B) (supra), *State of Bombay v. F. N. Balsara* (C) (supra), *Kedar Nath Bajoria v. State of West Bengal*, 1954 S C R 30 : (A I R 1953 S C 404) (I), *V. M. Syed Mohammad and Company v. State of Andhra*, 1954 SCR 1117 : (A I R 1954 S C 314) (J) and *Budhan Choudhury v. State of Bihar* (A) (supra).

(iii) A statute may direct its provisions against one individual person or things or to several individual person or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances; or matters of common knowledge. In such a case the Court will strike down the law as an instance of naked discrimination, as it did in *Ameerunnissa Begum v. Mahboob Begum*, 1953 S C R 404 : (A I R 1953 S C 91) (K) and *Ram Prasad Narain Sahi v. State of Bihar*, 1953 S C R 1129 : (A I R 1953 S C 215) (L).

(iii) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the Government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or otherwise of such a statute the Court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the Government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of the selection or classification. After such scrutiny the Court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the Government in the matter of selection or classification, on the ground that the statute provides for the delegation of arbitrary and uncontrolled power to the Government so as to enable it to discriminate between persons or things similarly situated and that, therefore, the discrimination is inherent in the statute

itself. In such a case the Court will strike down both the law as well as the executive action taken under such law, as it did in *State of West Bengal v. Anwar Ali Sarkar* (D) (supra), *Dwarka Prasad v. State of Uttar Pradesh*, 1954 S. C. R. 803 : (AIR 1954 S C 224) (M) and *Dhirendra Kumar Mandal v. Superintendent and Remembrancer of Legal Affairs*, 1955-1 S C R 224 : (AIR 1954 S C 242) (N).

(iv) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the Government to select and classify the person or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the Government in the matter of such selection or classification; the Court will uphold the law as constitutional, as it did in *Kathi Raning Rawat v. The State of Saurashtra* (E) (supra).

(v) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion of the Government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance to the exercise of discretion by the Government in the matter of such selection or classification. If the Government in making the selection or classification does not proceed on or follow such policy or principle, it has been held by this Court. e. g., in *Kathi Raning Rawat v. The State of Saurashtra* (E) (Supra) that in such a case the executive action but not the statute should be condemned as unconstitutional.

In the light of the foregoing discussions the question at once arises : In what category does the Act or the notification impugned in these appeals fall ?”

86. So also, the learned Advocate General has invited our attention to the judgment of the Apex Court in ***State of Mysore v. P. Narasinga Rao*** [AIR 1968 SC 349], the judgments of this Court in ***Alex Beets v. M.A. Urmese and another*** [AIR 1970 Ker. 312] and ***Pankajakshy & others v. George Mathew & others*** [1987 (2) KLT 723] to canvass the proposition that when a policy decision is taken by the Government with respect to the appointment of the personal staff of the Ministers etc. in order to serve the purpose of confidentiality, trust and confidence, the court may not sit over the wisdom of the legislature.

87. Learned Advocate General has also invited our attention to another Five Member Constitution Bench decision of the Apex Court in ***All India Station Masters' & Assistant Station Master's Association*** [AIR 1960 SC 384], which explained the intricacies of Article 16 of the Constitution of India and it is held at paragraph 8 thus:

8. It is clear that as between the members of the same class the question whether conditions of service are the same or not may well arise. If they are not, the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes of employees under the State? In our opinion, the answer must be in the negative. The concept of equality can have no existence except with reference to matters which are common as between individuals, between whom equality is predicated. Equality of opportunity in matters of employment can be predicated only as between persons, who are either seeking the same employment, or have obtained the same employment. It will for example, plainly make no sense to say that because for employment as professors of colleges, a higher University degree is required than for employment as teachers of schools, equality of opportunity is being denied. Similarly it is meaningless to say that unless persons who have obtained employment as school teachers, have the same chances of promotion as persons who have obtained employment as teachers in colleges, equality of opportunity is denied. There is, in our opinion, no escape from the conclusion that equality of opportunity in matters of promotion, must mean equality as between members of the same class of employees, and not equality between members of separate, independent classes.”

88. Therefore, according to the learned Advocate General, Special Rules were made to meet up with the requirements of the Ministers and others to carry on with the administration of the Government by reposing utmost confidence in the personnel staff in the matter of taking various decisions and policy decisions, by maintaining, retaining and sustaining secrecy and confidentiality.

89. Adv. Sri. B. G. Harindranath appearing for the party respondent Sri. C.M. Raveendran, has invited our attention to the judgments of the Apex Court in ***Union of India and another v. T.V. Patel*** [(2007) 4 SCC 785] and ***N.D.P Namboodripad (dead) by Lrs v. Union of India and others*** [(2007) 4 SCC 502] to contend that even the absence of consultation or any irregularity in the consultation process, does not confer the delinquent Government servant a cause of action in a court of law. It is also intended that the recruitment as per the Special Rules 1959 is a class by itself, and there is an intelligible differential in the matter of appointment of the personal staff.

90. Therefore on an evaluation of the rival submissions made across the Bar, it can be seen that the Special Rules are made for the purpose of appointment of personal staff to the Ministers/Opposition Leader/Chief Whip etc. In our view, insofar as exemption was granted as per Annexure to Regulations, 1957 concerning the personal staff of the Ministers etc., the contention advanced that there was no consultation with the Public Service Commission, cannot be sustained under law.

91. As we have pointed out above, the appointment is for the personal staff of the Chief Minister/Ministers etc. and therefore, a process of selection by public advertisement may not be possible, since that would not serve the purpose of conducting a selection of personal staff so as to have the confidence of the Ministers for the maintenance of the confidentiality, trust and faith in the matter of discharging duties.

92. In that view of the matter, the Special Rules made by prescribing the method of appointment on the basis of the selection conducted by the Ministers cannot be said to be bad or illegal. Insofar as the pension and family pension to the personal staffs directly recruited is concerned, it is clear and evident that State Government is providing ex gratia pension to the other Government employees who are having service of less than 10 years' minimum qualification, even up to the persons having the service of three years and below. It is also brought to our notice that by virtue of G.O.(P) No. 30/2021/FIN dated 12.02.2021, the ex gratia pension and ex gratia family pension are revised with effect from 01.07.2019 and a person having less than 3 years of service is entitled to get the ex gratia pension of Rs.3550/- and the family pension of Rs.1100/-.

93. Taking into account the principles of law evolved by the various Constitution Benches of the Apex Court in the judgments relied upon by the learned Advocate General, it can be seen that the appointments made to certain categories of posts could be done by a personal selection conducted by the Ministers to serve the purpose of their appointment as personal staff. Merely because such a recruitment is made for the better governance of the State with the aid, support and assistance of such personal staff, that cannot be said to be in violation of Articles 14 and 16 of the Constitution of India. Therefore, the judgments relied upon by the learned counsel for the petitioners are distinguishable.

94. Moreover, the appointment of such personal staff directly recruited is co-terminus with the service of the Ministers and therefore, it is a class of employment made in order to serve the Ministers during their tenure, which cannot be equated with a regular process of recruitment in terms of the General Rules applicable for appointment and conditions of service. Therefore, to put it short, the procedure prescribed in the Special Rules, 1959 is

necessitated to tackle certain situations due to administrative exigencies, and contingencies; and to achieve the said object and purpose a legislation with a distinct class is inevitable in the larger public interest. Looking from that angle, it cannot be said that the Special Rules, 1959 suffers from any vice of illegality and arbitrariness to interfere with the principles of law adumbrated in Articles 14 and 16 of the Constitution of India. Even though much was argued about the word “recruitment” that it is a process to be undertaken by evolving a transparent procedure; in reference to various dictionaries, it only means “the action or practice of recruiting for employment.” That is to say, with the mere employment of the word 'recruitment' in the Rules 1959, it cannot be legally presumed that a selection process is to be carried out by adopting a selection procedure as is done in the case of general recruitment for permanent posts to support the governance and administration generally. We are also of the view that good governance relates to the political and institutional process that are necessary and vitally required to protect the interest of the citizens in common and to achieve the goals of development. Therefore, to attain good governance and good practices in civil, cultural, economic, political, justice, social right, accountability, etc., the Government in power has to modulate its activities and discharge its functions, taking into account its political theories, election manifesto, and perceptions. For that, it must have a good and loyal team to its satisfaction producing results that meet the needs of the community at large, and to provide timely instructions and guidance from the political and social angle.

95. In that view of the matter, we are of the undoubted and considered opinion that the petitioners have not made out a case of arbitrariness or unfairness, so as to secure the reliefs as are sought in the writ petitions.

Needless to say, writ petitions fail and accordingly, they are dismissed. Before, we part with the judgment, we observe that it is always discernible to have a cadre strength to serve the Chief Minister, Minister, Leader of Opposition and the Chief Whip.

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