Pushpak Jyoti Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Dec. 11, 2003

Acts Referred: Constitution of India, 1950 â€" Article 14, 16, 16(2)

Citation: (2004) 1 UPLBEC 547

Hon'ble Judges: Umeshwar Pandey, J; M. Katju, J

Bench: Division Bench

Advocate: Ashok Khare, Sant Sharan Upadhyaya and Sadhna Upadhyaya, for the Appellant; B.N. Singh, S.S.C., S.K. Shukla and S.C., for the Respondent

Final Decision: Dismissed

Judgement

M. Katju, J.
These writ petitions and the bunch of connected writ petitions have challenged the validity of the petitioners'' allocation to the

State of Uttaranchal consequent upon the creation of the State of Uttaranchal by the U.P. Re-Organisation Act, 2000. All these petitions are being

disposed off by a common judgment.

2. We have heard the learned Counsel for the petitioners in all these connected petitions. We have also heard Sri B.N. Singh, learned Senior

Standing Counsel for the Central Government and the learned Standing Counsel for the State Government.

3. The petitioner in Writ Petition No. 52499 of 2002 was selected as an Officer in the Provincial Police Service in 1987 Batch. After completing

his training he joined the service on 3.3.1990 and was initially posted as Deputy Superintendent of Police at Rampur. Presently he is posted as

Additional Superintendent of Police, District Gautam Budh Nagar.

4. The U.P. Re-Organisation Act, 2000 was enacted by Parliament% which the State of U.P. was bifurcated and a new State called

''Uttaranchal1 Was created. Since a new State was being created obviously some U.P. Government employees had to be allocated to the State of

Uttaranchal.

5. The relevant provision in the U.P. Re-Organisation Act, 2000 with which we are concerned in these petitions are Sections 73, 75, 76 and 77 of

the Act. These provisions are as follows :--

73. Provisions relating to All India Services.--(1) Every persons who immediately before the appointed day is serving in connection with the

affairs of the existing State of Uttar Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of

Uttar Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of

the State of Uttaranchal:

Provided that every direction under this sub-section issued after the expiry of a period of one year from the appointed day shall be issued with the

consultation of the Governments of the successor States.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which

every person referred to in Sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or

be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of Sub-section (2) to a successor State shall, if he is not already serving therein be

made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or in default of such

agreement, as may be determined by the Central Government.

75. Provisions as to continuance of Officers in same post.--(1) Every person who, immediately before the appointed day is holding or discharging

the duties of any post or office in connection with the affairs of the existing State of Uttar Pradesh in any area which on that day falls within any of

the successor States shall continue to hold the same post or office in that successor State and shall be deemed, on and from that day, to have been

duly appointed to the post or office by the Government of or any other Appropriate Authority in that successor State :

Provided that nothing in this section shall be deemed to prevent a Competent Authority, on and from the appointed day, from passing in relation to

such person any order affecting the continuance in such post or office.

76. Advisory Committees.--(1) Central Government may, by order, establish one or more Advisory Committees for the purpose of assisting it in

regard to--

(a) the discharge of any of its functions under this part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this part and the proper consideration of any

representations made by such persons.

77. Power of Central Government to give directions.--The Central Government may give such directions to the State Government of Uttar

Pradesh and the State Government of Uttaranchal as may appear to it to be necessary for the purpose of giving to the foregoing provisions of this

part and the State Government shall comply with such directions.

6. u/s 73(1) a U.P. Government employee shall on and from the appointed date provisionally continue to serve in connection with the affairs of the

State of Uttaranchal unless he is required by general or special order of the Central Government to serve provisionally in connection with the affairs

of the State of Uttaranchal.

7. u/s 73(2) the Central Government by general or special order can determine the successor State to which every person mentioned in Sub-

section (1) shall be finally allotted for service and the date with effect from which the said allotment shall take effect.

8. It is obvious from Section 73(2) of the Act, that the final allotment for service in a successor State has to be made by the Central Government.

The expression "successor" State has been defined in Sub-section (2)(j) of the Act, to mean the State of U.P. or the State of Uttaranchal.

9. There is no challenge to the validity of any provision of the U.P. Re-Organisation Act, 2000, in this writ petition. What has been challenged is

the final allotment of the petitioner to the State of Uttaranchal u/s 73(2) and the principles of allotment.

10. The final allotment, as already mentioned above, has to be done by the Central Government u/s 73(2). u/s 76 the Central Government can

appoint an Advisory Committee for assisting it in discharge of its functions under Part-VIII of the Act and for ensuring fair and equitable treatment

to all persons likely to be affected and for proper consideration of any representation made by such persons. u/s 77 the Central Government can

give direction to the State Government as may appear to it to be necessary for the purpose of giving effect to the provisions of Part-VIII of the Act

and the State Government has to comply with such directions.

11. It appears that the Secretary, Ministry of Personnel, Public Grievances and Pensions, Government of India wrote a letter dated 13.9.2000 to

the Chief Secretary, U.P. Government, copy of which is Annexure-3 to the writ petition. This letter states that discussions had been held in the

meeting with the three Chief Secretaries of Bihar, Madhya Pradesh and U.P. on 6.9.2000 in the Chambers of Sri B.B. Tandon, Secretary,

Government of India, Ministry of Personnel, Public Grievance and Pensions regarding the principles to be followed for allocating personnel

belonging to the services other than All India Service to the new States in accordance with the provisions of the Act. Sri B.B. Tandon also sent

alongwith that letter copy of the guidelines containing the principles and modalities of handling the personnel and service matter which should be

followed by the State Government for all services other than All India Services. This letter also mentions nodal officers in the Central Government

who may by contacted by the State Government for any guidance and clarifications. Various principles are mentioned in the guidelines annexed to

the aforesaid letter. The Chief Secretary, U.P. formulated the policy of allocation of personnel in pursuance of the guidelines of the Central

Government dated 13.9.1990, in which the distribution of personnel had been laid down on the basis of three criteria, namely, (i) Optional; (ii)

domicile status; and (iii) deputation basis. True copy of the letter of the Chief Secretary dated 65.11.2000 is Annexure-4 to the writ petition.

12. It is alleged in Paragraph 10 of the writ petition that the State Advisory Committee was also constituted by the Central Government to deal

with such allocations which consisted of the Chief Secretaries, U.P. and Uttaranchal and Shri Vishwanath Anand, former Chief Secretary as

Chairman of the Committee. A true copy of the letter of Shri B.B. Tandon, Secretary, Government of India dated 21.12.2000/22.12.2000 to the

Chief Secretary, U.P. Government in this connection is Annexure-2 to the short counter-affidavit in Writ Petition No. 45201 (A) of 2002. This

letter states that after creation of the State of Uttaranchal the Central Government has decided to constitute a State Advisory Committee for

assisting it in discharging its functions in regard to State Government employees to ensure fair and equitable treatment and consideration of

representations. The guidelines to be borne in mind by the State Advisory Committee and its composition, were also mentioned in the said letter.

13. The first meeting of the State Advisory Committee was held at Delhi on 28.4.2001. The minuets, decisions and recommendations made in this

meeting are Annexure-8 to connected Writ Petition No. 47285 of 2002, Udai Raj Singh v. State of U.P..

14. A meeting of the State Advisory Committee was then held on 2.7.2002 at Nainital, Uttaranchal in which certain norms were laid down and

some previous policies were revised vide G.O. dated 6.11.2000. Copy of the minutes of the meeting of the State Advisory Committee held on

2.7.2002 at Nainital, Uttaranchal is Annexure-5 to the writ petition. The State Government issued a revised G.O. dated 15.7.2002 regarding final

allocation of personnel allegedly on the basis of the norms and guidelines laid down by the State Advisory Committee in its meeting dated

2.7.2002. True copy of the G.O. dated 15.7.2002 is Annexure 6 to the writ petition. A perusal of the same shows that the first two conditions for

allocating the personnel to Uttaranchal are (i) optional and (ii) domicile status. The remaining vacancies, if any, left thereafter shall be allocated as

per Clauses 3 to 8 in the G.O. dated 15.7.2002.

15. It is alleged in Paragraph 17 of the writ petition that the personnel of the Secretariat of the U.P. Government expressed deep anguish and

resentment of the guidelines dated 15.7.2002 by resorting to demonstrations. Consequently, the Principal Secretary, Secretariat Administration

Department informed the President of the U.P. Secretariat Association that the members of the Secretariat Association shall not be allocated to

Uttaranchal against their wish vide letter of the Principal Secretary dated 2.7.2002, Annexure-7 to the writ petition. It is alleged in Paragraph 17 of

the writ petition that this amounted to hostile discrimination against other employees who have been allotted Uttaranchal against their wish.

16. In Paragraph 22 of the writ petition it is alleged that the petitioner received notice dated 26.11.2002, alongwith copy of the tentative final

allocation list of the officers who are going to be allocated to the State of Uttaranchal. True copy of the tentative final allocation list dated

26.11.2002 of the P.P.S. Officers who are going to be allocated to the State of Uttaranchal is Annexure-9 to the writ petition. A perusal of this

letter shows that the persons who were given a tentative allotment were permitted to make a representation to the Chairman of the State Advisory

Committee by 12.12.2002. The representations received thereafter would not be considered.

17. In connected Civil Misc. Writ Petition No. 45201 of 2002, Vijay Kumar Yadav v. State of U.P., a short counter-affidavit has been filed by

the Central Government annexing copy of the letter of B.B. Tandon, Secretary to the Central Government dated 21/22.12.2000, addressed to the

Chief Secretary, U.P. Government. In this letter reference has been made to the earlier letter of Sri Tandon dated 13.9.2000 through which

guidelines for provisional allocation of State Government employees were circulated. In this letter dated 21/22.12.2000, Sri B.B. Tandon,

Secretary to the Central Government, Ministry of Personnel, Public Grievance and Pensions has written that with the provisional allocation order

having been issued by the Central Government and successor. States having come into existence the Central Government has decided to constitute

a State Advisory Committee for the purpose of assisting it in discharging its function with regard to the State Government employees with a view to

ensure their fair and equitable treatment including proper consideration of their representations.

18. The composition and objectives of the State Advisory Committee constituted by the Central Government including guidelines to be borne in

mind by the State Advisory Committee and the State Government has been enumerated in the annexure enclosed in that letter. Sri B.B. Tandon

requested the State Government to render all necessary assistance to the State Advisory Committee to enable it to function smoothly.

19. A perusal of the composition of the State Advisory Committee shows that the State Advisory Committee constituted by the Central

Government consisted of the following :--

(1) A senior retired Civil Servant of the rank of Chief Secretary or equivalent as Chairman.

(2) Chief Secretaries of the successor States or their nominees not below the rank of Secretary to the State Governments, representing the State

Governments as members of the Committee.

(3) Additional Secretary (Pension) or his nominee not below the rank of the Director to the Government of India, representing the Central

Government as member.

(4) An officer not below the rank of Secretary to the State Government coordinating the Re-organisation Cell in the State of Uttar Pradesh existing

immediately before the appointed day, as member Secretary.

20. Thus, the State Advisory Committee consisted of very senior and experienced Civil Servants.

21. The objectives of the State Advisory Committee was to assist the Central Government in regard to discharge of its function relating to State

Government employees under Part-VIII of the Act and to ensure fair and equitable treatment to the State Government employees affected by the

provisions of that part and for proper consideration of their representations. The State Advisory Committee circulated tentative final allocation list

to the respective successor State Government for information of their employees and for submission of representations. The State Advisory

Committee then considered the representations made by the employees against the tentative allocation list and forwarded its recommendations to

the Central Government for taking a final view in the matter. Based on the advice received from the Central Government on the recommendations

made by the State Advisory Committee, tentative allocation list was made final and on that basis the State Government issued final allocation

orders. Certain principles for final allocation have also been mentioned in the aforesaid letter.

22. By the subsequent letter of the Director in the Department of Personnel and Training, Central Government to the Chief Secretary, U.P. dated

26/27.9.2001, a modification had been made to the guidelines sent alongwith be letter dated 22.12.2000, vide Annexure-3 to the short counter-

affidavit in Writ Petition No. 45201 of 2002. Thereafter additional guidelines dated 21.11.2001 was issued vide Annexure-4 to the short counter-

affidavit.

23. It appears that a meeting of the State Advisory Committee constituted by the Central Government was held at Nainital, Uttaranchal on

2.7.2002 in which following officers attended--

Name Designation

Shri D.S. Bagga Chief Secretary, U.P.

Shri Madhukar Gupta Chief Secretary, Uttarancal

Shri R.S. Tolia Principal Secretary, Forest and Commissioner,

Rural Development, Uttaranchal

Shri Indu Pandey Principal Secretary, Finance, Uttaranchal

Shri N.S. Napalchyal Re-Organisation Commissioner, Uttaranchal

Shri Saurabh Chandra Secretary, Irrigation, U.P.

Shri Lav Verma Secretary, Uttaranchal Co-ordination

Shri Keshav Desiraju Secretary, Irrigation and Power, Uttaranchal

Shri Alok Jain Secretary, Karmik, Uttaranchal

Shri R.R. Prasad Director (S.R.), Government of India, Deptt. of

Personnel and Pension.

24. True copy of the minutes of the meeting of the State Advisory Committee held on 2.7.2002 is Annexure-5 to the Writ Petition No. 52499 of

2002. In this meeting the following criteria for allocation of personnel to Uttaranchal was suggested by the Chief Secretary, U.P. and was

accepted;

(1) The first of be allotted will be optees to Uttaranchal.

(2) Those whose home district as declared in service records lies within Uttaranchal, will be allotted to that State.

(3) If vacancies persist, the junior most as on the appointed day in the desired pay scale would be allotted.

(4) While carrying out the exercise care would be taken to observe the criteria regarding reservation of SCs/STs/OBCs and others. Care would

also be taken to allocate personnel pro rata according to the total strength of the batch, as far as possible.

(5) If both husband and wife are in service, allotment would be in accordance with the option of the senior with reference to the pay scale. In case

of officers finally allotted to Uttaranchal vide Government of India''s order dated 11.9.2001, the spouse would be allotted Uttaranchal only and not

Uttar Pradesh.

(6) Female employees would be allocated according to their options, subject to the condition that those whose spouses are covered by Point 2 or

Point 3 would be allotted Uttaranchal only and not Uttar Pradesh.

(7) Those employees who are due to retire within two years will be allotted as per their option.

(8) Handicapped employees, if not finally allotted to Uttaranchal vide orders dated 11.9.2001 issued by Government of India would be allotted as

per their options.

There was consensus on the adoption of these norms to govern the allocation of personnel.

25. In our opinion, the above 8 principles are objective criteria designed to avoid any complaint of pick and choose. These criteria, in our opinion,

cannot be regarded as arbitrary. They have been framed by senior, experienced administrators and hence the Court should defer to their opinion,

particularly since the Court does not have expertise in these matters.

26. The Chairman of the Committee also suggested that genuine and extreme hardship cases may be put up before the State Advisory Committee

for disposal.

27. On the basis of the aforesaid decision of the State Advisory Committee, the Chairman of the State Advisory Committee wrote a letter dated

15.7.2002 to all the Principal Secretaries and Heads of Department of U.P. Government, copy of which is Annexure-6 to the writ petition.

28. Sri Ashok Khare, learned Senior Counsel for the petitioners in some petitions submitted that the guidelines for final allocation have not been

framed by the Central Government as is the necessary requirement of the U.P. Reorganisation Act, 2000. He has submitted that the guidelines

have been framed by the State Advisory Committee on which no such power stands conferred. He has further submitted that there is nothing to

show that the criteria for allocation framed by the State Advisory Committee has ever been approved by the Central Government. We do not

accept this contention. It may be noted that the State Advisory Committee had been set up by the Central Government and hence it was acting on

the authority of the Central Government. There is no averment in the Writ Petition No. 52499 of 2002 or in Writ Petition No. 45201 of 2002 or

any other of these connected petitions that the recommendations of the State Advisory Committee had not been accepted or approved by the

Central Government. Hence the petition cannot urge that the recommendations of the State Advisory Committee had not been approved by the

Central Government when he has not even made pleadings in the writ petitions. We are of the opinion that the guidelines framed by the State

Advisory Committee will be deemed to be the guidelines of the Central Government since the Committee was set up by the Central Government

for this purpose. In fact the Central Government has made final allocation u/s 73(2) of the Act, vide order dated 22.4.2003 of the Director

(Personnel and Training), Central Government, copy of which has been produced before us by Sri B.N. Singh, learned Senior Standing Counsel

for the Central Government. The said copy of the order dated 22.4.2003 shall be kept on record in this case. Copy of the order date 22.4.2003

had also been given earlier to Sri Ashok Khare and Smt. Sadhana Upadhyay, learned Counsel for the petitioners by Sri B.N. Singh, Senior

Standing Counsel for Central Government, High Court alongwith his letter dated 11.11.2003.

29. A perusal of the order dated 22.4.2003 shows that the final allocation u/s 73(2) has been made by the Central Government by this order.

30. Annexed to the order dated 22.4.2003 is the list of persons who have been finally allocated to the State of U.P. or Uttaranchal u/s 73(2).

31. Since final allocation has been made by the Central Government u/s 73(2) of the Act, it can reasonably be concluded that this final allocation

u/s 73(2) was made on the recommendations of the State Advisory Committee set up by the Central Government u/s 76. Hence, it can be said

that the guidelines of the State Advisory Committee was accepted by the Central Government.

32. Sri Ashok Khare, then contended that the final allocation effects a change in the employer of the petitioner without the consent of the

employee. In our opinion, the legislature can change the employer of the employee in the circumstances of the case. Obviously, when the State of

Uttaranchal was created some of the U.P. Government employees have to be sent to Uttaranchal State, otherwise the State of Uttaranchal cannot

function. No doubt after few a years local recruitment will be done by the State of Uttaranchal but for sometime it will have to utilize the services of

the erstwhile U.P. Government employees otherwise there will be an administrative vacuum in the Uttaranchal State. We have to take a practical

view of the matter and not go by abstract theory. Learned Counsel for the petitioner has not been able to show any legal bar to the change of the

employer and hence his submission in this regard cannot be accepted.

33. Sri Ashok Khare then contended that Paragraph 2(b)(2) of the G.O. dated 15.7.2002 is violative of Article 16(2) of the Constitution.

Paragraph 2(b)(2) of the said G.O. states that the domiciles of Uttaranchal will be allotted Uttaranchal State. The domiciles will be regarded as

such persons in whose service record on 1.4.2000, it is mentioned that their home district is one of the 13 districts of Uttaranchal State.

34. We cannot accept this contention also. Article 16(2) of the Constitution states :

No citizen shall, on grounds only of religion, race, caste, sex, descent, place or birth, residence or any of them, be uneligible for, or discriminated

against in respect of, any employment or office under the State.

35. We do not see how Article 16(2) has been violated by the G.O. dated 15.7.2002. In our opinion, the G.O. dated 15.7.2002 does not

discriminate against the original residents/domiciles of the 13 districts included in Uttaranchal.

36. Learned Counsel for the petitioner has relied on the decision of the Supreme Court in Gazula Dasaratha Rama Rao Vs. The State of Andhra

Pradesh and Others, In that decision the validity of Section 6(1) of the Madras Hereditary Village Offices Act was challenged on the ground that it

violated Article 16(2) of the Constitution. Section 6(1) stated that in choosing the persons to fill the offices of Village Munsifs, the Collector shall

select the persons whom he may consider the best qualified from among the families of the last holders of the office. The Supreme Court held that

this provision violates Article 16(2) of the Constitution because the office of Village Munsif is an office under the State within the meaning of the

term in Article 16(1)(2) and hence it cannot be treated as a hereditary post. In our opinion, this decision is wholly distinguishable and cannot apply

to the facts of the present case.

37. In Kailash Chand Sharma v. State of Rajasthan AIR 2002 SCW 3276 , the Supreme Court considered the scope of Article 16(2) of the

Constitution. In that decision the Supreme Court held that the residence within a district or rural areas of that district could not be a valid basis for

classification for the purpose of public employment. In that case 10 bonus marks had been awarded for residence in the district concerned and five

marks for residents of rural areas of the concerned districts for selection to the post of Primary School Teachers by the Zila Parishad of various

districts in the State of Rajashtan. The Supreme Court referred to the Constitution Bench decision in A. V. S. Narasimha Rao and Others Vs. The

State of Andhra Pradesh and Another, where in connection with Article 16 it was observed :

The intention here is to make every office or employment open and available to every citizen and inter alia to make offices or employment in one

part of India open to citizens in all other parts of India

38. The Supreme Court also referred to its own decision in Dr. Pradeep Jain and Others Vs. Union of India (UOI) and Others, where it was

observed :

It will not noticed from the above discussion that though infra-State discrimination between persons resident in different districts or regions of a

State has by and large been frowned upon by the Court and struck down as invalid as in Minor P. Rajendran Vs. State of Madras and Others,

and Minor A. Peeriakaruppan and Sobha Joseph Vs. State of Tamil Nadu and Others, the Court has in D.N. Chanchala"s case and other similar

cases upheld institutional reservation effected through University-wise distribution of seats for admission to Medical Colleges. The Court has also

by its decision in D.P. Joshi Vs. The State of Madhya Bharat and Another, and N. Vasundara Vs. State of Mysore and Another, sustained the

constitutional validity of reservation based on residence requirement within a State for the purpose of admission to Medical College.

39. After discussing a catena of earlier decisions in Kailash Chand Sharma''s case (supra), the Supreme Court held that award of bonus marks to

the districts or rural areas of the districts amounts to impermissible discrimination as there is no rational basis for such preferential treatment.

40. In our opinion, the aforesaid decision is clearly distinguishable. We are here not concerned with any bonus marks or weightage given to people

of certain areas. We are concerned with the question whether there was a rational basis for allocating the employees whose domicile/place of birth

was in Uttaranchal to the State of Uttaranchal after its creation. We are of the opinion that such a decision to allocate such persons to Uttaranchal

cannot be said to be irrational. It may be that the Central Government and State Advisory Committee could have framed some other or different

criteria for allocating the employees to Uttaranchal, but it is not for this Court to decide whether this or that criteria was better from the point of

view of efficiency of administration or other such circumstances. The State is free to chose different methods and adopt different criteria and it is

not for this Court to say that any particular method or criteria should have been chosen.

41. In General Manager, Southern Railway v. Rangachari, AIR 1962 SC 36, the Supreme Court observed that Articles 16(1) and (2) really give

effect to the equality before law guaranteed by Article 14 and to prohibition of discrimination guaranteed by Article 15(1). Thus, Article 16 is really

a specie of the genus which is contained in Article 14. In other words, Article 16 is an instance of the application of the general rule of equality laid

down in Article 14 of the Constitution. Hence, the decisions on Article 14 may also be apposite.

42. It is well-settled that Article 14 does not prohibit reasonable classification for legitimate purpose vide The State of Bombay and Another Vs.

F.N. Balsara, ; Babulal Amthalal Mehta Vs. The Collector of Customs, Calcutta, ; Gopi Chand Vs. The Delhi Administration, In these decisions it

was held that differential treatment does not by itself constitute violation of Article 14 to the Constitution. It violates Article 14 when there is no

reasonable basis for the differentiation vide Ameerunnissa Begum and Others Vs. Mahboob Begum and Others, If a law deals equally with

members of a well defined class it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that there was no

application to other person vide State of Bombay v. Balsara (supra). No service rule can satisfy every employee vide Reserve Bank of India and

Others Vs. C.N. Sahasranaman and Others, (vide Para 58). If the State takes care to reasonably classify persons and if it deals equally with all

persons belonging to a well defined class it is not open to the charge of denial of equal protection on the ground that the law does not apply to the

other persons vide Sakhawat Ali Vs. The State of Orissa, (Vide Para 10); Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, etc.

43. Of course, 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 that differentia must have a rational relation to the object sought to be achieved by the law vide Harakchand

Ratanchand Banthia and Others Vs. Union of India (UOI) and Others, (vide Para 26); Mohd. Hanif Quareshi and Others Vs. The State of Bihar,

Pathumma and Others Vs. State of Kerala and Others, (Para 41) etc. However, Article 14 does not insist that the classification should be

scientifically perfect or logically complete vide Kedar Nath Bajoria Vs. The State of West Bengal, (vide Para 8). The classification would be

justified if it is not palpably arbitrary vide In Re: The Special Courts Bill, 1978, (Para 72).

44. Hence when a law is challenged as denying equal protection, the question for determination by the Court is not whether it has resulted in

inequality, but whether there is some difference which bears a just and reasonable relation to the object of the classification vide Suraj Mall Mohta

and Co. Vs. A.V. Visvanatha Sastri and Another, When, therefore, a law is challenged as offending Article 14 of the Constitution the first duty of

the Court is to examine the purpose and policy of the Act and then to discover whether the classification made by the law has a reasonable relation

to the object which the Legislature seeks to achieve vide Kedar Nath v. State of West Bengal AIR 1953 SC 401 ; P.B. Roy Vs. Union of India

(UOI), etc.

45. The basis of classification may be geographical vide D.P. Joshi Vs. The State of Madhya Bharat and Another, The State of Punjab Vs. Ajaib

Singh and Another, ; Gopal Narain Vs. State of Uttar Pradesh and Another, State of Nagaland Vs. Ratan Singh, etc., , etc., provided there is a

nexus between the territorial basis of the classification and the objects ought to be achieved by the Act, vide Purshottam Govindji Halai Vs. Shree

B.M. Desai, Additional Collector of Bombay and Others, . Gopi Chand Vs. The Delhi Administration, Kangshari Haldar and Another Vs. The

State of West Bengal, ; Shri Kishan Singh and Others Vs. The State of Rajasthan and Others, ; Ram Chandra Palai and Others Vs. The State of

Orissa and Others, State of Maharashtra Vs. Raj Kumar, H.H. Shri Swamiji of Shri Amar Mutt and Others Vs. Commissioner, Hindu Religious

and Charitable Endowments Department and Others, (Para 25); State of Madhya Pradesh Vs. Bhopal Sugar Industries Ltd., etc.

46. Thus, a perusal of the above decisions shows that there can be classification provided there is a reasonable nexus with the object sought to be

achieved. From this angle the impugned G.O. dated 15.7.2002, in our opinion, does not violate Articles 14 and 16(2) of the Constitution. There is

rational classification by the impugned G.O. which has a nexus sought to be achieved namely to provide sufficient number of Civil Servants to the

newly created State of Uttaranchal to enable it to function. Domiciles of Uttaranchal are a well defined class and they can better serve the people

of Uttaranchal as they are likely to have some knowledge of the local conditions in Uttaranchal.

47. In our opinion, the impugned G.O. dated 15.7.2002 does not discriminate on the basis of descent or on the basis of place of birth or

residence. It may be noted that Paragraph 2(b)(2) of the G.O. dated 15.7.2002 does not discriminate inter se between the persons who are

domiciles of the 13 districts of Uttaranchal. All such persons have been allocated to Uttaranchal (with the exception of the persons mentioned in

the impugned G.O.). All that the aforesaid provision does is to make a classification between persons who are domiciles of Uttaranchal and those

whose are not. In our opinion, this is a reasonable classification which has a nexus to the object sought to be achieved. After all persons who are

domiciles of Uttaranchal are likely to have some connection with Uttaranchal and some knowledge about the people, environment and the situation

in Uttaranchal. Hence, they will be better able to serve the people of Uttaranchal having knowledge of local affairs as contrasted to persons whose

domicile was not Uttaranchal. Persons who are domiciles of Uttaranchal very often have their homes and their relatives there and would in all

likelihood have knowledge of local conditions there. Many of them often visit their home cities or villages even when they have lived for quite

sometimes in plains of U.P. Hence, most of them have some affiliation to the State of Uttaranchal and they often have relatives and friends there

whom they often visit. This is a matter of common knowledge and we can take judicial notice of this fact.

48. No doubt there may be some individual cases of hardship, since there could be some persons who may be domiciles of Uttaranchal technically

but may have never visited Uttaranchal. However, it is well-settled that a rule cannot be said to be unreasonable merely because in a given case it

operates harshly vide State of Gujarat Vs. Shantilal Mangaldas and Others, (vide Paragraph 52).

49. In Srinivasa Enterprises v. Union of India (1980) 4 SCC 507, the Supreme Court observed vide Paragraph 13 :

When a general evil is sought to be suppressed some martyrs may have to suffer, for the legislature cannot easily make meticulous exception and

has to proceed on broad categorization not singular individualizations.

50. Hence, even if some individual Government servants suffer by the said clause that would not make it invalid vide K.B. Hides v. State of U.P.

and Ors., Civil Misc. Writ Petition No. 2529 of 2002, decided on 1.12.2003.

51. Sri Ashok Khare, learned Senior Advocate for the petitioner submitted that under Paragraph 2(b)(3) a person whose home district is

mentioned in the service record as one of the 13 districts falling within the Uttaranchal on 1.4.2000 is to be treated as an original residential

domicile of Uttaranchal. He submitted that this norm is wholly unreasonable since normally the district mentioned in the service book finds

reflection from the details as mentioned in the application form while applying before the U.P. Public Service Commission. In the said application

form the residence of an applicant may be mentioned as one of the 13 districts falling in the State of Uttaranchal on account of several factors

including posting of parents or the applicant at the said point of time in one of the aforesaid districts in Uttaranchal. We have already stated that

merely on account of individual cases of hardships the Court cannot declare a rule as violative of Article 14 of the Constitution. Hence, even if we

accept the argument of Sri Ashok Khare, it only follows that there are individual cases of hardship but on that account the rule will not become

violative of Article 14 of the Constitution.

52. Smt. Sadhna Upadhyay, learned Counsel for the petitioner in some of the cases submitted that Clause 2(b)(3) of the G.O. dated 15.7.2002, is

also arbitrary because it provides that even after the application of Sub-clauses (1) and (2) if some posts remain vacant then the junior most in the

desired pay scale would be allotted to Uttaranchal. She submitted that Uttaranchal requires senior and experienced Civil servants also and not only

junior Government employees.

53. In our opinion, there is no merit in this submission also. It may be noted that Sub-clause (3) only comes into play after exhausting Sub-clause

(1) and (2) of Clause 2(b) of the G.O. dated 45.7.2002. Hence, obviously some senior and experienced persons who come within Sub-clauses

(1) and (2) are bound to be allotted to Uttaranchal and it is not that only junior persons will be allotted there. At any event this is a policy matter

and we cannot interfere with the same in writ jurisdiction.

54. It is well-settled that in policy matters this Court has very limited scope of interference vide Union of India (UOI) and Another Vs. International

Trading Co. and Another, (Para 17); State of Punjab v. Ram Lubhaya 1993 (4) SCC 117 ; Krishnan Kakkanth Vs. Government of Kerala and

ohters, ; G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others, ; Federation of Railway Officers Association and Others Vs.

Union of India (UOI), etc.

55. In Union of India v. International Trading Co. 2003 (51) ALR 598, (vide Paragraph 17), the Supreme Court observed :

The Courts as observed in Union of India and others Vs. Hindustan Development Corpn. and others, , are kept out of the lush field of

administration policy except where the policy is inconsistent with the express or implied provision of a statute which creates the power to which the

policy relates or where a decision made in purported exercise of power is such that a repository of the power acting reasonably and in good faith

could not have made it. But, there has to be a word of caution. Something overwhelming must appear before the Court will intervene. That is and

ought to be a difficult onus of an applicant to discharge. The Courts are not very good at formulating or evaluating policy. Sometimes when the

Courts have intervened on policy grounds the Court''s view of the large of policies open under the statute or of what is unreasonable policy has not

got public acceptance. On the contrary, crucial views of policy have been subjected to stringent criticism.

As Professor Wade points out (in Administrative Law by H.W.R. Wade, 6th Edition), there is ample room within the legal boundaries for radical

differences of opinion in ;which neither side is unreasonable. The reasonableness in administrative law must, therefore, distinguish between proper

course and improper abuse of power. Nor is the test the Court''s own standard of reasonableness as it might conceive it in a given situation. The

point to note is that the thing is not unreasonable in the legal sense merely because the Court thinks it to be unwise.

56. In Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and

Others, the Supreme Court while examining the scope of interference by the Courts in public policy held that the Court cannot strike down a

circular/Government Order or a policy merely ;because there is a variation or contradiction. The Court observed : ""Life is sometimes contradiction

and even inconsistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factors fouls"". In

that decision the Court also observed :

Once, the principle is found to be rational, the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate

the order or the policy. Every cause claims a martyr and however, unhappy we be to see the seniors of yesterdays becoming the juniors of today,

this is an area where, absent arbitrariness and irrationality, the Court has to adopt a hands-off policy.

57. In Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, the

Supreme Court considered the scope of judicial review in a case of policy decision and held as under :--

The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation making body. It may be

a wise policy, which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and

improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down

on the ground that in its opinion, it is not a wise or prudent policy but is even a foolish one and that it will not really serve to effectuate he purpose

of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters

covered by the Act and there is no scope for any interference by the Courts unless the particular provision impugned before it can be said to suffer

from any legal infirmity in the sense of its being wholly beyond the scope of the regulation-making power or it being inconsistent with any of the

provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

58. A similar view has been reiterated in Delhi Science Forum and others Vs. Union of India and another, ; U.P. Kattha Factories Association Vs.

State of U.P. and others, ; and Rameshwar Prasad Vs. Managing Director U.P. Rajkiya Nirman Nigam Limited and Others,

59. In Netai Bag and Others Vs. The State of West Bengal and Others, (vide Para 20), the Supreme Court observed :

The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or

wiser or more scientific or logical.

60. The Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent

peculiar circumstances. While deciding the said case, the Court referred to and relied upon its earlier judgments in State of M.P. and Others Vs.

Nandlal Jaiswal and Others, and Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, wherein the Court held that

judicial interference with policy decision is permissible only if the decision is shown to be patently arbitrary, discriminatory or mala fide.

61. A similar view has been reiterated in Union of India and Others Vs. Dinesh Engineering Corporation and Another etc., . In M/s. Ugar Sugar

Works Ltd. Vs. Delhi Administration and Others, , it has been held that in exercise of their powers of judicial review, the Courts do not ordinarily

interfere with policy decisions of the executive unless the policy can be faulted on the ground of mala fide, unreasonableness, arbitrariness or

unfairness etc. If the policy cannot be touched on any of these grounds, the mere fact that it may affect the interests of a party does not justify

invalidating the policy.

62. In State of Himachal Pradesh and Another Vs. Padam Devi and Others, , the Supreme Court held that unless a policy decision is

demonstrably capricious or arbitrary and not informed by any reason or discriminatory or infringing any statute or the Constitution it cannot be a

subject of judicial interference under the provisions of Articles 32, 226 and 136 of the Constitution. Similar view, has been reiterated in State of

Rajasthan and Others Vs. Lata Arun,

63. In Local Government Board v. Arlidge 1915 AC 120, the Lord Chancellor observed :

The Minister at the Head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself

does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He

is expected to obtain his materials vicariously through his officials and he has discharged his duty if he sees that they obtain these materials for him

properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to

impair his efficiency. Unlike a Judge of a Court he is not only at liberty but is compelled to rely on the assistance of his staff.

64. In Board of Education v. Rice 1911 AC 179, the House of Lords observed :

A functionary who has to decide an administrative matter of the nature involved in this case, can obtain the material on which he is to act in such

manner as may be feasible and convenient, provided only that the affected party has a fair opportunity to correct or contradict any relevant and

prejudicial material.

65. In view of the above clear statement of the fundamental principles of administrative law the objection to the validity of the procedure adopted

by the Central Government for the final allocation of U.P. Government servants to Uttaranchal is without any substance and must be rejected. The

Central Government has constituted a State Advisory Committee consisting of very Senior Officers who have wide and long experience in the

administrative field and hence their decision, which has to be treated as the decision of the Central Government, cannot be faulted. Opportunity

was given to the officials likely to be affected by permitting representations against the tentative list. Hence, there was no arbitrariness on this

account.

66. This Court cannot ordinarily interfere in administrative matters, since the administrative authorities are specialists in matters relating to the

administration. The Court does not have the expertise in such matters and ordinarily should leave such matters to the discretion of the

Administrative Authorities. It is only in rare and exceptional cases, where the Wednesbury principle applies that the Court should interfere, vide

Tata Cellular v. Union of India (1994) 6 SCC 651; Om Kumar v. Union of India 2001 (2) SCC 386 . In U.P. Financial Corporation and Others

Vs. Naini Oxygen and Acetylene Gas Ltd. and Another, (vide Para 21), the Supreme Court observed :

However, we cannot lose sight of the fact that the Corporation is an independent autonomous statutory body having its own constitution and rules

to abide by and functions and obligations to discharge. As such, in the discharge of its function it is free to act according to its own light. The views

it forms and the decisions it takes are on the basis of the information in its possession and the advice it receives and according to its own

perspective and calculations. Unless its action is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the Courts or a

third party to substitute its decision, however, more prudent, commercial or business like it may be, for the decision of the Corporation. Hence,

whatever the wisdom (or the lack of it) of the conduct of the Corporation, the same cannot be assailed by making the Corporation liable.

67. In Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr. (2002) 1 UPLBEC 937 (vide Paragraph 10), the Supreme Court

observed :

if the High Court cannot sit as an Appellate Authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do

so in the case of Administrative Authorities. In the matter of administrative action, it is well known that more than one choice is available to the

Administrative Authorities. They have a certain amount of discretion available to them. They have ""a right to choose between more than one

possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred"", (per Lord

Diplock in Secretary of State for Education and Science v. Metropolitan Borough Counsel of Tameside 1977 AC 1014. The Court cannot

substitute its judgment for the judgment of Administrative Authorities in such cases. Only when the action of the Administrative Authority is so

unfair or unreasonable that no reasonable person would have taken that action, the Court can intervene. To quote the classic passage from the

judgment of Lord Greene M.R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation 1947 (2) All ER 680 :

It is true the discretion must be exercised reasonably. Now what does not mean ? Lawyers familiar with the phraseology commonly used in

relation to exercise of statutory discretions often use the word ''unreasonable'' in a rather comprehensive sense. It has frequently been used and is

frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak,

direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration

matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said and often is said, to be acting

''unreasonably''. Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the

authority.

68. In Tata Cellular Vs. Union of India, (vide Paragraph 113), the Supreme Court observed :--

(1) The modern trend points of judicial restraint in administrative action.

(2) The Court does not sit as a Court of Appeal over administrative decisions but merely reviews the manner in which the decision was made.

(3) The Court does not have the expertise to correct an administrative decision. If a review of the administrative decision is permitted it will be

substituting its own decision, without the necessary expertise, which itself may be fallible.

69. In the same decision the Supreme Court observed that judicial review is concerned with reviewing not the merits of the decision but the

decision making process (the Wednesbury principle). Seed also Pramod Kumar Misra Vs. Indian Oil Corporation Ltd. and Others, State of

Kerala v. Joseph Antony 1994 (1) SCC 658, etc.

As Lord Denning observed :

This power to overturn executive decisions must be exercised very carefully, because you have got to remember that the Executive and the Local

Authorities have their very own responsibilities and they have the right to make decisions. The Courts should be very wary about interfering and

only interfere in extreme cases, that is, cases where the Court is sure they have gone wrong in law or they have been utterly unreasonable.

Otherwise you would get a conflict between the Courts and the Government and the authorities, which would be most undesirable. The Courts

must act very warily in this matter."" (See ''Judging the World'' by Garry Sturgess Philip Chubb).

70. In our opinion Judges must maintain judicial self restraint while exercising the powers of judicial review of administrative or legislative decisions

:

In view of the complexities of modem society,"" wrote Justice Frankfurter, while Professor of Law at Harvard University, ""and the restricted scope

of any man''s experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others become crucial faculties in

the disposition of cases. The successful exercise of such judicial power calls for rare intellectual disinterestedness and penetration, lest limitation in

personal experience and imagination operate as limitations of the Constitution. These insights Mr. Justice Holmes applied in hundreds of cases and

expressed in memorable language:

It is misfortune if a Judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law and forgets that what

seem to him to be first principles are believed by half his fellow men to be wrong.

(See Frankfurter''s ''Mr. Justice Holmes and the Supreme Court'').

71. In our opinion, the Administrative Authorities must be given freedom to do experimentations and in exercising powers, provided of course they

do not transgress the legal limits or act arbitrarily.

72. The function of a Judge has been described, thus, by Lawton LJ :

A Judge acts as a referee who can blow his judicial whistle when the ball goes out of play but when the game restarts he must neither take part in

it nor tell the players how to play"" vide Laker Airways Ltd. v. Department of Trade (1977) QB 643 (724).

73. In writing a biographical essay on the celebrated Justice Holmes of the U.S. Supreme Court in the dictionary of American Biography, Justice

Frankfurter wrote:

It was not for him (Holmes) to prescribe for society or to deny it the right of experimentation within very wide limits. That was to be left for

contest by the political forces in the state. The duty of the Court was to keep the ring free. He reached the democratic result by the philosophic

route of scepticism -- by his disbelief in ultimate answers to social questions. Thereby he exhibited the judicial function at its purest."" (See Essays

on Legal History in Honour of Felix Frankfurter, Edited by Morris D. Forkosh).

74. In the process of judging constitutional cases, Justice Frankfurther wrote :

The core of the difficulty is that there is hardly a question of any real difficulty before the Court that does not entail more than one so-called

principle. Anybody can decide a question if only a single principle is in controversy. Partisans and Advocates often case a question in that form, but

the form is deceptive. In a famous passage Mr. Justice Holmes has exposed this misconception : ''All rights tend to declare themselves absolute to

their logical extreme. Yet all in fact are limited by the neighbourhood of principles of policy which are other than those on which the particular right

is founded and which become strong enough to hold their own when a certain point is reached.

75. In our opinion, adjudication must be done within the system of historically validated restraints and conscious minimisation of the Judges

preferences. The Court must not embarass the Administrative Authorities and must realise the Administrative Authorities have expertise in the field

of administration while the Court does not. In the word of Chief Justice Neely :

I have very few illusions about my own limitations as a Judge. I am not an Accountant, Electrical Engineer, Financer, Banker, Stockbroker or

System Management Analyst. It is the height of folly to expect Judges intelligently to review a 5000 page record addressing the intricacies of a

public utility operation. It is not the function of a Judge to act as a super board or with the zeal of a pedantic school master substituting its judgment

for that of the administrator.

76. In administrative matters the Court should, therefore, ordinarily defer to the judgment of the administrative unless the decision is clearly illegal

or shockingly arbitrary.

77. In this connection Justice Frankfurter while Professor of Law, at Harvard University wrote in "The Public and its Government"--

With the great men of the Supreme Court constitutional adjudication has always been statecraft. As a mere Judge, Marshall had his superiors

among his colleagues. His supremacy lay in his recognition of the practical needs of Government. The great Judges are those to whom the

Constitution is not primarily a text for interpretation but the means of ordering the life of a progressive people"".

78. In the same book Justice Frankfrurter also wrote--

In simple truth, the difficulties that Government encounters from law do not inhere in the Constitution. They are due to the Judges who interpret it.

That document has ample resources for imaginative statesmanship, if Judges have imagination for statesmanship.

79. In view of the above we are clearly of the view that the principles laid down in the G.O. dated 15.7.2002 cannot be said to be arbitrary or

violative of Articles 14 or 16 of the Constitution. These principles were laid down in meetings of very senior officers who were members of the

State Advisory Committee set up by the Central Government. These senior officers have long and wide experience of administrative matters and it

is not for this Court to sit in appeal over these decisions. It is evident from the documents placed before us that there was a detailed exercise

involving a large number of officials belonging to the Central Government, the State of U.P. and the State of Uttaranchal and only thereafter the

order dated 15.7.2002, as well as the final allocation dated 22.4.2003 were issued. The aforesaid orders were, therefore, based on due

application of mind by several very senior officers and the Court should defer to their judgment by exercising self restraint. The orders dated

15.7.2002 and 22.4.2003 are purely administrative in nature and not quasi-judicial. No doubt some hardships will ensue to some individual

employees but on that account we cannot strike down the orders dated 15.7.2003 and 22.4.2003.

80. We may mention that we have only considered the validity of the G.O. dated 15.7.2002 and the principles laid down therein which we have

found to be valid and constitutional. We have not considered in this bound of petitions any individual complaint where the Government employee

has complained of breach of the principles contained in the G.O. dated 15.7.2002. In fact the G.O. dated 15.7.2002, itself states (at the end) that

if there is any individual case of clear breach of the guidelines and principles mentioned in the G.O. dated 15.7.2002, it will be open to such

employee to make a representation to the State Advisory Committee which was nominated by the Central Government in this connection. In fact

many such representations were made and were considered and decided by the Committee. Hence, we cannot now interfere.

81. A submission has also been made regarding the criterion where both husband and wife are in U.P. Government service. It has been contended

that the criterion of allocating the spouse to the district where his/her senior in pay scale has been allocated is arbitrary and illegal. We are of the

opinion, that this submission also cannot be accepted. It has already been stated above that it is for the Administrative Authorities to decide the

criteria for allocation and unless the same is totally illegal or irrational in the Wednesbury sense the Court cannot interfere. Certainly seniority can

be one of the criteria for allocating husband and wife and we see nothing arbitrary in this.

82. As regards the submission that since U.P. Secretariat employees are not being allocated to Uttaranchal against their will, there is violation of

Article 14 of the Constitution, we find no substance in this plea. Secretariat employees are a well defined class and they may be needed by the

U.P. Government due to their experience in the Secretariat. Hence, the classification is not irrational.

83. As regards Section 75 this is obviously subject to the final allocation u/s 73(2).

84. It has also been submitted by the learned Counsels for the petitioners that Section 73(2) of the Act does not lay down any guiding principles

for the Central Government to make final allocations. In the absence of any policy, standards or legal principles in the Act, itself it is urged that the

impugned G.O. dated 15.7.2002, suffers from the vice of excessive delegation. Learned Counsel has relied on the decision of the Supreme Court

in The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others, (vide Para 3).

85. We cannot accept this contention. It may be noted that the constitutional validity of Section 73(2) has not been challenged in these petitions,

but even if it had been challenged we are of the opinion that it is valid. It is well-settled that guidelines need not be mentioned in the statutory

provision itself and can be spelt out from the scheme of the Act, the subject matter or other surrounding circumstances, vide Registrar v. Kunjabmu

(supra), Vasantlal v. State of Bombay 1961 SCJ 394 ; State of Bhopal and Others Vs. Champalal and Others, etc.

86. Moreover, in our opinion, Section 73(2) has not delegated any legislative function at all. It has only empowered the Central Government to

exercise a certain executive function, viz., that of making final allocation of U.P. Government employees to the successor States.

87. It has lastly been contended by the petitioners that their representations have not been properly considered. In this connection it may be noted

that all U.P. Government employees who were proposed to be finally allocated to Uttaranchal had been given the right to make a representation to

the State Advisory Committee. The State Advisory Committee consists of very senior officials with wide experience and therefore, it has to be

presumed that the representations were properly considered. In our opinion, it was not incumbent on the Committee to give reasons while deciding

a representation since its decision was purely administrative and not quasi-judicial.

88. In His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, (vide Para 1547), Khanna J., observed:

In exercising the power of judicial review, the Courts cannot be oblivious of the practical needs of the Government. The door has to be left open

for trial and error.

89. In Indian Railway Construction Co. Limited v. Ajay Kumar (2003) 2 UPLBEC 1206 (vide Para 14), the Supreme Court observed that there

are three grounds on which administration action is subject to control by judicial review. The first ground is illegality, the second is irrationality and

the third is procedural impropriety. These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil

Service 1984 (3) All ER 935. The Supreme Court observed that the Court will be slow to interfere in such matters relating to administrative

functions unless the decision is tainted by any vulnerability enumerated above, like illegality, irrationality and procedural impropriety. The famous

case, commonly known as the "Wednesbury"s case", is treated as the landmark in laying down various principles relating to judicial review of

administrative or statutory discretion.

90. Lord Diplock explained irrationality as follows :

By irrationality, I mean what can be now be succinctly referred to as Wednesbury unreasonableness. It applies to a decision which is so

outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided

could have arrived at it.

91. From the above standpoint the impugned decisions of the Administrative Authorities in the present case cannot be faulted as they cannot be

said to be so outrageous in defiance of logic or accepted moral standards that no sensible person could have arrived at it. It may be that different

principles of allocation could have been adopted, but on this ground the impugned order cannot be said to be vitiated.

92. Before parting with this case we would like to briefly comment on the subject of judicial restraint while reviewing statutes or administrative

decisions. We feel justified in making these comments because the times which this country is passing through requires clarification of the role of the

judiciary vis-a-vis the executive and the legislature.

93. Under our Constitution the judiciary, the Legislature and the Executive have their own spheres of operation. It is important that these organs do

not entrench on each others proper spheres and confine themselves to their own, otherwise there will always be danger of a reaction. Of the three

organs of the State, it is only the judiciary which has the right to determine the limits of jurisdiction of all these three organs. This great power must,

therefore, be exercised by the judiciary with the utmost humility and self restraint.

94. The judiciary must, therefore, exercise self restraint and eschew the temptation to act as a super legislature or a Court of Appeal sitting over

the decisions of the Administrative Authorities. By exercising self-restraint it will enhance its own respect and prestige. Of course, if law clearly

violates some provision of the Constitution or is beyond its legislative competence, or if an administrative decision is clearly violative of some

statutory or constitutional provision or is shockingly arbitrary in the Wednesbury sense, it can be struck down, but otherwise it is not for this Court

to sit in appeal over the wisdom of the legislature or the executive.

95. The Court may feel that a better decision could have been taken or some other course of action could have been adopted by the legislature or

executive, but on this ground it cannot strike down the law or the administrative decision. The legislature and the executive authorities in their

wisdom are free to choose different methods of solving a problem and the Court cannot say that this or that method should have been adopted. As

Mr. Justice Cardozo of the U.S. Supreme Court observed in Anderson v. Wilson 289 U.S. 20 :

We do not pause to consider whether a statute differently conceived and framed would yield results more consonant with fairness and reason. We

take this statute as we find it.

96. In our opinion, the same principle will apply to administrative decisions also.

97. It must never be forgotten that the Administrative Authorities have wide experience in administrative matters. No Court should, therefore,

strike down an administrative decision solely because it is perceived by it to be unwise. A Judge cannot act on the belief that he knows better than

the executive on a question of policy, because he can never be justifiably certain that he is right. Judicial humility should, therefore, prevail over

judicial activism in this respect.

98. Judicial restraint is consistent with the complementary to the balance of power among the three independent branches of the State. It

accomplishes this in two ways. First, judicial restraint not only recognizes the equality of the other two branches with the judiciary, it also fosters

that equality by minimizing interbranch interference by the judiciary. In this analysis, judicial restraint may also be called judicial respect, that is,

respect by the judiciary for the other coequal branches. In contrast, judicial activism"s unpredictable results make the judiciary a moving target and

thus, decreases the ability to maintain equality with the co-branches. Restraint stabilizes the judiciary so that it may better function in a system of

interbranch equality.

99. Second, judicial restraint tends to protect the independence of the judiciary. When Courts encroach into the legislative or administrative fields

almost inevitably voters, legislators and other elected officials will conclude that the activities of Judges should be closely monitored. If Judges act

like legislators or administrators it follows that Judges should be elected like legislators or selected and trained like administrators. This is

counterproductive. The touchstone of an independent judiciary has been its removal from the political or administrative process. Even if this

removal has sometimes been less than complete, it is an ideal worthy of support and one that has had valuable effects.

100. The constitutional trade off for independence is that Judges must restrain themselves from the areas reserved to the other separate branches.

Thus, judicial restraint complements the twin, overarching values of the independence of the judiciary and the separation of powers.

101. The Court should always hesitate to declare statutes or policy decisions of the executive unconstitutional, unless it finds it clearly so. As

observed by the Supreme Court in M.H. Qureshi v. State of Bihar (supra), the Court must presume that the legislature understands and correctly

appreciates the need of its own people. The legislature is free to recognize degrees of harm and may confine its restrictions to those where the need

is deemed to be the clearest. In the same decision it was also observed that the legislature is the best Judge of what is good for the community on

whose suffrage it came into existence. In our opinion, the same principle will also apply to policy decisions taken by the Administrative Authorities.

102. In Lochner v. New York 198 U.S. 45 (1905), Mr. Justice Holmes of the U.S. Supreme Court in his dissenting judgment criticized the

majority of the Court for becoming a super legislature by inventing a ''liberty of contract'' theory, thereby enforcing its particular laissez -- faire

economic philosophy. Similarly, in his dissenting judgment in Griswold v. Connecticut, 381 U.S. 479, Mr. Justice Hugo Black warned that

unbounded judicial creativity would make this Court a day-today Constitutional Convention."" In The Nature of the Judicial Process, Justice

Cardozo remarked : ""The Judge is not a Knight errant, roaming at will in pursuit of his own ideal of beauty and goodness."" Justice Frankfurter has

pointed out that great Judges have constantly admonished their brethren of the need for discipline in observing their limitations (see Frankfurter''s

''Some Reflections on the Reading of Statutes'').

103. In this connection we may usefully refer to the well-known episode in the history of the U.S. Supreme Court when it dealt with the New Deal

Legislation of President Franklin Roosevelt. When President Rooseevelt took office in January, 1933, the country was passing through a terrible

economic crisis the Great Depression. To overcome this, President Roosevelt initiated a series of legislation called the New Deal, which were

mainly economic regulatory measures. When these were challenged in the U.S. Supreme Court the Court began striking them down on the ground

that they violated the due process clause in the U.S. Constitution. As a reaction, President Roosevelt proposed to reconstitute the Court with six

more Judges to be nominated by him. This threat was enough and it was not necessary to carry it out. The Court in 1937, suddenly changed its

approach and began upholding the laws. ''Economic due process'' met with a sudden demise.

104. The moral of this story is that if the judiciary does not exercise restraint and over-stretches its limits there is bound to be a reaction from

politicians and others. The politicians will then step in and curtail the powers or even the independence of the judiciary (in fact the mere threat may

do, as the above example demonstrate). The judiciary should, therefore, confine itself to its proper sphere, realizing that in a democracy many

matters and controversies are best resolved in a non-judicial setting.

105. We hasten to add that it is not our opinion, that Judges should never be ''activist''. Sometimes judicial activism is a useful adjunct to

democracy such as in the School Segregation and Human Rights decisions of the U.S. Supreme Court, vide Brown v. Board of Education 347

U.S. 483 (1954), Miranda v. Arizona 384 U.S. 436, Roe v. Wade 410 U.S. 113, etc. or the decisions of our own Supreme Court which

expanded the scope of Articles 14 and 21 of the Constitution. This, however, should be resorted to in exceptional circumstances when the

situation forcefully demands it in the interest of the nation, but always keeping in mind that ordinarily the task of legislation or making policy

decisions is for the legislature and the executive and not the judiciary.

106. In the present case, the impugned policy decision has been taken by the Central Government on the advice of the State Advisory Committee

set up by it consisting of very senior officers having wide and long experience of administration. The Committee held several meetings and has

considered the principles for allocation to Uttaranchal in great detail. This Court should, therefore, defer to the opinion of this Committee and the

Central Government, particularly since it does not have expertise in these matters and does not find any clear violation of any statutory or

constitutional principle nor any arbitrariness in the Wednesbury sense.

107. The petitioner are, therefore, dismissed. All other connected and/or similar petitions are also dismissed and interim orders are vacated.

108. Let a copy of this judgment be sent by the Registrar General of this Court to the Chief Secretary, U.P. and the Home and Law Secretaries,

Government of India and the Chief Secretary, Uttaranchal forthwith.