

S. NAGARAJ AND ORS. A
v.
STATE OF KARNATAKA AND ANR.

AUGUST 26, 1993

[S. RATNAVEL PANDIAN, R.M. SAHAI AND B
B.P. JEEVAN REDDY, JJ.]

Contempt of Courts Act, 1971—Section 2—Binding effect of an order passed by Supreme Court—Order improperly obtained—No court or authority can ignore it—Any doubt or ambiguity can be removed by court which passed the order—No authority can assume to itself role of substituting it or clarifying and modifying it according to its own understanding—Order of Supreme Court not to be taken lightly. C

Constitution of India—Art. 137—Supreme Court Rules—Order XL Rule 1—Review—Recalling or reviewing its own order—Power of Court to remove error. D

Service Law—Possessing minimum qualification prescribed under rules—does not mean appointment on that post—No employee can claim higher post or scale of pay commensurate with his qualification—Appointment to a post which carries lower qualification—Whether by itself, amounts to exploitation—Held, No—It is not violative of any constitutional guarantee or principle. E

Service Law—Equal pay for equal work—Doctrine of—Applicability—Not to be unduly stretched to frustrate entire process of selection and appointment in Government Service. F

Service Law—Karnataka Civil (Special Recruitment) Rules 1982—Rule 3 as amended in 1987—Stipendiary Graduate Employment Scheme, 1977—Reservation of 40% post for stipendiary graduates in direct recruits quota—Needs a fresh look—Rules amended in 1987 are against public policy. G

Service Law—Karnataka Civil (Special Recruitment) Rules, 1982—Stipendiary Graduate Employment Scheme, 1977—Reservation of 40% posts for stipendiary graduates in direct recruits quota—Claim of regularisation—State's failure to bring correct facts on record—Order of Supreme Court H

A *to absorb all stipendiary graduates in scale of First Division Assistants placing them in higher scale amongst Assistants—Reconsideration—Order recalled—All stipendiary graduates covered by order to be appointed as Second Division Assistants in Grade 'C' only.*

B *Constitution of India—Articles 14 and 16—Scheme framed to help educated unemployed—Commendable—Rule which results in undue benefit to one class to the exclusion of others—permits entry in State Civil Service without competition—Exploitation by State in violation of Art. 39—Karnataka Civil (Special Recruitment) Rules 1982 as amended in 1987—Validity of—Not challenged—Rules being not in consonance with constitutional spirit—Any appointments made under these rules—Not open to challenge on ground that they are not in consonance with constitutional spirit.*

D *In 1977 the Government of Karnataka framed a scheme for employment of unemployed graduates, post graduates and diploma-holders with a view to relieve unemployment among them. The scheme was made applicable to persons coming from families having less than Rs. 3600 annual income and no earning member in the family. The stipend was raised finally to Rs 640 p.m. from Rs. 150 p.m. After expiry of nearly four and half years the Government framed Karnataka Civil (Special Recruitment) Rules, 1982, reserving 50% of the direct recruitment vacancies existing on the date the rules came into force, to be filled by stipendiary graduates and local candidates in various categories of posts which included First and Second Division Assistants in State Civil Services by a competitive examination to be conducted by the Public Service Commission. These rules were amended in 1987 and three important changes were made. The rules became applicable to any category of posts in group 'C' in the State Civil Services, 50% was bifurcated and 40% was reserved for stipendiary graduates and 10% for local candidates, and the requirement of examination or interview was done away with.*

G *The Association of Stipendiary Graduates filed writ petitions seeking declaration that they were regular employees under the rules. Their claim was not accepted by the Tribunal as they having been appointed under a special scheme and not against any post in a cadre they were not members of any service of the State against sanctioned strength. On regularisation it was held that it could be done by the State only, and not by court. This*

H *order was challenged by filing SLP. The State did not file any reply within*

time allowed by the court. This Court passed an interim order directing the State to pay a stipend of Rs. 960 p.m. to the stipendiary graduates. The Court directed the State to file affidavit regarding regularisation and absorption of the employees stating specifically the total number of vacancies to be filled up and how many of those were available to be filled up by stipendiary graduates in accordance with rules. The State submitted that the number of stipendiary graduates required to be regularised was 5265 and 3691 vacancies in group 'C' were available for being filled by direct recruitment in accordance with rules. No details were given to explain the distinction between First and Second Division Assistants nor any break up of vacancies for First Division and Second Division was mentioned. Based on these facts, the Court passed an order on 24th July 1990, directing the State of Karnataka to absorb all the stipendiary graduates against the existing vacancies and create supernumerary posts for the remaining.

The petitioners, not satisfied, made an attempt and succeeded further in persuading this Court to add the word 'graduate' in the order dated 24th July 1990 before the word 'qualification'. The Government after being apprised of the modified order, without making any effort to get the doubts removed, issued a number of orders for implementing the order of this Court by appointing and regularising the stipendiary graduates as directed by the Court. On 11th June, for the first time a letter was issued the contents of which were against the tenor of orders issued till then. In implementing orders of this Court and absorbing the stipendiary graduates in posts carrying graduate qualification the Government decided that absorption could be both against First Division and Second Division Assistants. However, the stipendiary graduates were not agreeable to accept the post of Lower Division Assistant in group 'C' as the minimum qualification for this was only SSLC. The petitioners filed Contempt Application accusing the Government of going back on its earlier orders. A claim was made that the stipendiary graduates should only be absorbed against posts which required minimum graduate qualification. The Government issued an order stating that to avoid any discrimination and in view of the availability of the vacancies in the Second Division Assistant Cadre, it was considered appropriate to absorb these stipendiary graduates only against the Second Division Assistant post. Another order was passed on 5th September 1991 creating 5000 stipendiary posts. An affidavit was filed stating that the 3691 vacancies men-

A tioned earlier in fact comprised of both Second Division and First Division Assistants and out of the vacancies the majority were of the Second Division Assistants. The affidavit did not mention the earlier orders issued by the Government.

B Considering that the Government was deliberately not obeying the orders of this Court without any valid explanation, this court passed an order dated 24th October 1991 directing the Government to absorb all the stipendiary graduates as First Division Assistants. An application was filed for clarification of the order. In the affidavit it was stated that since
 C the Court in every order had directed the stipendiary graduates to be absorbed in accordance with rules it would have taken 10 to 15 years for the entire lot to enter into service, it was decided to create 5000 supernumerary posts and absorb all the stipendiary graduates as Second Division Assistants. It was stated that only 300 posts of First Division Assistants were available. Administrative difficulties were also pointed out
 D and it was averred for the first time that the direction to absorb them at the level of First Grade Assistants, would bring about a discrimination even as between the stipendiary graduates. It was stated that objections had been received from Second Division Assistants who had been selected by the Public Service Commission and had been working since 10 to 15 years as they would be seriously affected if the claim of the petitioners was
 E accepted. It was claimed that the order dated 30th October 1991 was passed by this Court on misrepresentation of facts furnished by the petitioners.

Disposing of the matter, this Court

F **HELD :** *By the Court*

The application filed by the State Government praying that the order dated 30th October 1991 for absorbing all the stipendiary graduates in pay scale of Rs. 1190-2200 to be recalled is allowed. All the stipendiary
 G graduates covered by the order dated 24th July 1990 shall be appointed as Second Division Assistants in Grade 'C' only. [34-C]

Per R.M. Sahai and S. Ratnavel Pandian, JJ.

H 1.1. The order dated 30th October 1991 for absorbing all the stipendiary graduates in pay scale of Rs. 1190-2200 was recalled. The word

'graduate' added in order dated 24th July 1990 did not purport to mean that all those who were working in the Stipendiary Graduate Scheme were to be appointed in Category 'C' post which carried graduate qualification. [34-D] A

1.2. The order of this Court dated 24th July 1990 directing to fill up 3691 existing vacancies in Category 'C' by the stipendiary graduates and further to take steps to appoint remaining 1574 as soon as vacancies arose, are to be complied within a period of six months, if necessary by creating supernumery posts. [34-E-F] B

1.3. All the stipendiary graduates covered by the order 24th July 1990 shall be appointed as Second Division Assistants in Grade 'C' only. [34-G] C

1.4. Since the delay in implementation of the order passed by this Court had been occasioned due to petitioners themselves and further they had not worked during that period as Second Division Assistants, they were not entitled to their salary as Second Division Assistants. However the consolidated amount paid to them during pendency of the proceedings shall not be recovered from them. [34-H, 35-A] D

1.5. The appointment of the stipendiary graduates as Second Division Assistants shall be effective from May 1991, the period fixed by this Court for compliance of order dated 24th July 1990 for purposes of granting retirement benefits only. [35-B] E

2.1. If an order had been passed by a Court which had jurisdiction to pass it then the error or mistake in the order can be got corrected by a higher court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume to themselves the role of substituting it or clarifying and modifying it as they consider proper. [25-H, 26-A] F

2.2. Any order passed by a Court of Law, more so by the higher courts and specially this Court whose decisions are declarations of law are not only entitled to respect but are binding and have to be enforced and obeyed strictly. No court much less an authority howsoever high can ignore it. Any doubt or ambiguity can be removed by the court which passed the order and not by authority according to its own understanding. [26-D] G H

A 2.3. In the instant case, a government which was faced with such a
stupendous problem of accommodating 5000 stipendiary graduates, took
it not only lightly, ignored the orders of the Court, but went on filing
affidavits which were vague, uncertain and did not bring the facts correctly
on record even though the affidavits had been sworn by no less persons
B than the Secretary and Deputy Secretary. If filling of 3691 vacancies in
accordance with rules would have taken 10 to 15 years then how was the
affidavit filed that 3691 vacancies were available for being filled by
stipendiary graduates against direct recruitment. The manner in which the
two orders dated 17th August and 5th September 1991 were issued by the
Government and the clumsy manner in which their issuance had been
C attempted to be defended by the Secretary to the Government are depre-
cated. After the order was passed adding the word 'graduate' before the
word 'qualification' and the petitioners insisted that they were liable to be
absorbed as First Division Assistants the Government issued two orders,
one in January and second in April 1991. None of the orders mentioned
D that they were to be absorbed as Second Division Assistants. It was only
after the contempt application had been filed that the Government ap-
peared to have been awakened from its slumber and then a meeting of the
officers of the Law Department and the Finance Department took place
and the decision was taken to absorb all these petitioners as Second
Division Assistants and to effectuate it, the two orders were issued in
E August and September 1991. In doing so the Government and its officers
assumed the role of substituting the order of the Court by what they
considered proper and convenient. Such actions were reprehensible and
not in keeping with rule of law. The Government when it issued the two
orders dated 17th August and 5th September 1991, did not appreciate the
F gravity and appeared to have acted in violation of the order passed by this
Court. The explanation offered by the Secretary was not only an eye-wash
but was to be deprecated in strongest words to impress upon the Govern-
ment and its officials that the orders of the Court should not be taken
lightly and the course open to the Government when an occasion like this
arises, is to approach the Court itself. The Government in issuing the
G orders dated 17th August and 5th September 1991 in the first instance,
and then trying to justify it, without getting the doubt, if any, cleared was
certainly guilty of not following the norms which were expected of a
responsible government of a welfare State. [26-G-H, 27-A-F]

H 2.4. Possessing minimum qualification prescribed under Service

rules does not mean appointment on that post. It only provides eligibility. A
 No employee can claim higher post or scale of pay commensurate with his
 qualification. Appointment of a graduate or a post graduate to a post
 which carries lower qualification by itself, does not amount to exploitation
 nor it violative of any constitutional guarantee or principle. [28-E, G]

2.5. In the instant case, Karnataka Civil (Special Recruitment) B
 Rules, 1982, amended in 1987 permitted appointment of stipendiary
 graduates as First Division Assistant. In absence of any challenge to such
 appointments they could not be assumed to be invalid nor they could
 furnish valid basis for claiming that all stipendiary graduates were liable C
 to be appointed as First Division Assistants. Mere eligibility was not
 sufficient unless availability of posts was also established. In absence of
 posts and due to equitable consideration arising in favour of other
 employees the practical difficulty in appointing all the five thousand
 stipendiary graduates as First Division Assistants appeared to be insur-
 mountable. This court would have refused to modify its order at the D
 instance of the Government but the court could not be unjust to other
 employees. [30-B-D]

2.6. No less is the hurdle arising out of principle of finality of orders
 and the binding nature of direction issued by this Court. But what stands E
 above all which persuaded to take a fresh look is the injury inherent in
 it. Many of the stipendiary graduates who either appeared in the competi-
 tive examination conducted by the Commission, under 1982 rules or were
 selected under 1987 rules for the post of Second Division Assistants
 because there were no vacancies amongst First Division Assistants would
 not only become junior to the petitioners but they may never get a chance F
 to move up higher on the ladder as the rules of 1982 and 1987 specifically
 provided that a stipendiary graduate appointed under the rule would not
 be eligible for recruitment again under it. Further if a stipendiary graduate
 was entitled by virtue of graduate qualification to be absorbed as First
 Division Assistant then Rule (3) of 1982 Rules permitting absorption of G
 stipendiary graduates both against Second and First Division Assistants
 was rendered meaningless. Nor there could be any rationale to disregard
 the claim of those large number of stipendiary graduates who were working
 as Second Class Assistants. Moreover possessing minimum qualification
 prescribed under rules does not mean appointment on that post. It only
 provides eligibility. Being graduate did not mean that any stipendiary H

A graduate was liable to be absorbed as First Division Assistant. No employee can claim higher post or scale of pay commensurate with his qualification. It may be ideal but not practical. Appointment of a graduate or a post graduate to a post which carries lower qualification by itself, does not amount to exploitation nor it is violative of any constitutional guarantee or principle. [28-B-G]

3. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law stand in its way. The order of the court should not be prejudicial to anyone. Rule of *stare decisis* is adhered for consistency but it is not inflexible in Administrative Law as in Public Law. Even the law bends before justice. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the court. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. In the instant case, this court did commit an error in placing all stipendiary graduates in the scale of First Division Assistants due to State's failure to bring correct facts on record. But that cannot stand in the way of the Court correcting its mistake. Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of the true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the

abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice. [31-E-H, 32-A-E] A

Raja Prithvi Chand Lal Choudhary v. Sukhraj Rai and Ors., AIR (1941) Federal Court 1, relied on. B

Rajinder Narain Rae v. Bijai Govind Singh, 1 MOO PC 117 L, referred to. C

State of Mys. & Anr. v. P. Narasinga Rao, AIR (1968) SC 349; *State of J & K v. Triloki Nath Khosa*, AIR (1974) SC 1 and *Sabyasachi Sengupta & Anr. v. Nani Gopal Dutta*, [1990] Supp. SCC 315, distinguished. C

4. Stipendiary Graduate Employment Scheme framed by the Government of Karnataka in the year 1977, if still in operation required immediate attention. Reservation of 40% posts, for stipendiary graduate, in direct recruits quota itself needed a fresh look. Framing of scheme in keeping with constitutional goal to provide job to uneducated cannot be construed as right of such incumbents to enter civil service as a matter of right either due to length of service or because the allowance paid is lower than others who have entered civil service under the rules. 'Equal pay for equal job' should not be unduly stretched to frustrate the entire process of selection and appointment in Government service. Any rule which results in undue benefit to one class to the exclusion of others and permit entry in State Civil Service, without any competition or test is breach of faith with others in society. Rules framed by the Karnataka Government, particularly in 1987, are against public policy. But no one had challenged their validity. Therefore, any appointment made under these rules, till now shall not be open to challenge for the reason that they were not in consonance with constitutional spirit. [33-H, 34-A-B] D E F

5. Application filed by the State Government praying that the order dated 30th October 1991 should be modified and stipendiary graduates to be directed to be appointed as Second Division Assistants in Group 'C' was allowed. In absence of posts and due to equitable consideration arising in favour of other employees, the practical difficulty in appointing all the five thousand stipendiary graduates as First Division Assistants appeared to be insurmountable. Even so this court would have refused to modify its order dated 24th October 1991 at the instance of the Government but the H

A Court could not be unjust to other employees. [34-C, 30-C-D]

Per Jeevan Reddy, J. (Partly concurring) :

1.1. The orders based upon the misleading and wrong information had resulted in directing the filling up of all vacancies in group 'C' services with the stipendiary graduates instead of confining them to 40% of the vacancies reserved for direct recruitment. The failure of justice and infraction of law was too eloquent to require any emphasis. Stipendiary graduates were not government servants. They were mere stipendiaries. They were never appointed to any service under the State. The manner of their induction into government service *en masse*, to the extent of all the available vacancies or even to the extent of vacancies reserved for direct recruitment was likely to take several years which meant that others including fresh graduates could never expect to get an opportunity to apply or compete for these vacancies. Similarly persons in the lower grades, who were entitled to be promoted to these posts were also deprived of their opportunity for a long number of years to come. Such a course could not be treated as valid unless there were extra-ordinary and exceptional circumstances to sustain it. [44-C-E]

1.2. It was true that the Government was mainly responsible for the above unfortunate state of affairs but that should not desist this Court from revising and reviewing the said orders which had such serious consequences. It is one thing to punish the person who furnished false particulars and altogether a different thing to refuse to revise and review the orders when the correct situation and its likely consequences are brought to the notice of Court. It is the duty of the Court to rectify, revise and re-call its orders as and when it is brought to its notice that certain of its orders were passed on a wrong or mistaken assumption of facts and that implementation of those orders would have serious consequences. [46-B-C]

1.3. No one had questioned the 1987 amendments. The parties who were affected namely the persons awaiting employment under the government probably did not even know what was happening. But where an unconstitutional provision of such vast impact is brought to the notice of this Court and it is asked to enforce it, it is the constitutional duty of this Court to refuse to do so. Therefore, this Court should refuse to make any orders directing implementation of the Rules as amended in 1987. The proper direction would be to direct the absorption of the S.Gs. in accordance with

the 1982 rules as originally framed (i.e., without reference to the 1987 Amendments) and to the extent provided therein. Those S.Gs. who had been absorbed already into group 'C' service in accordance with the said rules will remain unaffected since disturbing them, without notice to them and in view of all the circumstances of this case, may not be advisable. All those S.Gs. who had not so far been absorbed in group 'C' service shall continue in the present status, drawing Rs. 960 per month. They will be entitled for absorption in group 'C' posts only in accordance with the 1982 Rules, without reference to the 1987 Amendments. [46-H, 47-A-B-C]

1.4. Limited review of directing to absorb these persons in the second grade assistants category would not meet the end of justice or of the law. It may not be permissible for the court to load the administration with five thousand persons at a stretch. The practical and pragmatic considerations militates against such direction. [47-E]

ORIGINAL JURISDICTION : Contempt Petition No. 55 of 1992.

In

W.P. (C) No. 1249 of 1989 etc. etc.

(Under Article 32 of the Constitution of India)

R.K. Garg, K. Ramaswamy, S.K. Kulkarni, D.K. Garg, V. Lakshminarayan, Indeevar Goodrill, R.C. Kaushik and Ashok Sharma for the appellants.

Altaf Ahmad, ASG, V.C. Mahajan, M. Veerappa and M.T. George for the respondents.

The Judgment of the Court was delivered by

R.M. SAHAI, J. How even the socio-economic welfare measures taken by the State to tackle unemployment and ameliorate poverty, within its limited resources, gets stifled and flounders due to lack of proper appreciation of its purpose and objective aided by faulty enforcement, aggravated by apathy of those responsible in government to place correct facts, when called upon to do so by courts, and wake up, only, when it is either too late or move on pain of contempt proceedings resulting in one sided orders creating rights in favour of some leading to clash of interest

- A and heart burning among others leaving the courts in dilemma of how to adjust the equities of competing claims. To what extent such frustrating consequences can arise is demonstrated by these applications filed, on one hand, by what are known as stipendiary graduates in the State of Karnataka for taking contempt proceedings against State and its officials for not complying with orders of this Court and on the other application filed by the State for clarification of the very order, giving rise to contempt proceedings, as usual, not before the point of no return was, nearly, reached and writ petitions by yet others, who at one time were stipendiary graduates, but were absorbed as provided in the rules and placed in the lowest scale for Assistants, for grant of same pay and grade which was granted by this Court to those others who till, now, were only stipendiary graduates.

- D To comprehend the problem it is necessary to narrate the facts in detail, step by step during which two important stages were crossed, one, creating right in favour of stipendiary graduates under orders of this Court obtained without apprising it of full and complete facts and second, issuing of directions to absorb them as First Division Assistants placing them in higher scale amongst assistants. Normally all this was not necessary to be said but the piquant situation that has arisen requires re-consideration of the entire matter, afresh, as the stipendiary graduates succeeded in getting orders for absorption of all of them numbering thousands and a jump in higher scale, without any adjudication on merits either in the Special Leave Petition or even in the Writ Petition on assumptions drawn from a vague and an incorrect affidavit filed on behalf of the State.

- F In 1977 the Government of Karnataka framed a scheme for employment of unemployed graduates, post-graduates and diploma holders. Its salient features were its applicability to persons coming from families having less than Rs. 3,600 annual income and no earning member in the family. The value of the stipend was fixed at Rs. 150 per month. But since with such amount it would have been difficult for beneficiaries to work in far off places the scheme visualised employment of such educated unemployed in special programmes located as near as possible to their native places within a Taluka. The stipend was raised in 1979 to Rs. 200, in 1982 to Rs. 250, then to Rs. 490 and finally to Rs. 640. After expiry of nearly four and half years the Government decided, further, to help such unemployed youth by framing Karnataka Civil (Special Recruitment Rules),

1982, and reserving 50% of the direct recruitment vacancies existing on the dates, the rules came into force, to be filled by stipendiary graduates and local candidates in various categories of posts mentioned therein which included First and Second Division Assistants in State Civil services by a competitive examination to be conducted by the Public Service Commission. These rules were amended, again, in 1987 and three important changes were made. One, the rules became applicable to any category of posts in group 'C' in the State Civil services, second, 50% was bifurcated and 40% was reserved for stipendiary graduates and 10% for local candidates. Third and the most significant amendment was that the requirement of examination or interview was done away with. Whether such rules are violative of Articles 14 and 16 of the Constitution does not arise for consideration in these proceedings. Yet we cannot refrain from expressing that any laudable scheme or policy framed by a government to help the educated unemployed to stand on their own is commendable and in keeping with spirit of Directive Principles of the Constitution. But any rule which results in undue benefit to one class to exclusion of others and permit entry in State Civil Service, the most coveted service wealth, without any competition or test written or oral of persons who are possessed of only one qualification that despite State help for five years or more they could not get entry anywhere is something which is breach of faith with others in society. A man in the street or a common man cannot have any knowledge how his right to enter into service has been eroded or curtailed by rules. Helping the weak or the poor is one of the primary functions of the State. But any such scheme should not be so manoeuvred by the State as to make an in road in the right guaranteed to every citizen of equal treatment of entering into service. Rules such as were framed by the Karnataka Government, particularly in 1987, are against public policy. But no one has challenged their validity. They have been in force for all these years. Therefore, it is necessary to make it clear that any appointment made under these rules, till now shall not be open to challenge for the reason that they are not in consonance with constitutional spirit.

However to complete the narration yet another set of rules had been framed in 1986 for, 'local candidates' as defined in Clause 27A of Rule 8 of the Karnataka Civil Service Rules. It provided for absorption of such candidates in groups 'A', 'B', 'C' and 'D' and fixation of their pay, seniority alongwith other candidates under 1986 rules. Relying on the expression 'local candidates' the Association of Stipendiary Graduates approached the

A High Court under Article 226 by way of writ petitions seeking declaration that they were regular employees under the rules, which were transferred to the State Administrative Tribunal. Their claim was not accepted as they having been appointed under a special scheme and not against any post in a cadre they were not members of any service of the State against sanctioned strength. The Tribunal further held that the rules of 1986 were not applicable to them as local candidates under Rule 27A did not bear the same connotation as local candidate under the scheme. On regularisation it was held that it could be done by the State, only, and not by court and the State had already taken steps by framing rules and reserving 40% of the posts in group 'C' for being filled by such stipendiary graduates. This order was challenged by way of S.L.P. (C) Nos. 4760-62 of 1989. Some of the stipendiary graduates, who were not parties before the Tribunal, invoked extraordinary jurisdiction of this Court by way of Writ Petition (C) No. 1249 of 1989 and claimed exploitation by the State in violation of Article 39, on which the respondents were directed to show cause why rule *nisi* should not be issued. The Bench further directed that during pendency of the writ petition, the daily wages/daily rates employees who had not already been relieved from service shall continue in employment. The State did not file any reply within time allowed by the Court, consequently, on 5th February 1990 the Bench, after hearing the learned counsel for parties passed the following order :

E "After hearing Ld. counsels for the parties there will be an interim order to this extent that the petitioners will be given a consolidated pay of Rs. 960 w.e.f. 1st Feb., 1990 until further orders. The Counsel for the Respondents stated that he will file an affidavit about the Scheme stating what are the total number of vacancies at present, how many have already been absorbed in these vacancies and how many remained to be absorbed. The State will also given the *inter se* seniority of those employees who are required to be absorbed categorywise. These affidavits will be filed within four weeks and reply, if any, be filed within two weeks. Thereafter, the matter will come up for hearing after 7 weeks. This order is with regard to both the matters."

On 12th February 1990 notice was issued on S.L.P. and it was directed to be tagged with the Writ Petition. On 26th March 1990 yet another order was passed,

"that the State of Karnataka, is hereby directed to comply with the order of this Court dated 5th February 1990 as early as possible but not later than two weeks from this date, 26th March 1990."

The Bench directed the State to file affidavit also, within four weeks regarding regularisation and absorption of the employees. On 3rd May the Court directed the State to comply with order dated 26th February 1990 and to file an affidavit,

"stating specifically what were the total number of vacancies to be filled up and also state in case there are vacancies how many of those were available to be filled up by stipendiary graduates in accordance with rules."

It was only after the order was passed on 3rd May 1990 that the State filed its reply on 11th May 1990. It was explained that the stipendiary graduates were not appointed to any civil post and, therefore, they were not eligible for such benefits as house rent allowance CCA, DA etc. which were payable to regular government servants. It was also stated that the stipendiary graduates were not working against any sanctioned group 'C' post nor they were performing same duty as regular assistants. They were only attached to the office and rendered such assistance as was required of them. They were further being paid a consolidated amount of Rs. 640 per month. They were selected without any test or interview, yet in order to provide them regular employment the State Government had taken steps and Karnataka Civil Service Special (Amendment) Rules of 1987 had been framed reserving 40% of group 'C' vacancies for them. Another affidavit was filed, in pursuance of the order requiring the State to apprise the number of vacancies etc., and it was stated that 3691 vacancies in group 'C' were available for being filled by direct recruitments in accordance with rules. How far this affidavit was correct shall appear when reference is made to other affidavits filed by the State but it certainly led to passing of the orders the chain reaction of which has not settled down as yet. But when the Court was informed that so many vacancies were available for being filled by stipendiary graduates it passed the order on 24th July 1990 to the following effect :

"We have heard learned counsel for all the parties. By an order dated 5.2.90 we directed the counsel for the respondents to file an affidavit about the scheme stating what are the total number of

A vacancies at present, how many have already been absorbed in
these vacancies and how many remained to be absorbed. By our
further order dated 26.3.90 we also directed the State to file an
affidavit in the light of the Order dated 5.2.90 regarding regularisa-
tion and absorption of the employees. In one of the affidavits it
B has been stated in para-3 that the number of stipendiary graduates
still required to be regularised is 5265 and not 7500 to 8000 as
contended by the petitioner in para-10. Another affidavit has been
sworn on 18.7.90 where from it appears (vide para-3 of the said
affidavit filed by the State) that a total number of 3691 vacancies
in Category 'C' are vacant and are required to be filled up by the
C Stipendiary Graduates in accordance with the Rules.

After considering both these affidavits we direct the respondent
State of Karnataka to take immediate steps for filling up the
vacancies 3691 which are in Category 'C' by the Stipendiary
D Graduates who fulfil the required qualifications as provided in the
Rules. As regards the balance 1574 Stipendiary Graduates steps
will be taken by the State as soon as the vacancies arise in the
Department concerned to fill up all vacant posts available by the
Stipendiary Graduates preferably within a period of nine months
from this date. We make it clear that this matter will appear after
E the expiry of a period 9 months from the date of this Order and
the State will file an affidavit stating therein that they have filled
up all the available vacancies as per extant rules by Stipendiary
Graduates and regularised them. The Writ Petition No. 1249/89 as
well as other writ petitions and special leave petitions are disposed
F of accordingly without any order as to costs."

With this came to an end the first phase of litigation which was
remarkable for State's typical attitude of not giving due weight to the orders
of this Court passed from time to time. Result was that each innocuous
looking order either restraining the State from terminating services of
G stipendiary graduates, or for payment of consolidated amount of Rs. 960
or giving details of vacancies and regularisation gradually created an
impression of undesirable exploitation of the educated unemployed to
which the State had no answer. And when ultimately the State filed its
objection/reply no effort was made to explain the distinction between First
H or Second Division Assistants and the method how the stipendiary

graduates were absorbed after 1987 against one or the other category. No details were given nor any break up of vacancies for First Division and Second Division was mentioned. Such vague and incomplete affidavit lacking in material particulars was bound to create confusion and it did when the Court being left with no option except to act on the statement of the Government, issued the order dated 24th July 1990 directing State Government to absorb all the stipendiary graduate against the existing vacancies and create supernumerary posts for the remaining.

But the petitioners were not satisfied. Having got what they could not have expected but for the State's unexplainable silence and casual approach to the matter they made an attempt and succeeded further in persuading this Court without any application or affidavit in getting the word 'graduate' added in the order dated 24th July 1990 before the word 'qualification' on an innocent looking mention after a week of passing of the order. Even the State counsel could not realise the gravity of such addition. But what has left us completely surprised is not so much the mention made on behalf of petitioner or its acceptance by the Court, the purported objective of which became clear later, as the approach of the Government which must have deliberated over it after being apprised of the modified order as it took six months to issue the first order in compliance to the order passed by this Court in January 1991. And this was done without making any effort to get the doubt removed. Rather the context of the order was such that the State knew the implication of the addition and was issuing order to carry it out. Relevant portion of the order dated 31st January is extracted below:

"all the departments coming under your control to appoint the Stipendiary graduates to all the vacant posts in the respective department to which degree qualification is prescribed and also to give directions to all the departments to send proposals in this regard to undersigned."

It is not clear if petitioners were aware of this order but on 6th February they moved first Contempt Application No. 142 of 1991 for taking action against the Government as even though there were vacancies the Government in disobedience of the orders of this Court was not taking steps to fill them. Even now the Government did not choose to place its difficulty before the Court rather issued an order for implementing the order of this

A Court on 3rd April 1991 the relevant portion of which is extracted below:

B "Government hereby direct in relaxation of the ban on direct recruitment that immediate action should be taken to implement the orders of the Hon'ble Supreme Court by filling up the vacant posts requiring graduate qualifications under the recruitment rules of the Departments by appointing the Stipendiary Graduates as directed by the Hon'ble Supreme Court and in terms of Memorandum No. SWL 106 ECS 89(P) dated 31.1.1991 within the stipulated time."

C Another order was issued on 20th April 1991 after a meeting was held by various officials on regularisation of the stipendiary graduates. The Committee decided that if sufficient numbers of vacancies in the 40% direct recruitments quota was not available then supernumerary posts may be created, and rules be amended. Relevant portion of the order is extracted below :

D "After considering all aspects of the matter and in order to implement the directions of the Supreme Court within the stipulated time i.e. within 23.4.91 Government hereby direct that all the Stipendiary Graduates who are eligible to be absorbed under the directions of the Supreme Court should be appointed against the direct recruitment vacancies as per rules which requires graduate qualifications. However, if it is necessary to create supernumerary posts for temporary period the said post may be created in the department concerned in consultation with Finance Department to implement the directions of the Supreme Court."

F These orders were placed before the Court and on 6th May 1991 the Court passed following order :

G "Pursuant to our direction made on 24th July as modified on 1st August 1990 in Writ Petition No. 1249 of 1989 the State Government after considering the same made an order being order No. DPAR 39 SLC 89 (Part) Bangalore, dated 20th April 1991 whereby it has been directed that the directions of the Supreme Court be implemented within time i.e. within 23rd April, 1991 by filling up the vacant posts by giving appointment to the stipendiary graduates who are eligible to be absorbed under the directions of

H

the Supreme Court and if necessary to create supernumerary posts for temporary period for giving appointments to the Stipendiary Graduates. A

List the Writ Petition on 21st August 1991. In the meantime, the Government will take appropriate steps in the light of the order made by it. B

List the Contempt Petition and Special Leave Petition Nos. 4760-64 of 1990 also that day."

Till April, therefore, the Government not only issued orders for implementing the order by appointing and regularising the stipendiary graduates as directed by this Court but even decided to amend the rules. On 11th June, however, for the first time a letter was issued the relevant portion of which is extracted below : C

"I am directed to inform you that Government have decided to fill up the 40% of Direct Recruitment vacant posts by the Stipendiary Graduates both against the First Division Assistant/equivalent posts and Second Division Assistant/equivalent posts (all group 'C'). Hence, I am to request you kindly to furnish the 40% of total Direct recruitment vacancy in all-group 'C' cadre immediately. D E

Those who have furnished information in so far as First Division Assistant/equivalent cadre need not furnish the position in so far as First Division Assistant vacancy but only Second Division Assistant/equivalent vacancy position." F

The contents of this letter were obviously against the tenor of orders issued till now. From implementing orders of this Court and absorbing the stipendiary graduates in posts carrying graduate qualification the Government now decided that absorption could be both against First Division and Second Division Assistants. For this the stipendiary graduates, who by now had become armed not only with orders of absorption and regularisation but absorption against post carrying graduate qualification, were not willing. They were not agreeable to accept the post of Lower Division Assistant in group 'C' as the minimum qualification for this was only SSLC. And they being graduates and post graduates could not be asked to accept a post G H

A meant for matriculates. How far they were justified in their approach shall be adverted to later but they filed second Contempt Application No. 166 of 1991 accusing the Government of going back on its earlier orders. Faced with this situation the Government on 17th August 1991 issued an order relevant portion of which is extracted below :

B "A claim was made that the stipendiary graduates should only
be absorbed against posts which require minimum graduate
qualification. This aspect was examined in detail in consultation
with the Department of Law & Parliamentary Affairs, Finance
C Department and D.P.A.R. Having regard to the provisions of the
Karnataka Civil Services (Special) Rules, 1987 referred to above
these stipendiary graduates can be absorbed against any of the
Group 'C' posts. To avoid any discrimination and in view of the
availability of the vacancies in the second division assistant cadre,
it was considered appropriate to absorb these stipendiary
D graduates only against the second division assistant posts or
equivalent posts in the departments or Government."

Another order was passed on 5th September 1991 creating 5000 stipendiary posts. Relevant portion of the order is extracted below :

E "Government are pleased to create 5000 (Five Thousand) Super-
numerary posts of Second Division Assistants under Social
Welfare & Labour Department for a period of two months from
1-9-91 and all the stipendiary graduates are absorbed against these
posts in the pay scale of Rs. 960-1760. These Stipendiary Graduates
will continue to work in these posts till they are regularly appointed
F against the vacancies the various Government Departments. Their
service conditions will be governed under Karnataka Civil Service
Rules and other rules applicable to government servants."

After passing these orders in furtherance of their decisions reflected in the
letter of 11th June the Government through its Secretary in Social Welfare
G Department filed an affidavit in the Contempt Application No. 166, that
the Government on 20th April 1991 issued orders for absorbing all eligible
stipendiary graduates according to rules which required graduate qualifica-
tion. But when the stipendiary graduates made a claim that they were to
be absorbed against post which required minimum graduate qualification
H then the aspect was examined in detail in consultation with the Department

of Law and Parliamentary Affairs, Finance Department, D.P.A.R. and it was decided that to avoid any discrimination and in view of the availability of the vacancies in the Second Division Assistant cadre it was considered appropriate to absorb the stipendiary graduates only against the Second Division Assistant posts or equivalent posts in the Department of Government. The affidavit asserted that it was in keeping with this decision that the order dated 17th August 1991 was issued directing all stipendiary graduates to be absorbed against the post of Second Division Assistant or equivalent post, and the economy orders were relaxed and the maximum age limit was removed. It was stated that since the identification of the required number of vacancies in various Government departments was likely to take time it was decided to create supernumerary posts in the Second Division Assistant cadre for the absorption of the stipendiary graduates, and consequently the order dated 5th September 1991 was issued. It was averred that the 3691 vacancies mentioned in the affidavit of July 1990 in fact comprised of both Second Division and First Division Assistants. Out of the vacancies the majority were of the Second Division Assistants.

What is astonishing is that the affidavit did not take care to explain the earlier orders issued by the Government in January and April 1991. The letter issued in June 1991 and the orders issued in August and September 1991 were not in conformity with earlier orders. The decision of the Government to absorb all stipendiary graduates as Second Division Assistants to avoid any discrimination without seeking any modification or clarification by the Court was unfortunate. A high official like Secretary did not even bring to the notice of the Court number of stipendiary graduates in fact absorbed as First Division Assistants after the order was passed in July 1990. No effort was made to explain as to how many vacancies were existing in either category of posts. The statement that majority of the vacancies was of Second Division Assistants was most unsatisfactory manner of filing an affidavit. If 3691 vacancies were existing in various offices the break-up of which was given in the first affidavit then where was the necessity of identifying the vacancies or creating 5000 supernumerary posts. The Court had directed to absorb the petitioners against existing vacancies and create supernumerary posts for remaining only. Both the letter issued in June 1991 and the Government orders issued on 17th August and 5th September 1991 were in teeth of the order passed by this Court. When all this was brought to the notice of this Court the

A bench of which one of us was a member (R.M. Sahai, J.) felt that the Government was deliberately not obeying the orders of this Court without any valid explanation. Consequently, the order dated 24th October 1991 was passed directing the Government to absorb all the stipendiary graduates as First Division Assistants. The Government was further directed to withdraw the orders dated 17th August and 5th September 1991. The order after narrating the sequence of events from 24th July onwards held,

"We have very minutely scrutinised all these aforesaid orders as well as the Governor's orders. We do not find any ambiguity in the order and directions made by this Court as well as the Governor's orders as to the stipendiary graduates are to be absorbed in the vacant posts which appeared in the affidavit of the Government numbering about 3691 and also to the direction of this Court that for the balance the Government will create as many supernumerary posts as are necessary to implement to absorb the remaining 1574 graduates having graduate qualification. There is no ambiguity that this order can be misunderstood that the candidates having matric qualification will be absorbed only or the candidates having matriculation qualification and also graduate qualification will have to be absorbed in Class 'C' posts. We make it more clear that in Class 'C' posts there are two categories of candidates, one category requires candidates having matriculation qualification, another category having graduate qualification and the pay in respect of these two category posts in Class 'C' are totally different. It is, therefore, not proper to argue that the directions of this Court were to implement the order absorption of the stipendiary graduates. In view of this, there is no room for making any contention before this Court that the order does not say that the graduate qualification candidates will be absorbed in the Group 'C' posts which require graduate qualification

In these circumstances, the only proper order and direction will be that we direct the State of Karnataka to implement forth with the order of this Court mentioned hereinbefore and to absorb all these stipendiary graduates in the available vacancies as well as in creating supernumerary posts for absorbing all of them which require graduate qualification with pay scale of Rs. 1190-2200.

We further direct that the implementation of the order of this Court be made within a period of three months from this date. The Contempt Petition is thus disposed of, but nevertheless we make it clear if the order of this Court is not followed in letters, the petitioners are given liberty to mention the matter before this Court for proper directions of this Court.

We direct the Government to withdraw the order dt. 17.8.1991 as well as the order dt. 5.9.91 forthwith and to pass orders in accordance with the directions of this Court stated herein before."

This order for the first time took notice of two categories of posts in group 'C' one for which the minimum qualification was SSLC and the other for which it was graduate. It was held that when Court passed the order on 24th July 1990 it intended that the stipendiary graduates be absorbed in the category for which the qualification was graduate, namely, First Division Assistant. The Bench further directed the Government to withdraw its orders dated 17th August and 5th September 1991 and absorb the stipendiary graduates in pay scales of Rs. 1190-2200.

Now the Government woke up. It found itself in serious administrative and financial difficulty. But instead of making clean breast of the mistake committed by it the attempt has been to justify it crudely. An application was filed in December 1991 for clarification of the order dated 24th October 1991. In the affidavit filed in support of the application it was stated that since the Court in every order had directed the stipendiary graduates to be absorbed in accordance with rules it would have taken 10 to 15 years for the entire lot to enter into service, it was decided to create 5000 supernumerary posts and absorb all the stipendiary graduates as Second Division Assistants. How could a responsible officer like a Deputy Secretary file such an affidavit without caring to peruse the earlier affidavit filed by the Assistant Secretary giving out not only the number of vacancies but even the availability of it in different departments. In fact the basis in every order passed by this Court that the vacancy should be filled in accordance with rules originated from the affidavit of Assistant Secretary that 3691 vacancies were available in various departments of the Government to be filled in accordance with rules by the stipendiary graduates. The averment in the affidavit, for the first time, that it was not possible to absorb all the stipendiary graduates as First Division Assistants could not

A have been taken by the Government of its own when this Court had passed an order, as far back as July 1990 to absorb the stipendiary graduates against posts carrying graduate qualification. It was in this affidavit that it was stated that only 300 posts of First Division Assistants were available, therefore, it was impossible for the Government to absorb all the 5000 stipendiary graduates against the post of First Division Assistants. Administrative difficulties were also pointed out and it was stated that apart from financial implication there were various stipendiary graduates who had been appointed as Second Division Assistants through various recruitment committees and they had joined in 1985 and 1987 but if in pursuance of the order passed by this Court the entire 5000 were made as First Division Assistants then all of them shall become junior. Attempt was made to explain that the order dated 20th April 1991 proceeded on the footing that this Court had directed on 24th July 1990 to accommodate the petitioners against graduate vacancies when in fact there was no such direction. It was also stated that nearly 500 objections had been received from Second Division Assistants who had been selected by the Public Service Commission and had been working since 10 to 15 years and they would be seriously affected if the claim of the petitioners was accepted. It was claimed that the order dated 30th October 1991 was passed by this Court on misrepresentation of facts furnished by the petitioners. Therefore, it was prayed that the Court may modify its order dated 24th July 1990 and 6th May 1991 passed in Writ Petition (C) No. 1249 of 1989 and S.L.P. (C) Nos. 4760-62 of 1989 and order dated 30th October 1991 in Contempt Petition No. 142 and 166 of 1991 and direct the stipendiary graduates to be appointed as Second Division Assistant Grade 'C'.

F So it was for the first time that the break-up of vacancies, the difficulties in appointing such large number as First Division Assistants, the administrative problems of seniority and blocking promotion etc. were attempted to be brought to the notice of this Court. Even now no regret was expressed that all this confusion started due to thoughtless affidavit filed by the Assistant Secretary in 1990 stating that 3691 vacancies in group 'C' were available to be filled by direct recruitment by stipendiary graduates. This was quite contrary to what was stated by the Deputy Secretary that if 5000 stipendiary graduates were to be absorbed in accordance with 40% rules it would have taken 10 to 15 years. We are just amazed on such affidavit filed by a responsible officer without having any regard to facts or the earlier stand taken by the Government. We have no

hesitation in saying that the orders were passed not because the petitioners made any misrepresentation before this Court but because of the casual attitude of the Government. A

However, while the State filed application for clarification of the order the petitioner filed third Contempt Application No. 55 of 1992. And three set of employees filed three writ petitions. Writ Petition(C) No. 356 of 1992 was filed by group of stipendiary graduates for grant of same benefit as was granted to petitioners in Writ Petition(C) No. 1249 of 1989. Writ Petition(C) No. 390 of 1992 was also filed by stipendiary graduates working as Second Division Assistants. And Writ Petition(C) No. 254 of 1992 was filed by Second Division Assistants against absorption of stipendiary graduates as First Division Assistants as it shall deprive them forever from being promoted as First Division Assistants. In reply to contempt petition an affidavit was filed by the Secretary to the Government in Department of Social Welfare and Labour. Most of the averments were reiteration of the affidavit filed by the Deputy Secretary for clarification of the orders passed by this Court. It was also explained that the orders dated 17th August 1991 and 5th September, 1991 were in fact the orders of the Government but they were authenticated by the Deputy Secretary and Under Secretary according to Article 166 of the Constitution conveying the decision taken by the Government. It was also stated that the order dated 30th October 1991 passed by this Court had the effect of creating dissatisfaction among the officials who were appointed according to recruitment rules. Further the petitioners who had competed with others and were unsuccessful in getting the employment, shall have to be appointed to the higher post of First Division Assistant. It was claimed that the order dated 30th October 1991 was beyond the order passed by this Court on 24th July 1990. And taking this into consideration along with other factors the Government issued the orders on 17th August and 5th September 1991. The affidavit asserted that the two orders were in strict compliance with the directions issued by this Court and since the order dated 24th July 1990 had been complied with there was no violation nor any disobedience of any order passed by this Court. B C D E F G

Was it so? Could the Government take up this stand? Law on the binding effect of an order passed by a Court of Law is well settled. Nor there can be any conflict of opinion that if an order had been passed by a Court which had jurisdiction to pass it then the error or mistake in the H

A order can be got corrected by a higher Court or by an application for clarification, modification or recall of the order and not by ignoring the order by any authority actively or passively or disobeying it expressly or impliedly. Even if the order has been improperly obtained the authorities cannot assume on themselves the role of substituting it or clarifying and modifying it as they consider proper. In Halsbury's Laws of England (Fourth Edn. Vol. 9, p.35, para 55) the law on orders improperly obtained is stated thus,

C "The opinion has been expressed that the fact that an order ought not to have been made is not a sufficient excuse for disobeying it, that disobedience to it constitutes a contempt, and that the party aggrieved should apply to the court for relief from compliance with the order."

D Any order passed by a Court of Law, more so by the higher courts and specially this Court whose decisions are declarations of law are not only entitled to respect but are binding and have to be enforced and obeyed strictly. No court much less an authority howsoever high can ignore it. Any doubt or ambiguity can be removed by the court which passed the order and not by authority according to its own understanding.

E In these proceedings the Government filed four affidavits, one, after expiry of six months from the date of issue of notice on the writ petition, second, in September 1991 in response to Contempt Petition No. 166, the third in December 1991 for clarifying the order dated 24th October 1991 and the fourth on 24th July 1990 in Contempt Petition No. 55 of 1992. What is significant is that till the affidavit for clarification was filed in December 1992 the Government did not care to disclose the number of vacancies of the First Division Assistants nor it cared to take the court into confidence by stating that in fact there were no vacancies and the affidavit filed stating that there were 3691 vacancies did not give the correct picture. It is indeed surprising that a government which was faced with such a stupendous problem of accommodating 5000 stipendiary graduates, took it not only lightly, ignored the orders of the Court, but went on filing affidavits which were vague, uncertain and did not bring the facts correctly on record even though the affidavits have been sworn by no less persons than the Secretary and Deputy Secretary. If filling of 3691 vacancies in accordance with rules would have taken 10 to 15 years then how was the affidavit filed that 3691

vacancies were available for being filled by stipendiary graduates against direct recruitment. We are further constrained to observe the manner in which the two orders dated 17th August and 5th September 1991 were issued by the Government and the clumsy manner in which their issuance had been attempted to be defended by the Secretary to the Government. After the order was passed adding the word, 'gradutate' before the word 'qualification' and the petitioners insisted that they were liable to be absorbed as First Division Assistants the Government issued two orders, one in January and second in April 1991. None of the orders mentioned that they were to be absorbed as Second Division Assistants. It was only after the contempt application had been filed that the Government appears to have been awakened from its slumber and then a meeting of the officers of the Law Department and the Finance Department took place and the decision was taken to absorb all these petitioners as Second Division Assistants and to effectuate it, the two orders were issued in August and September 1991. In doing so the Government and its officers assumed the role of substituting the order of the Court by what they considered proper and convenient. Such actions to say the least were reprehensible and not in keeping with rule of law. We have no doubt in our mind that the Government when it issued the two orders dated 17th August and 5th September 1991 it did not appreciate the gravity and appear to have acted in violation of the order passed by this Court. The explanation offered by the Secretary is not only an eye-wash but is to be deprecated in strongest words to impress upon the Government and its officials that the orders of the Court should not be taken lightly and the course open to the Government when an occasion like this arises, is to approach the Court itself. In our opinion the Government in issuing the orders dated 17th August and 5th September 1991 in the first instance, and then trying to justify it, without getting the doubt, if any, cleared was certainly guilty of not following the norms which are expected of a responsible government of a welfare State. We, however, do not propose to take any action as when these petitions were listed earlier the learned Additional Solicitor General assured the Bench of which one of us (R.M. Sahai, J.) was a member that these orders shall be withdrawn and he made a statement, during hearing, that in fact they have been withdrawn.

Despite the failings of the Government to apprise this Court, timely, of correct fact what has been agitating us how to even the balance. On one side are the orders of this Court passed on vague and incomplete affidavit,

- A creating right and hope in favour of 5000 stipendiary graduates to be absorbed as First Division Assistants with some of them even deriving the benefit whereas on the other hand there are others the likely injustice to whom due to implementation of the orders had already been explained in the affidavit of the Secretary, the Deputy Secretary and in the Writ Petition filed by different section of the employees. No less is the hurdle arising out of principle of finality of orders and the binding nature of directions issued by this Court. But what stands above all which persuaded to take a fresh look is the injustice inherent in it. Many of the stipendiary graduate who either appeared in the competitive examination conducted by the Commission, under 1982 rules or were selected under 1987 rules for the post of
- B Second Division Assistants because there were no vacancies amongst First Division Assistants would not only become junior to the petitioners but they may never get a chance to move up higher on the ladder as the rules of 1982 and 1987 specifically provide that a stipendiary graduate appointed under the rule would not be eligible for recruitment again under it. Further
- D if a stipendiary graduate is entitled by virtue of graduate qualification to be absorbed as First Division Assistant then Rule (3) of 1982 Rules permitting absorption of stipendiary graduates both against Second and First Division Assistants is rendered meaningless. Nor there can be any rational to disregard the claim of those large number of stipendiary graduates who are working as Second Class Assistants. Moreover possessing
- E minimum qualification prescribed under rules does not mean appointment on that post. It only provides eligibility. For instance a holder of SSLC certificate cannot be considered as eligible for the post of First Division Assistant as the minimum qualification for it is graduate. A graduate can apply for either. But being graduate does not mean that any stipendiary
- F graduate is liable to be absorbed as First Division Assistant. No employee can claim higher post or scale of pay commensurate with his qualification. It may be ideal but not practical. Appointment of a graduate or a post graduate to a post which carries lower qualification by itself, does not amount to exploitation nor it is violative of any constitutional guarantee or principle.
- G

- Even otherwise validity of 1982 and 1987 rules reserving only 40% posts for stipendiary graduates were not assailed. Therefore absorption beyond 40% of the vacancies existing in any year would be contrary to rules. That is why in compliance to the order passed by this Court directing
- H all the stipendiary graduates to be absorbed in State service the Govern-

ment issued orders for amending 1982 rules. Further group 'C', admittedly, comprises of various categories of posts including Second Division and First Division Assistants. When Karnataka State Civil Services (Special Recruitment) Rules, 1982 were framed it provided for filling of vacancies by stipendiary graduates and local candidate who, 'was not disqualified under the Karnataka Civil Services (General Recruitment) Rules, 1977, and who as on 1st April 1982, has worked for a period of not less than one year as a local candidate or as a stipendiary graduate and possesses the qualifications prescribed in the rules specially made for recruitment to the category of posts specified in rule 3 shall be eligible for admission to the competitive examination under these rules. The rules did not purport to create any post nor it passed any order increasing the sanctioned strength of the First or Second Division Assistants. The only objective of the rule was to reserve 50% of the existing posts on the date the rules were framed for stipendiary graduates and local candidates. This reservation was in the existing strength. For instance, if there were 100 vacancies existing on the date the rule came into force then 50% of it were to be filled by stipendiary graduates or local candidates in either First Division or Second Division category. And if out of 50 vacancies 10 were of First Division Assistants and 40 were of Second Division Assistants then each stipendiary graduates or local candidate, who was eligible, was entitled to compete in the examination conducted by the Commission. The rules, therefore, did not provide anything except reservation in direct recruitment and permitting every stipendiary graduate, irrespective of age etc., to compete if he had completed one year's service. When these rules were amended further in 1987 two changes were made, one, that the 50% vacancies were bifurcated into 40% for stipendiary graduates and 10% for local candidates and, second, that if the stipendiary graduates possessed the required qualification and were otherwise eligible then they were entitled to be appointed straightaway without any competitive examination or interview. Whether such dispensing of the examination was proper or not but the amendment did not result either in enhancement of the strength or permitting absorption of stipendiary graduates automatically. They could be 'absorbed only if the vacancies were existing in the Department.

Many government orders appointing stipendiary graduates as Teachers, Supervisors, First Division Assistants etc., and some appointments in the pay scale of Rs. 1190-2200 after the order was passed in July 1990 and prior to April 1991 were relied and it was urged that the

- A Government having treated stipendiary graduates as eligible for higher posts it cannot be permitted to turn around. True, but group 'C' comprised of various categories of posts, to which the stipendiary graduates could be appointed according to their qualification against 40% quota. The appointments, presumably, must have been made in accordance with rules. In any case none of such appointments were assailed to be contrary to law. As explained earlier the rules framed in 1982 amended in 1987 permitted appointment of stipendiary graduates as First Division Assistant. In absence of any challenge to such appointments they cannot be assumed to be invalid nor they can furnish valid basis for claiming that all the stipendiary graduates were liable to be appointed as First Division Assistants. Mere eligibility was not sufficient unless availability of posts was also established. In absence of posts and due to equitable considerations arising in favour of other employees the practical difficulty in appointing all the five thousand stipendiary graduates as First Division Assistants appears to be insurmountable. Even so we have no hesitation in saying that we would have refused to modify our order dated 24th October 1991 at the instance of the Government but the Court cannot be unjust to other employees.

- Reliance was placed on *Sabyasachi Sengupta & Ors. v. Nani Gopal Datta & Ors.*, [1990] Supp. SCC 315 and it was urged that any modification or recall of the order passed by this Court would result in destroying principle of finality enshrined in Article 141 of the Constitution. We shall advert to this, presently, but the submission advanced on observation in *Sengupta* case proceeded on complete misapprehension both of facts and law. The observations, 'if his plea is to be accepted then it will be only a mockery of justice because it will be tantamount to nullifying our own order which has reached its finality', were made in an application made on behalf of State of West Bengal seeking clarification of the earlier order passed by this Court. What had happened was slightly unusual. A Learned Single Judge of the Calcutta High Court declared the draft service rules as *ultra vires* and directed the Government to determine seniority of the employees in light of observations in the judgment. Operation of this order was stayed by the Division Bench. Liberty was given to Government to finalise the draft rules and even fill the vacancies. The Bench, however, stayed operation of its order for eight weeks, obviously, to enable the aggrieved party to approach this Court. And Special Leave Petition was filed but it was dismissed with a request to the High Court to dispose of the appeal if possible within two months. When the appeal came up for hearing another

Bench extended the operation of the order passed by the earlier Bench for another eight weeks. This order was challenged before this Court. And the Bench passed the interim order, as was passed by this Court earlier, 'notwithstanding the contrary order passed' by the Division Bench. The S.L.P. was ultimately disposed of as in view of the interim order passed by this Court no further order was necessary. Despite these orders which were clear the effect of which was to permit State Government to proceed with filling up of vacancies it approached this Court for clarification. It furnished an opportunity to those respondents in whose favour the learned Single Judge had passed the order to oppose it and claim that if the application was allowed it would cause substantiated injustice. Obviously it was other way round. That is why the Bench repelled the plea as illogical and misconceived and made the observations, extracted earlier. Facts are self-demonstrative. Injustice apart the order of the second Division Bench of the High Court was contrary to the order passed by this Court. Upholding that order would have resulted in disturbing the finality of the order passed by this Court. No such consideration is involved in these proceedings. In fact if we refuse to modify the order because of the State Government's attitude it would result in grave injustice.

Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of *stare decisis* is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (R.M. Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of

A First Division Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.

B Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no
C statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In *Raja Prithvi Chand Lal Choudhury v. Sukhraj Rai and others*, AIR (1941) Federal Court 1, the Court observed that even though no rules had been framed permitting the highest court to review its order yet it was available on the
D limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in *Rajinder Narain Rae v. Bijai Govind Singh*, 1 Moo PC 117 that an order made by the Court was final and could not be altered,

E "nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by common law, the same power which the Courts of record and statute have of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have how-
F ever gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies."

G Basis for exercise of the power was stated in the same decision as under :

"It is impossible to doubt that the indulgence extended in such cases is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard
H and an order has been inadvertently made as if the party had been

heard."

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution-makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, 'for any other sufficient reason' in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of court. The Court is thus not precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.

Reliance was placed on *State of Mysore and Anr. v. P. Narasinga Rao*, AIR (1968) SC 349 and *The State of Jammu and Kashmir v. Triloki Nath Khosa*, AIR (1974) SC 1 and it was urged that different pay scale for same nature of work based on higher qualification was not violative of Articles 14 and 16. In our opinion this question does not arise in these petitions, therefore, it is not necessary to discuss it.

All this confusion has arisen because of sub-rule (4) of Rule (3) of 1987 Rules. The provision abolishing any test enlarged the field of eligibility leaving scope for pick and choose arbitrarily. Posts in group 'C' comprise not only of Assistants but even Inspector, Compounders etc. Even amongst Assistants there are two categories, First and Second Division Assistant. In absence of any guideline to appoint one against 'A' and another against 'B' the selection was bound to generate extraneous consideration. We were informed that recruitment under 1977 scheme has been stopped since 1980. May be but in our opinion if the scheme is still in operation it needs

- A immediate attention. Reservation of 40% posts, for stipendiary graduates, in direct recruits quota itself needs a fresh look. Framing of scheme in keeping with constitutional goal to provide job to uneducated cannot be construed as right of such incumbents to enter civil service as a matter of right either due to length of service or because the allowance paid is lower than others who have entered civil service under the rules. 'Equal pay for equal job' should not be unduly stretched to frustrate the entire process of selection and appointment in Government service.
- B

For reasons stated above the application filed by the State Government in December 1991 praying that the order dated 30th October 1991 may be modified and stipendiary graduates may be directed to be appointed as Second Division Assistants in Group 'C' is allowed and following directions are issued :

C

- (1) The order dated 30th October 1991 for absorbing all the stipendiary graduates in pay scale of Rs. 1190-2200 is recalled.
- D
- (2) It is clarified that the word 'graduate' added in order dated 24th July 1990 did not purport to mean that all those who were working in the Stipendiary Graduate Scheme were to be appointed in Category 'C' post which carried graduate qualification.
- E
- (3) Since this Court while disposing of the special leave petitions and writ petitions on 24th July 1990 had directed to fill up 3691 existing vacancies in Category 'C' by the stipendiary graduates and further to take steps to appoint remaining 1574 as soon as vacancies arose, the order shall now be complied within a period of six months from today, if necessary, by creating supernumerary posts.
- F
- (4) All the stipendiary graduates covered by the order dated 24th July 1990 shall be appointed as Second Division Assistants in Grade 'C' only.
- G
- (5) Since the delay in implementation of the order passed by this Court has been occasioned due to petitioners themselves and further they have not worked during this period as Second Division Assistants we do not think that they are entitled to their salary as Second Division Assistants. However the consolidated
- H

amount paid to them during pendency of the special leave petitions and writ petitions under orders of this Court, which was more than the stipendiary graduates allowance shall not be recovered from them. A

(6) The appointment of the stipendiary graduates as Second Division Assistant shall however be effective from May 1991 the period fixed by this Court for compliance of order dated 24th July 1990 for purposes of granting retirement benefits only. B

(7) No notice was issued on writ petitions filed by other section of employees. In view of the order passed today it is not necessary to issue any notice. They shall stand disposed of. C

(8) No orders are necessary on contempt applications. They stand disposed of in terms of the orders passed today. Since the Government was no less responsible for the unfortunate situation, we direct it to pay Rs. 30,000 towards costs of the contempt applications. The amount shall be deposited within three months with the Supreme Court Legal Aid Committee which shall be entitled to appropriate it. D

B.P. JEEVAN REDDY, J. These matters were referred to a three-judge bench so that it can, if necessary, revise, review and recall the earlier orders of this Court made by a Bench of two Judges or a Bench of three Judges, as the case may be. The reference to three-Judge Bench was made because it was felt by my learned brother Sahai J. and myself that some of the earlier orders of this Court may require to be reconsidered. E

The relevant facts are not in dispute. They have been set out in the judgment of my learned brother Sahai J. F

With a view to relieve unemployment among the graduates, the Government of Karnataka framed a scheme called 'Stipendiary Graduates Employment Scheme', in the year 1977. It provided for stipend in a sum of Rs. 150 per month to unemployed graduates coming from families having annual income of less than Rs. 3,600 and who did not have even a single earning member. In view of the meagre amount of stipend, these persons were posted in special programmes located as near as possible to their native places. The stipend was raised to Rs. 200 in 1979 and to Rs. H

A 250 in 1982. It was again raised to Rs. 490 and finally to Rs. 640. These persons, it must be mentioned, were selected on an *ad hoc* basis, i.e., without notifying the vacancies and without conducting any process of selection.

B In the year 1982, the Government framed Karnataka Civil Services (Special Recruitment) Rules, 1982. These rules provided that 50% of the vacancies reserved for direct recruitment in certain categories in group 'C' services of the State shall be filled by stipendiary graduates and 'local candidates' on the basis of a competitive examination to be conducted by the Public Service Commission. Rule 2 of Notification (No. DPAR 50 SDE 81 (A) dated 25th June 1982) issued under the proviso to Article 309 of the Constitution of India, reads as follows :—

2. SPECIAL PROVISION FOR CERTAIN CATEGORIES :

D (1) Notwithstanding anything contained in any rule made under proviso to Article 309 of the Constitution of India but subject to the provisions of rules 8 and 9 of the Karnataka Civil Services (General Recruitment Rules, 1977, *in every direct recruitment to any category of posts in Group - 'C' in the State Civil Services, fifty per cent of the posts notified for recruitment shall be filled by candidates who, as on 1st April 1982, have worked for a period of not less than one year as a Local Candidate or as a Stipendiary Graduate:*

E Provided that if sufficient number of such candidates are not available for filling the said fifty per cent of the posts, such unfilled posts shall be filled by other candidates :

F Provided further that no Local Candidate shall be eligible for recruitment under this rule to a category or posts other than the one in which he was working as a Local Candidate immediately before the date of coming into force of these rules.

G Explanation : For the purpose of this rule (a) Local Candidate means a Local Candidate as defined in the Karnataka Civil Services Rules and appointed as such on or after 1st April 1972.

H (b) Stipendiary Graduate means a person appointed on a stipend under the Stipendiary Employment Scheme sanctioned in Government Order No. PD 112 PMM 7 dated 28th December

1977.

A

(2) Nothing in these rules shall apply to recruitment to the following categories of posts namely :-

(i) Sub-Inspectors of Police.

B

(ii) Forest Rangers.

(iii) Such other category of posts as the Government may by order declared from time to time.

(3) A Stipendiary Graduate appointed to a post under these rules or under the Karnataka State Civil Services (Special Recruitment) Rules, 1982, shall not be eligible for recruitment again under these rules."

C

Rules 3 to 7 of the Rules issued in Notification No. DPAR 50 SDE 81(B) dated 25th June, 1982 under the proviso to Article 309 read as follows :

D

"3. APPLICATION : Notwithstanding anything contained in any rule made under the proviso to Article 309 of the Constitution of India, the provisions of these rules shall apply to direct recruitment to fifty percent of the vacancies existing on the date of commencement of these rules in the categories of posts specified below, namely :

E

(a) First Division Clerks and Second Division Clerks in all State Civil Services.

F

(b) Veterinary Live Stock Inspectors.

(c) Veterinary Compounders.

(d) Agricultural Assistants.

G

(e) Such other category of post as the Government may be order, specify.

4. METHOD OF RECRUITMENT : Recruitment under these rules shall be made on the basis of the results of a competitive

H

A examination conducted by the Commission. The competitive examination shall be held at such place and on such date as may be notified by the Commission.

B 5. ACADEMIC QUALIFICATION OF CANDIDATES :
Every person who is not disqualified under the Karnataka Civil Services (General Recruitment) Rules, 1977, and who as on 1st April, 1982, has worked for a period of not less than one year as a local candidate or as a stipendiary graduate and possesses the qualifications prescribed in the rules specially made for recruitment to the category of posts specified in rule 3 shall be eligible for admission to the competitive examination under these rules.

C NOTE : In this rule —

D (a) "Stipendiary graduate" means a person appointed on a stipend under the Stipendiary Employment Scheme sanctioned in Government Order No. PD 112 PMM 77, dated 28th December, 1977,

E (b) "Local candidate" means a local candidate as defined in Karnataka Civil Services Rules and appointed as such on or after 1st April, 1972.

F 6. AGE LIMIT : Notwithstanding the provisions in the rules of recruitment specially made in respect of any of the posts referred to in rule 3, every stipendiary graduate or local candidate applying to a post under these rules when he was initially appointed as a stipendiary graduate or as a local candidate must have attained the age of eighteen years of age and must not have attained the age of :

G (a) forty years in the case of a person belonging to any of the Scheduled Castes or Scheduled Tribes or Backward Tribes :

(b) thirty-eight years in the case of a person belonging to any of the Backward Castes or Backward Communities :

H (c) thirty-five years in the case of any other person.

7. EXAMINATION : The competitive examination shall consist of a Written Examination consisting of one paper in General English or General Kannada and General Knowledge. Maximum marks for the written examination shall be 100. There shall be one examination for recruitment to the category of posts for which a degree or higher qualification has been prescribed as the minimum qualification and another examination for recruitment to the category of posts for which a pass in the SSLC Examination has been prescribed as the minimum qualification. Syllabi for the written examinations shall be as specified in the Schedule to these rules."

In 1987, these rules were amended. Rule 2 was amended and Rule 3 substituted altogether. By virtue of the new Rule 3, the requirement of selection on the basis of competitive examination to be conducted by Public Service Commission was deleted. They were now to be appointed on the basis of a common seniority list prepared for the purpose as provided by Rule 3 of Amendment Rules. Rule 3 as substituted in 1987 reads as follows:

"3. PROCEDURE FOR APPOINTMENT OF STIPENDIARY GRADUATES:— (1) There shall be a common list of Stipendiary Graduates, maintained by the Social Welfare and Labour Department, arranging their names according to their seniority, seniority being determined on the basis of continuous service as Stipendiary Graduates and where two or more stipendiary graduates are appointed on the same date, the seniority shall be determined on the basis of their age, person or persons older in age being placed above.

(2) Every appointing authority in respect of Group 'C' posts, after determining the vacancies in respect of each direct recruitment, to be filled up by appointment of candidates who have worked as Stipendiary Graduates or Local Candidates and other candidates, report to the Secretary to Government, Social Welfare and Labour Department the number of vacancies set apart for being filled by Stipendiary Graduates.

(3) The Social Welfare and Labour Department shall on receipt of such reports from the appointing authorities sponsor the names of stipendiary Graduates equal to the number of vacancies

A reported by the appointing authorities according to their seniority in the list maintained under sub-rule (1), in the order of reports as received from the appointing authorities.

B (4) On receipt of the list of Stipendiary Graduates from the Social Welfare and Labour Department, the appointing authorities shall appoint them after satisfying that the candidates possess the *required academic and other qualification prescribed for the posts under the relevant rules of recruitment. They shall not be subjected to any competitive examination or interview.*

C (5) If any Stipendiary Graduates whose name has been assigned refuses to accept the appointment, he shall cease to be a stipendiary graduate and his name shall stand deleted from the list maintained under sub-rule (1).

D (6) Savings :— Notwithstanding anything contained in these rules recruitment to any service or post advertised before the commencement of these rules shall be made as if the said rules have not been amended by these rules provided that the last date for receipt of application is over prior to such commencement."

E The said 50% of the vacancies reserved for stipendiary graduates and local candidates were apportioned between them in the proportion of 40:10. The circle of constitutional violations was thus complete. The Stipendiary Graduates were appointed without any process of selection and now they were being absorbed in Government service - that too at group 'C' level - without any process of selection. The concern appears to be to help
F these persons at all costs, irrespective of its effect upon others' rights or upon the constitutional requirements and mandates.

G The Association of stipendiary graduates approached the Karnataka High Court by way of a writ petition seeking a declaration that they (i.e., unabsorbed stipendiary graduates) were regular employees under the Government. The writ petition was transferred to the State Administrative Tribunal after it was constituted. The Tribunal dismissed the claim of the association. Against the order of the Tribunal, the association filed S.L.P.
(C) No. 4760- 62/89. Some of the stipendiary graduates who had not approached the High Court or Tribunal approached this Court directly by
H way of Writ Petition (C) No. 1249/89. It is in these matters that this Court

passed orders referred to in the order of my learned brother Sahai, J. The effect of these orders was to direct the State (1) to pay a stipend of Rs. 960 per month to the stipendiary graduates with effect from February 1, 1990 and (2) to absorb them in the available vacancies requiring graduate qualification (i.e., in the category of First grade assistants) in accordance with the aforesaid Rules (i.e., without holding a competitive examination or an interview). These orders were based upon and induced by the wrong information furnished by the State of Karnataka as demonstrated and detailed in the order of my learned brother. Either the information was not furnished in time or was furnished in a misleading manner. *The result was that the directions made by this Court required the State to absorb stipendiary graduates not only against the vacancies meant for them by the 1982/1987 Rules i.e., against 40% of the vacancies reserved for direct recruitment but practically against all the vacancies in the relevant categories. In other words, the effect of these orders - according to the present stand of the Government - is that instead of confining these persons to 40% of the vacancies to be filled by direct recruitment, they are directed to be absorbed against all the vacancies available i.e., all of the vacancies to be filled by direct recruitment as well as by promotion.*

When the orders of this Court aforementioned were not fully carried out, the stipendiary graduates have approached this Court by way of these contempt applications.

At this stage, I think it appropriate to refer to some of the averments in the affidavit filed by Shri Y. Chandrashekhar, Dy. Secretary to Government (S.W. & L.) Department in Contempt Petition No. 142-166/91. It is stated therein *inter alia*, as condensed by me:

After the introduction of the 1982 rules several stipendiary graduates appeared for selection to Public Service Commission for class 'C' posts and those who were successful were appointed to several categories in group 'C' including First grade assistants and second grade assistants.

Even after the Amendments effected in the year 1987, some stipendiary graduates were absorbed in various posts including first grade assistants and second grade assistants and equivalent posts.

In all 260 stipendiary graduates have been absorbed in the scale

A of Rs. 960-1760, 320 candidates in the scale of Rs. 1040-1750, 164
in the scale of Rs. 1190-2200 and 17 in the scale of Rs. 1280-2450.
About 466 S.Gs. possessing B.Ed. qualification have been spon-
sored for the posts of High School Teachers. Several S. Gs., senior
B to the petitioners, are now working in the post of second division
assistants and/or equivalent posts. Five thousand more stipendiary
graduates are still remaining unabsorbed in group 'C' and they are
the petitioners in this Court.

C The order dated 24.7.1990 made by this Court mainly provided
absorption of S.Gs. in group 'C' posts. Subsequently, however, the
counsel for the S.Gs. got the word "graduate" inserted in the said
order and on that basis they are now claiming that all of them must
be absorbed in the first grade assistant posts or equivalent posts
alone - and not in other lower posts.

D The following statement being quite relevant is reproduced from the
affidavit :

E The Government have filed an affidavit stating that there were
3691 vacancies at the time of filing the affidavit. But it was the total
vacancy i.e. 100% of the vacant posts in all the categories under
group 'C' containing 8 categories. Whereas the percentage of the
posts reserved for the stipendiary graduates as per Karnataka Civil
Service (Spl.) Rules, 1987, is only 40%. Further the vacancy posi-
F tion mention by the petitioner includes all (100%) vacancies in
Group A, B, C & D. If the 40% of the Direct Recruitment
vacancies in only Group 'C' Posts is taken up the vacancy available
to accommodate the stipendiary graduates as per Karnataka Civil
Services (Special) Rules 1987, is negligible. Hence, the claim of
the petitioner that they can be immediately absorbed is not main-
tainable.

G In pursuance of the order of this Court all the five thousand
S.Gs. have been absorbed in Government service with effect from
1.9.1991 vide Government order No. SWL-106-ECS-89 dated
17.8.1991 and 5.9.1991. If all these five thousand S.Gs. are to be
absorbed in group 'C' posts, it will choke all the available vacancies
for the several coming years. It will also affect the promotional
H chances of the regularly appointed persons and the opportunity to

apply and compete for the said posts to those eligible to apply A
therefore for direct recruitment. The orders passed by this Court
are creating several difficulties in the way of the Government and,
therefore, required to be modified.

It is true that the stipendiary graduates employment scheme was B
evolved to provide some relief to unemployed graduates, but - as rightly
emphasised by my learned brother Sahai, J. - this concern cannot be
carried to the extent of violating the provisions of the Constitution. Any
scheme framed by the State, even for achieving laudable purposes, shall C
have to conform to the commands of the Constitution. One can atleast
understand the 1982 rules as they were issued originally - not that we are
pronouncing them as valid. They contemplated absorption of stipendiary
graduates in group 'C' services, to a limited extent, after processing them
through and on the basis of a competitive examination held by the Public
Service Commission. But the amendments made to these rules in the year D
1987 are extremely difficult to understand or appreciate. By these amend-
ments, the requirement of competitive examination to be held by Public
Service Commission was done away with, which meant that these persons
could be absorbed straightaway in group 'C' services on the basis of their
seniority. Group 'C' service comprises of I and II division assistants and
various other posts of equal grade. The ordinary mode of recruitment to
these posts is by selection by the Public Service Commission - or where E
consultation with the Public Service Commission is dispensed with, by the
appropriate authority in accordance with the prescribed procedure. In-
variably, a public notice is issued giving an opportunity to all eligible
persons to appear and compete for the selection. (Of course, the public
notice may not be necessary where the candidates are called for from the F
employment exchange since such procedure has been held to be consistent
with Articles 14 and 16.) The 1982 Rules took away half the vacancies
meant for direct recruitment and reserved them for stipendiary graduates
and 'local candidates'. The 1987 Amendments made the position worse by
removing even the fig-leaf of a competitive examination to be conducted
by the Public Service Commission. Now, they were to be filled on the basis G
of seniority *inter se* of the stipendiary graduates without any test or inter-
view. The number of these stipendiary graduates runs into several
thousands. Absorption of this large body of persons is likely to take several
years, thus choking - indeed, closing - the normal channels of recruitment.
All this in the context of the fact, it may be reiterated, that the initial H

- A appointment of these stipendiary graduates was without any selection or interview but on an *ad hoc* basis. This situation was further compounded beyond redemption by the misleading particulars furnished by the State of Karnataka to this Court while passing the earlier orders. The State of Karnataka furnished the *total vacancy position in group 'C' services* instead of furnishing the number of vacancies which according to the 1982 Rules could be filled by stipendiary graduates i.e., 40% of the vacancies reserved for direct recruitment. Atleast, that is what the State now says. Believing in the information so furnished wrongly, this Court passed the aforesaid orders. The orders based upon the misleading and wrong information have resulted in directing the filling up of all vacancies in group 'C' Services with the stipendiary graduates instead of confining them to 40% of the vacancies reserved for direct recruitment. The failure of justice and infraction of law is too eloquent to require any emphasis. Stipendiary graduates were not government servants. They were mere stipendiaries. They were never appointed to any service under the State. The manner of their induction into government service *en masse, to the extent of all the available vacancies or even to the extent of vacancies reserved for direct recruitment - is likely to take several years which means that others including fresh graduates can never expect to get an opportunity to apply or compete for these vacancies*. Similarly, persons in the lower grades, who are entitled to be promoted to these posts are also deprived of their opportunity for a long number of years to come.
- E Such a course can not be treated as valid unless there are extraordinary and exceptional circumstances to sustain it. None are present here except an unseemly anxiety on the part of the State to accommodate these persons. It needs equally to be emphasised that these stipendiary graduates were sought to be absorbed into Government service straightaway at the level of I and II division assistants, when posts of a lower status (in group 'D') were also available. Indeed, the claim of these persons at present, on the basis of the orders of this Court, is that they should be absorbed straightaway in grade I assistants category. The ambition of these persons is truly limitless.
- F
- G The question now arises what is the proper course to be adopted by this Court in the circumstances? Would it be just, proper and consistent with law to direct the Government to absorb all the remaining five thousand S.Gs. in regular group 'C' Government service and that too at the level of first grade assistants or equivalent posts or would it be just and
- H appropriate to modify and revise the earlier orders, vitiated as they are by

the wrong and misleading information furnished by the Government. After giving my earnest consideration, I am of the opinion that this Court ought to follow the second course and not the first one. As pointed out hereinabove, the S.Gs. were appointed without any test or process of selection - i.e., on an *ad hoc* basis. The original scheme was a measure of unemployment relief; the idea was to provide them a small amount of Rs. 150 by way of stipend till they get employed in Government service or elsewhere. The stipend of Rs. 150 was raised from time to time to Rs. 640. Under the orders of this Court it has been raised to Rs. 960. The number of these persons runs into several thousands. Even today about five thousand persons remain unabsorbed in regular Government service. In pursuance of the orders of this Court, the Government appears to have 'absorbed' them in Government service but paying them only the stipend of Rs. 960 per month. These are all the persons, it is relevant to remember, who either did not apply or appear in regular selection for group 'C' posts or having applied and appeared for regular selection for group 'C' posts, they could not be selected. And now they are all directed to be absorbed immediately in group 'C' service and that too at the level of first grade assistants - highest category in group 'C'. The consequences flowing from such direction are pretty grave. Such absorption will take a long number of years - unless of course the Government is compelled to create five thousand posts at once, which is bound to create serious consequences for the Administration and its finances. Even if these persons were absorbed at once, they will block the chances of others for many many years. The direction to absorb them at the level of first grade assistants, it is relevant to notice, brings about a discrimination even as between the S.Gs. themselves. As stated hereinbefore, a good number of S.Gs. were absorbed as second grade assistants on the basis of selection by P.S.C. between the years 1982 and 1987. Even after 1987, some of them have been absorbed in the second grade assistant and equivalent categories on the basis of seniority. Now the remaining S.Gs. who are admittedly juniors to those already absorbed in second grade assistant category are directed to be absorbed in the grade of first grade assistants. These juniors will thus be stealing a march over their seniors. Above all, the directions given by this Court are vitiated on account of the fact that they are based upon incorrect and misleading particulars furnished by the Government at the earlier stages of the litigation. The directions now made pertain not merely to 40% of the vacancies to be filled by direct recruitment as provided by Rules but

A to all the available vacancies in all the group 'C' posts. It is evident that insistence upon compliance with the orders of this Court made in the above circumstances would lead to serious problems besides being inconsistent with law and the constitutional rights of others.

B It is true that the Government is mainly responsible for the above
C unfortunate state of affairs but that should not desist this Court from
D revising and reviewing the said orders which have such serious consequences. It is one thing to punish the person who furnished false particulars and
E altogether a different thing to refuse to revise and review the orders when the correct situation and its likely consequences are brought to the notice
F of Court. It is the duty of the Court to rectify, revise and re-call its orders as and when it is brought to its notice that certain of its orders were passed
G on a wrong or mistaken assumption of facts and that implementation of those orders would have serious consequences. An act of Court should
H prejudice none. "Of all these things respecting which learned men dispute", said *Cicero*, "there is none more important than clearly to understand that we are born for justice and that right is founded not in opinion but in nature." This very idea was echoed by James Madison (*The Federalist* No. 51 page 352). He said : "Justice is the end of government. It is the end of the Civil Society. It ever has been and ever will be pursued, until it be obtained or until liberty be lost in the pursuit."

E There is yet another circumstance. The question is, whether this Court should enforce the 1982 Rules as amended in 1987. The 1987 amendments have the effect of smuggling in thousands of persons into Government service by a back-door - without complying with the requirements of Articles 14 and 16. One can understand the rules as framed in 1982, but it is extremely difficult to appreciate or understand the reasons for which the 1987 amendment was brought in. The question, to repeat, is whether this Court should extend its arm - its discretionary power under Articles 136 and 32, as the case may be, to implement such unconstitutional Rules and help these persons to gain a back-door entry into Government service - that too at the highest level in group 'C' services straightaway. It is true that no one has questioned the 1987 amendments. The petitioners do not question them because they are advantageous to them; they want them to be implemented. The Government can not and does not question them because it has itself made them. The parties who are affected namely
H the persons awaiting employment under the government probably do not

even know what is happening. But where an unconstitutional provision of such vast impact is brought to the notice of this Court and it is asked to enforce it, it is the constitutional duty of this Court to refuse to do so. I am, therefore, of the firm opinion that this Court should refuse to make any orders directing implementation of the Rules as amended in 1987. The proper direction would be to direct the absorption of the S.Gs. in accordance with the 1982 rules as originally framed (i.e., without reference to the 1987 Amendments) and to the extent provided therein. Of course those S.Gs. who have been absorbed already into group 'C' service in accordance with the said rules will remain unaffected since disturbing them, without notice to them and in view of all the circumstances of this case, may not be advisable. All those S.Gs. who have not so far been absorbed in group 'C' service shall continue in the present status, drawing Rs. 960 per month. They will be entitled for absorption in group 'C' posts only in accordance with the 1982 Rules, *without* reference to the 1987 Amendments.

According to the directions now contained in the judgment of my learned brother Sahai, J., the direction is to absorb these persons in the second grade assistant's category only which means that earlier orders of this court have been revised. In the place of earlier direction to absorb them in first grade assistant's category, the direction now given limits them to second grade assistant's category only. In my respectful opinion, this limited review does not meet the end of justice or of the law. It may not be permissible for the court to load the administration with five thousand persons at a stretch. The practical and pragmatic considerations militate against such direction, in my humble opinion.

The earlier orders of this Court shall stand revised and modified in the above terms. The Contempt Petitions are disposed of as unnecessary. No costs.

ORDER

For reasons given by the majority of us the application filed by the State is allowed and the special leave petitions, writ petitions and the contempt applications are disposed of in terms of the directions contained in the order. No costs.

R.A.

Matters disposed of.