

dent of Police, Sangrur passed the orders of compulsory retirement of the appellant on his own and that the relevant consideration as set out in the Punjab Civil Services (Premature Retirement) Rules, 1975 were taken into consideration at the time of passing the impugned order. This rule provides that "the appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right by giving an employee prior notice in writing to retire that employee on the date on which he completes twenty five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice."

7. Mr. S. K. Bagga, learned counsel for the respondents urged that the appellant was compulsorily retired in public interest. Public interest is an unruly horse and once it is alleged that the order was a device to circumvent the decision of this Court, it was obligatory upon the respondents to explain why it became necessary to retire the appellant in public interest. It is true that dead wood has to be weeded out but that itself should not become a cloak to wreak vengeance. The officer who passed the order of compulsory retirement has not filed his counter-affidavit explaining the circumstances in which he considered it in public interest to compulsorily retire the appellant. Mr. S. S. Bains, who has filed the counter-affidavit claims to have no knowledge of the circumstances which necessitated compulsory retirement of the appellant. It is in this background and keeping in view the fact that while the appellant was reinstated on February 11, 1980 in the forenoon, on the same day in the afternoon he was compulsorily retired from service. In effect the decision to reinstate was taken simultaneously with the decision to retire him. It is in the backdrop of these facts which left us agitated that we called upon the respondents to disclose the file in which administrative decision was taken. It may be mentioned that no privilege is claimed. The file is not shown on the specious plea that no such file is maintained. It is conceded in para 5 of the counter-affidavit that no annual confidential reports are maintained in the case of constables. This left us completely guessing as to what must have weighed with the competent authority to pass the impugned order of retirement which is a bald order merely reciting the

words of the relevant rule. The order of compulsory retirement affects the livelihood of the person in whose respect the order is made and it cannot be left to the guess work to decide what prompted the making of such an order. We are disinclined to accept the submission that no file was maintained. In the absence of any record and the annual confidential reports, it must be confessed that there was no material before the competent authority to pass the impugned order. When in view of the judgment of this Court, it became obligatory to reinstate the appellant in service, the power to order compulsory retirement was exercised not in public interest but to make a pretence of reinstatement and to get rid of the appellant. The High Court, in our opinion, was clearly in error in dismissing such a petition in limine. Accordingly, this appeal succeeds and is allowed and the order of compulsorily retiring the appellant from service dated February 11, 1980 is quashed and set aside. If the appellant has not reached the age of superannuation, he must be reinstated in service. If he had reached the age of superannuation, he should be paid the salary, wages and other terminal benefits for the period February 11, 1980 till the date of his superannuation. The respondents shall pay the costs of the appellant quantified at Rs. 1,000/-.

Appeal allowed.

✓ 1984 LAB. I. C. 623

(MADRAS HIGH COURT)

GOKULAKRISHNAN AND

NAINAR SUNDARAM, JJ.

Madras Dock Labour Board, Madras.
Appellant v. Young Entrepreneurs Guild
and another, Respondents.

W. A. No. 27 of 1983, D/- 2-3-1983.

(A) Dock Workers (Regulation of Employment) Act (9 of 1948), S. 4 (1) — Madras Unregistered Dock Workers (Regulation of Employment) Scheme (1957), Cl. 8 (3) — Listing of employers of Dock Workers — Application by petitioner for enlistment as dock employer, on ground that he had prospects of securing a contract for chipping and painting work in Madras Port — Finding of Dock Labour Board, on review of employment potential for chipping and painting workers, that there was no prospect for new enlistment of dock employers — Conse-

LA/AB/F820/83/HR/BDB

quent refusal by Board to enlist petitioner as dock employer — Not illegal. W. P. No. 10144 of 1982, D/- 5-1-1983 (Mad), Reversed. (Paras 9, 10)

(B) Dock Workers (Regulation of Employment) Act (9 of 1948), S. 4 (1) — Madras Unregistered Dock Workers (Regulation of Employment) Scheme (1957), Cl. 8 (3) — Discretionary power conferred on Madras Dock Labour Board under Cl. 8 (3) in matter of listing of employers of dock workers — Not unguided or uncontrolled as to be violative of Art. 245 of the Constitution. (Constitution of India, Art. 245).

The discretionary power conferred upon the Madras Dock Labour Board under cl. 8 (3) of the Madras Unregistered Dock Workers (Regulation of Employment) Scheme, in the matter of listing of employers of dock workers, is not unguided or uncontrolled as to be violative of Art. 245 of the Constitution. It is well settled that though a particular provision does not explicitly by its terms expatiate the rules and the norms for the exercise of the power, there may be adequate and sufficient guidance in the other provisions and such a guidance could also be gathered from the policy and the purpose of the enactment as a whole. The Dock Workers (Regulation of Employment) Act has got a purpose to serve and to achieve the purpose, the scheme got framed for the Port of Madras. The policy and the purpose have been well brought out in the various clauses in the scheme, and hence the Madras Dock Labour Board has to act, keeping in mind the purpose and the policy behind the scheme, and the lack of delineation, in so many terms, of the norms for exercise of such power need not necessarily make the provision under which such power is exercised as violative of the constitutional provisions. The bare possibility that the power may be abused is no ground for invalidating the provision. (Para 12)

A. L. Somayaji, for Appellant; Mrs. Ammu Balachandran, for Respondents.

NAINAR SUNDARAM, J.:— This appeal is directed against the order of Padmanabhan, J. in W. P. 10144 of 1982. The appellant herein is the second respondent; the first respondent herein is the petitioner and the second respondent herein is the first respondent in the writ petition. We prefer to refer to the parties as they stood arrayed in the writ petition. The petitioner prayed for the issue of a writ of certiorified mandamus,

directing the respondents to register the petitioner as an employer under the Madras Unregistered Dock Workers (Regulation of Employment) Scheme 1957, hereinafter referred to as the Scheme. The petitioner addressed a letter on 23-9-1982 to the Secretary of the second respondent to enlist them as a dock employer under the Scheme. The petitioner got a letter from one Mogul Line Ltd. on 30-9-1982, stating that the offer of the petitioner for carrying out chipping and painting jobs in the Madras Port Trust will be considered provided they are registered with the Madras Dock Labour Board. The petitioner addressed a letter on 30-10-1982, to the Deputy Chairman of the second respondent, stating that they are in a position to get substantial work of chipping and painting of various shipping companies and they also enclosed a copy of the letter received from Mogul Line Ltd., and requested for registration. The petitioner followed this up with another letter addressed to the first respondent on 1-11-1982. Ultimately, on 20-11-1982, the petitioner received a communication from the second respondent, stating that at present there is no adequate chipping and painting work in the Port and the existing number of chipping and painting workers are being engaged for other works and in the said circumstances it is not proposed to list any new employer for chipping and painting works. Aggrieved by this refusal to enlist them as a dock employer under the Scheme, the petitioner approached this court with the above writ petition.

2. Padmanabhan, J. who heard the matter, considered cl. 8 of the Scheme and in particular sub-cl. (3) thereof and the learned Judge found that this sub-clause would not mean that an absolute discretion is conferred on the second respondent to reject the application of an employer to be entitled. The learned Judge also took into consideration the fact that the petitioner is having the prospects of obtaining the contract from Mogul Line Ltd., for chipping and painting work and held that in this view, the reasons given in the communication of the second respondent dated 20-11-1982 cannot be accepted. The learned Judge further opining that the petitioner had only sought a registration and not employment, held that the communication of the second respondent dated 20-11-1982 cannot be sustained. In this view,

the learned Judge allowed the writ petition. The learned Judge also considered the question as to whether the petitioner should exhaust the alternative remedy of an appeal to the Central Government as provided under cl. 15 (2) of the Scheme and held that in view of the exigencies of the case, the alternative remedy need not be put against the petitioner.

3. Mr. A. L. Somayaji, learned counsel appearing for the second respondent, urges two aspects, coveting interference in appeal. One is that the second respondent was not enabled to file a detailed counter-affidavit in the writ petition dealing with the scope of the Scheme as well as the implications thereof, impressing upon the learned Judge that the second respondent was justified in declining to enlist the petitioner as a dock employer under the Scheme and the second respondent took into consideration all the relevant factors and the matter was within the purview of the second respondent to do so as enjoined by sub-clause (3) of clause 8 of the Scheme. It is admitted that while an interlocutory application W. M. P. 15264 of 1982 which was one for direction to the respondents to temporarily register the petitioner under the Scheme, came up for consideration the writ petition itself has been taken up for final disposal and it is not disputed before us that the second respondent did not have the time to file a detailed counter-affidavit in the writ petition in the said circumstances. But, this need not deter us from considering the relevant aspects and we permitted the learned counsel to argue the matter on all aspects.

4. The Scheme as such came to be formulated pursuant to the powers conferred by sub-sec. (1) of Sec. 4 of the Dock Workers (Regulation of Employment) Act 1948 (Act 9 of 1948), hereinafter referred to as the Act. The very Preamble sets out the policy behind the Act, and that is, the expediency to provide for regulating the employment of dock workers. Section 3 (1) of the Act states that provision may be made by a Scheme for the registration of dock workers and employers with a view to ensuring greater regularity of employment and for regulating the employment of dock workers, whether registered or not, in a port. Sub-sec. (2) (c) contemplates that such a scheme may provide

for regulating the recruitment and entry into the scheme of dock workers and the registration of dock workers and employers, including the maintenance of registers, the removal either temporarily or permanently, of names from the registers and the imposition of fees for registration. Though the entire Scheme is portent, we feel obliged to refer to some of the relevant clauses in the scheme for the purpose of appreciating the argument put forth on behalf of the second respondent that the second respondent acted within the scope and ambit of the Scheme and did consider it expedient and necessary to decline to enlist the petitioner and no exception could be taken to its decision.

5. Clause 4 deals with the functions of the Madras Dock Labour Board, which is defined as the 'Board' under the Scheme. Sub-clauses (b) and (c) of cl. 4 are relevant and they read as follows:

"The Board may with a view to regulating the employment of dock workers to whom this scheme applies take such measures as it may consider desirable including measures for —(a)..... (b) determining and keeping under review the number of listed employers and listed dock workers from time to time on the lists and the increase or reduction to be made in the number in any such list;

(c) keeping and maintaining a list of dock employers, entering or re-entering therein the name of any dock employer and where circumstances so require, removing from the list, the name of any dock employer, either at his own request or in accordance with the provisions of this Scheme".

6. Clause 4-AA sets forth the responsibilities and duties of the Board in meeting and cl. (c) thereof makes the Board in meeting responsible for considering listing of new employers on the recommendations of the Chairman. Clause 6-A speaks about the constitution of the administrative body and Cl. 6-B deals with the functions of the administrative body. We can refer to sub-cl. (a), (b), (c) and (d) of Cl. 6-B and they read as follows —

"Without prejudice to the powers and functions of the Board, the Chairman and the Deputy Chairman, the Administrative Body shall be responsible for the administration of this Scheme and in particular be responsible for —

(a) keeping, adjusting and maintaining a list of listed employers entering or re-entering therein the name of any listed employer and where circumstances so require, removing from the list the name of any listed employer either at his own request or in accordance with the provisions of the Scheme;

(b) keeping, adjusting and maintaining from time to time such lists, registers or records as may be necessary, of listed workers including any lists, registers or records of listed workers who are temporarily not available for dock work and whose absence has been approved by the Administrative Body and where circumstances so require removing from any register, list or record the name of any listed worker either at his own request or in accordance with the provisions of this scheme;

(c) the employment and control of listed workers available for work when they are not otherwise employed in accordance with this scheme;

(d) the allocation of listed workers in the pools constituted under Cl. 9-A who are available for work to listed employ-
ers....."

Clause 8 deals with listing of employers of dock workers and it would suffice our purpose if sub-cl. (1) to (4) alone are extracted, which are as follows—

"8. Listing of employers of Dock workers : (1) The Board shall maintain a list of employers of dock workers to whom this scheme applies.

(2) Every person who, on the date of commencement of this Scheme, is an employer of dock workers to whom this scheme applies, and who applies to the Board in this behalf on or before such date as may be fixed by the Board for this purpose shall be entitled to be listed under this Scheme.

Provided that, no employer other than an employer of chipping and painting workers shall be listed who has not been licensed by the Madras Port Trust under its bye-laws.

(3) The Board may, if it considers expedient and necessary to do so, list employers other than those covered by sub-cl. (2).

(4) Where the Board refuses to list an employer, it shall communicate to the person concerned a copy of the order together with the reasons therefor."

7. Clause 9-A deals with classification, of workers in the list, Cl. 11 deals with

obligations of listed employers. Cl. 13 speaks about the restriction on employment. Clause 13-B deals with guaranteed minimum wages in a month.

8. The array of the clauses and the implications thereof leave no room for doubt in our mind that the question of determining and keeping under review the number of listed employers from time to time in the list and increase or reduction to be made in the number in such list, are purely within the ambit of the powers of the second respondent and it alone has to consider the expediency and necessity of enlisting of dock employers under the Scheme. In the present case, the question of listing could arise only under sub-cl. (3) of Cl. 8, because listing under sub-cl. (2) is no longer available. Unless it is patently demonstrated that extraneous consideration weighed with the second respondent and that it had acted with mala fides and discrimination with reference to a particular applicant for enlisting, it is not possible for this court to substitute its own judgment and hold that it is expedient and necessary to enlist a particular employer. The counter-affidavit filed in the interlocutory application to a very great extent, sets forth the factors which weighed with the second respondent when it declined to enlist the petitioner. Paras 4, 5 and 6 need extraction and they run as follows—

"4. It is true that the writ petitioner requested the respondents herein to list them as a shipping and painting employer. The Dock Labour Board rejected the request in view of the fact that there is no chipping and painting work warranting the listing of additional employers. As a matter of fact, there is no sufficient chipping and painting work even to engage the workers of the already listed chipping and painting employers. Consequently the chipping and painting workers are deployed as shore workers as well as stevedore labour. The chipping and painting labour get only 3 days employment in a month in the chipping and painting unit.

5. The work of chipping and painting depends upon the whims and fancy of the Master of the vessel. Unlike the stevedoring work, the chipping and painting work is not regular. Most of the Masters of the vessel are disinclined to get the chipping and painting work done in Madras for want of dry-dock facility.

Very minor work of chipping and painting which cannot brook delay alone is done by the Masters of the vessel in the Madras Port. The details given below relating to the employment potential of the workers and the man shifts engaged by the chipping and painting employers for the period from 1-6-1982 to 31-10-1982, will bear ample testimony to the bleak employment opportunity of chipping and painting labourers in the Madras Port.

	No. of man shifts employers
1. Messrs Allied Miller	15
2. Messrs. K. Damodara and Co.	521
3. Messrs. Pachaiappan	116
4. Messrs. India Shipping	529
5. Messrs. P. S. Sundaram	204

6. In fact many firms individuals like 1. M. Pariappan, Madras 13; (2) Ambekar Co-operative Labour Contract Society, (3) National Union of Sea Farers of India, Madras 1, (4) Seven Seas Agencies, Madras 13, (5) C. Hari Haran and individuals applied for listing as our employer of chipping and painting workers and the said requests could not be acceded to for the reasons referred to above. The Dock Labour Board is not obliged to list an employer unless they find as a result of review that there is increase in the volumes of any class of dock work".

9. From the above, it is clear that the employment potential for chipping and painting workers for the period from 1-6-1982 to 31-10-1982, has been assessed and the second respondent found no prospect of enlisting new dock employers. We find that no reply has been filed rebutting the allegations in the said counter affidavit and our attention has also not been drawn to any material which would go to demonstrate that the said averments are either false or not supported by factual and statistical data. It is not possible to state that in spite of the review done by the second respondent, which review shows that there is no prospect for new enlistment of dock employers, the second respondent should be compelled to increase the strength of the dock employers in the concerned list.

10. These features have been obviously omitted to be taken note of by the learned single Judge and the attention of the learned Judge has not been drawn to the various clauses in the scheme whereby the duty of determining and

keeping under review the number of listed employers, is cast upon the second respondent and the learned Judge, construing only sub-cl. (3) of Cl. 8, thought that no absolute discretion is conferred on the second respondent to reject an application of employer to be enlisted. Learned counsel for the second respondent frankly admitted that the second respondent could not do so for want of time to file a detailed counter affidavit. The fact that the petitioner is having a prospect of securing a contract for chipping and painting work need not necessarily be advanced as a factor to compel the second respondent to enlarge the list, especially when there are various other circumstances which have to weigh with it, as can be seen from the clauses in the scheme itself, and apparently, they did weigh with it.

11. Mrs. Ammu Balachandran, learned counsel for the petitioner, would submit that the second respondent has always got the discretion to enlarge the list and the second respondent need not have declined to enlist the petitioner and the reasons given in the communication dated 20-11-1982 are not convincing. We have found that factors which are relevant and which definitely bring conviction to our mind, have been taken into consideration by the second respondent and it is not possible to substitute our judgment for that of the second respondent on this question.

12. Mrs. Ammu Balachandran, learned counsel for the petitioner would submit that sub-cl. (3) of Cl. 8 of the Scheme confers upon the second respondent an unguided or uncontrolled discretionary power in the matter of listing. It is well settled that though a particular provision does not explicitly by its terms expatiate the rules and the norms for the exercise of the power, there may be adequate and sufficient guidance in the other provisions and such a guidance could also be gathered from the policy and the purpose of the enactment as a whole. The Act has got a purpose to serve and to achieve the purpose, the Scheme got framed for the Port of Madras. The policy and the purpose have been well brought out in the various clauses in the Scheme, and hence the second respondent has to act, keeping in mind the purpose and the policy behind the Scheme, and the lack of delineation, in so many terms, of the norms for exercise of such power need not neces-

sarily make the provision under which such power is exercised as violative of the Constitutional provisions. The bare possibility that the power may be abused is no ground for invalidating the provision. If, in a specific case, it is demonstrated that the authority has misused the power or arbitrarily declined to exercise the power in disregard of the purpose and policy behind the enactment, this Court will definitely strike down such exercise of power as offending the Constitutional provisions. On facts, we have found that such is not the case here.

13. The second aspect which Mr. A. L. Somayaji, learned counsel for the second respondent, wanted to urge is that Cl. 15 (2) of the Scheme provides for an alternative remedy and the petitioner having not exhausted the same and having given no convincing explanation for not resorting to the alternative remedy, this court ought not to have interfered in writ jurisdiction. We must also point out that Mrs. Ammu Balachandran, learned counsel for the petitioner, submitted that the alternative remedy pointed out is not an efficacious one and the matter requires consideration at the hands of this Court in exercise of its jurisdiction under Art. 226 of the Constitution. We have sustained the first submission urged by the learned counsel for the second respondent on merits and it is unnecessary for us to go into this question.

14. For reasons set out by us, we are not able to concur with the view of the learned Judge and this obliges us to interfere in appeal and accordingly this appeal is allowed; the order of Padmanabhan J. in W. P. 10144 of 1982 dated 5-1-1983 is set aside and the said writ petition will stand dismissed. The parties are directed to bear their respective costs throughout.

15. At this stage, Mrs. Ammu Balachandran, learned counsel for the petitioner, seeks leave of us to take up the matter to the Supreme Court. We do not find that the case involves any substantial question of law of general importance and we are also not of the opinion that any question arising in this case needs a decision from the Supreme Court. Hence, leave is refused.

Appeal allowed.

1984 LAB. I. C. 628
(KERALA HIGH COURT)
FULL BENCH

K. BHASKARAN, Ag. C. J.,
K. SUKUMARAN AND
V. BHASKARAN NAMPIAR, JJ.

Director of Postal Services (South) Kerala Circle, Trivandrum and another, Appellants v. K. R. B. Kaimal and another, Respondents.

W. A. Nos. 47 and 48 of 1979, D/-23-12-1983.

(A) Constitution of India, Art. 309, proviso — Central Civil Services (Temporary Service Rules), R. 5 — Temporary clerks of Post and Telegraph Department — Governed by R. 5 and not by Chapter V-A of Industrial Disputes Act — Their termination found to be illegal by High Court — On reinstatement, they were not entitled to invoke S. 33-C (2) of I. D. Act — Special rules framed under Art. 309 exclude provisions of Chapter V-A of I. D. Act. (1979) 1 Lab LJ 176 (Ker), Reversed. (i) Industrial Disputes Act (14 of 1947), S. 33-C (2) and Chap. V-A; (ii) *Maxims* — "Generalia specialibus non derogant"; (iii) Interpretation of Statutes).

Where on writ petitions, the termination of the temporary clerks of Post and Telegraph Department being illegal, the High Court set aside the orders of their termination and on reinstatement the Department allowed their claim of salary only for three years preceding the date of High Court's order, but the reinstated temporary clerks claimed salary for the entire period they were out of service and moved the Central Government Labour Court under S. 33-C (2), Industrial Disputes Act, for determination of the monetary benefits, due to them, it was held that the reinstated temporary clerks were not entitled to invoke S. 33-C (2), Industrial Disputes Act, and the Tribunal constituted under the Act had no jurisdiction to consider this claim. They were governed by R. 5, Central Civil Services (Temporary Service) Rules, 1965, and not by Chapter V-A of the Industrial Disputes Act. (1979) 1 Lab LJ 176 (Ker), Reversed. (Para 29)

The rights and liabilities of the temporary Government servants in the P and T Department are to be found in Central Civil Services (Temporary Ser-