

**बिहार सरकार**  
**राजस्व एवं भूमि सुधार विभाग**

प्रेषक,

सी० के० अनिल,  
प्रधान सचिव।

सेवा में,

सभी समाहर्ता,  
बिहार।

ई-मेल

पटना-15, दिनांक- 06-03-2026

**विषय :-** दिनांक-09.03.2026 (सोमवार) से राजस्व पदाधिकारियों द्वारा प्रस्तावित सामूहिक अवकाश (हड़ताल) पर जाने के आलोक में वैकल्पिक व्यवस्था के संबंध में।

**प्रसंग :-** राजस्व एवं भूमि सुधार विभाग, बिहार, पटना की अधिसूचना दिनांक-05.02.2026

महाशय,

उपर्युक्त विषय के संबंध में कहना है कि प्रासंगिक अधिसूचना से एक समिति का गठन किया गया था, जो राजस्व पदाधिकारियों के कतिपय माँगों के बारे में विशेषज्ञ समिति के रूप में दिनांक-31.03.2026 तक अनुशांसा सरकार को देने हेतु प्राधिकृत किया गया था। उक्त अवधि के पूर्व राजस्व पदाधिकारियों द्वारा पुनः दिनांक-09.03.2026 को सामूहिक अवकाश/हड़ताल में जाने का निर्णय लिया गया है। उक्त के आलोक में पूर्व की भाँती निम्नलिखित कार्यकारी व्यवस्था की जाए :-

(क) विभागीय पत्रांक-187(3)/रा० दिनांक 02.02.2026 के अनुरूप पूर्व में जो व्यवस्था की गई थी, उसी को लागू की जाए।

(ख) पूर्व निर्देशों की भाँती हड़ताल पर जाने वाले पदाधिकारियों से सभी सरकारी (Official) सामान विधिवत दिनांक-09.03.2026 के पूर्व DCLR के कार्यालय में/यदि प्रभार स्तर पर प्रखण्ड स्तर पर पदाधिकारियों को दी गई हो तो उसका प्रतिवेदन अपर समाहर्ता को पत्र द्वारा सूचित करेंगे।

(ग) राजस्व पदाधिकारी हड़ताल पर जाने हेतु स्वतंत्र हैं परन्तु T.K. Rangarajan बनाम Government of Tamil Nadu, AIR 2003 SC 3032 के अनुसार "There is no fundamental right to strike." यह Kameshwar Prasad बनाम बिहार राज्य में 1962 Suppl. 3 SCR 369" बिहार के लिए माननीय उच्चतम न्यायालय नियमन दिया जा चुका है। जो संविधान अनुच्छेद-141 के अनुसार Doctrine of precedent (stare decisis) के आलोक में बाध्यकारी एवं Non-Negotiable है।

(घ) बिहार सरकारी सेवक आचरण नियमावली, 1976 के अन्तर्गत नियम-8 के तहत सरकारी सेवकों द्वारा प्रदर्शन एवं हड़ताल प्रतिबंधित है।

(ङ) जनगणना अधिनियम-1948 की धारा-11 के अनुसार कोई भी जनगणना पदाधिकारी अपने कर्तव्य का पालन करने से मना नहीं कर सकता है और न ही उसकी उपेक्षा कर सकता है अर्थात् जनगणना कार्य से इनकार करना या कार्य में लापरवाही बरतना दण्डनीय है, जिससे हड़ताल या कार्य बाधित करना भी प्रतिबंधित माना जाता है।

(च) यह कि मुख्य सचिव, बिहार के पत्रांक-83, दिनांक-09.01.2026 के आलोक में प्रति सोमवार एवं शुक्रवार को सात निश्चय-3 के सातवें निश्चय Ease of Leaving के अनुपालन में अनिवार्य रूप से कार्यालय कक्ष में रहने का निर्देश प्राप्त होने के आलोक में सभी राजस्व पदाधिकारियों की सूक्ष्मता एवं Detailed उपस्थिति की समीक्षा करके राजस्व मुख्यालय (RHQ) को प्रतिवेदित किया जाए। उपस्थिति सरकारी मोबाईल पर Video Call पर किया जाना सुनिश्चित किया जाए।

(छ) दिनांक-09.03.2026 के संध्या 06 बजे सभी अनुपस्थित (हड़ताल पर) CO/RO की सूची मुख्यालय में अग्रसारित की जाए। ताकि वित्तीय वर्ष के अंतिम माह में जान बुझकर सरकारी कार्य में सुनियोजित दण्ड से अवरोध पैदा करने के उद्देश्य से राजस्व पदाधिकारियों के विरुद्ध विधिसम्मत कार्रवाई प्रारम्भ की जा सके।

अतः अनुरोध है कि अपने स्तर से वैकल्पिक व्यवस्था श्रृजित करें ताकि सामान्य जनमानस को राजस्व पदाधिकारियों के सामूहिक अवकाश का कोई प्रतिकूल असर न पड़े एवं सरकार के नितियों का निश्चित समय सारणी के अनुसार क्रियान्वयन किया जा सके।

अनु0-1. T.K. Rangarajan बनाम तमिलनाडु सरकार की प्रति

2- Kameshwar Prasad बनाम बिहार सरकार की प्रति

विश्वासभाजन  
06/03/2026  
(सी0 के0 ऑनल),  
प्रधान सचिव।

# Protection of Fundamental Rights for Government Servants: Kameshwar Prasad v. State of Bihar

Date: Feb 23, 1962



## Protection of Fundamental Rights for Government Servants: Kameshwar Prasad v. State of Bihar

### Introduction

The landmark case of **Kameshwar Prasad And Others v. State Of Bihar And Another (1962 INSC 67)** was adjudicated by the Supreme Court of India on February 22, 1962. The appellants, comprising government servants from Bihar, challenged the constitutional validity of Rule 4-A introduced in the Bihar Government Servants' Conduct Rules, 1956. This rule explicitly prohibited government servants from participating in any form of demonstration or strike related to their conditions of service. The central issue revolved around whether such restrictions violated the fundamental rights enshrined under Articles 19(1)(a), 19(1)(b), and 19(1)(c) of the Constitution of

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## Summary of the Judgment

The Patna High Court had initially upheld the validity of Rule 4-A, determining that the freedoms guaranteed under Articles 19(1)(a) and 19(1)(c) did not extend to the right to demonstrate or strike for government servants. However, upon appeal, the Supreme Court revisited the matter and found that while the prohibition on strikes could be upheld due to the absence of a fundamental right to strike, the blanket ban on demonstrations was unconstitutional. The Court emphasized that such a comprehensive prohibition infringed upon the fundamental rights to freedom of speech and expression and peaceful assembly. Consequently, the Supreme Court declared Rule 4-A unconstitutional in its entirety concerning demonstrations, while maintaining its validity regarding strikes.

### Analysis

### Precedents Cited

The Supreme Court, in its deliberation, referenced several pivotal cases that shaped its reasoning:

- **Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia (1960)**: This case was instrumental in defining the scope of "public order" under Articles 19(2) and 19(3), emphasizing a reasonable nexus between restricted speech and the maintenance of public order.



ently include the right to strike.

- **Ex Parte Curtis and United Public Workers v. Mitchell:** These American cases were discussed to contrast the approach towards restrictions on fundamental rights, although the Supreme Court ultimately considered them not directly applicable to Indian jurisprudence.
- **Balakotaiah v. Union of India:** This case was referenced to underline that specific provisions in the Constitution do not exclude general government servants from fundamental rights protections.

### Legal Reasoning

The Court's analysis hinged on interpreting the constitutional provisions in light of the facts presented:

- **Article 19(1)(a) & (b):** These articles guarantee the freedoms of speech and expression, and the right to assemble peaceably and without arms, respectively. The Court interpreted "demonstration" as a form of expression that could fall under these provisions.
- **Article 19(2) & (3):** These clauses allow the state to impose reasonable restrictions on the aforementioned freedoms in the interests of public order, among other reasons. The High Court had previously deemed the restrictions as reasonable, but the Supreme Court scrutinized the breadth of these restrictions.

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members of the armed forces. However

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that this does not broadly exclude all government servants from the protection of fundamental rights.

- The Court distinguished between specific service rules aimed at maintaining discipline and broad restrictions that impede fundamental freedoms. It emphasized that while certain limitations are necessary for the efficient functioning of government services, they must not unduly infringe upon constitutional rights.
- The absence of a fundamental right to strike was a crucial factor in upholding the prohibition on strikes, contrasting with the invalidation of the complete ban on demonstrations.

### Impact

This judgment had significant implications for:

- **Service Conduct Rules:** It established stringent parameters within which service rules must operate, ensuring they do not infringe upon fundamental rights unless exceptionally justified.
- **Balance between Public Order and Individual Rights:** The decision reinforced the necessity of maintaining a delicate balance between the state's interests in preserving public order and the individual's rights to freedom of expression and assembly.
- **Future Litigation:** The ruling set a precedent for challenging similar service rules nationwide, ensuring that government-im-



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fied that government servants are not entirely exempt from fundamental rights, thereby expanding the protective ambit of the Constitution.

### Complex Concepts Simplified

Understanding the intricacies of this judgment involves unpacking several legal concepts:

- **Public Order:** As defined by the Court, public order encompasses the maintenance of safety and tranquility in society. It does not pertain to minor local disturbances but rather to significant disruptions that threaten the state's stability.
- **Reasonable Restrictions:** These are limitations imposed on fundamental rights that are justified in the interest of broader societal needs, such as security and public order. However, these restrictions must be proportionate and not overly broad.
- **Article 33:** While it allows the state to restrict certain rights for specific groups like the armed forces, it does not grant carte blanche exclusion from fundamental rights protections for all government servants.
- **Demonstration as Expression:** The Court recognized demonstrations as a form of speech and expression, thus falling under the protections of Articles 19(1)(a) and 19(1)(b), provided they are peaceful and do not infringe upon public order.

ment servants in India. By invalidating the blanket prohibition on demonstrations, the Court underscored the principle that fundamental rights are not wholly abridged by holding a government position. However, the upholding of the prohibition on strikes affirmed that certain collective actions are not inherently protected under the Constitution. This nuanced approach ensures that while individual freedoms are safeguarded, the integrity and efficiency of governmental operations are not compromised. The judgment thus reinforces the essential democratic tenet that constitutional rights are universal, yet subject to reasonable and justified limitations in the interest of the greater good.

### Case Details

Kameshwar Prasad And Others v. State Of Bihar And Another

YEAR: 1962 COURT: SUPREME COURT OF INDIA

### Judge(s)

GAJENDRAGADKAR P.B.SARKAR A.K.WANCHOO K.N.GUPTA K.C. DASAYYANGAR N. RAJAGOPALA

### Advocates

B.P Maheshwari, Advocate.S.P Varma, Advocate.

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CASE NO.:  
Appeal (civil) 5556 of 2003

PETITIONER:  
T.K. Rangarajan

RESPONDENT:  
Vs.  
Government of Tamil Nadu & others

DATE OF JUDGMENT: 06/08/2003

BENCH:  
M.B. SHAH & AR LAKSHMANAN.

JUDGMENT:

J U D G M E N T

(Arising out of SLP (C) No.12224 of 2003)

WITH

WRIT PETITION (C) Nos. 298, 308 & 330 OF 2003  
& C.A. Nos. \_\_\_\_\_ OF 2003 ARISING OUT  
OF SLP (C) Nos.12577 & 13102 OF 2003.

Shah, J.

Leave granted.

Unprecedented action of the Tamil Nadu Government terminating the services of all employees who have resorted to strike for their demands was challenged before the High Court of Madras by filing writ petitions under Articles 226/227 of the Constitution. Learned Single Judge by interim order inter alia directed the State Government that suspension and dismissal of employees without conducting any enquiry be kept in abeyance until further orders and such employees be directed to resume duty. That interim order was challenged by the State Government by filing writ appeals. On behalf of Government employees, writ petitions were filed challenging the validity of the Tamil Nadu Essential Services Maintenance Act, 2002 and also the Tamil Nadu Ordinance No.3 of 2003.

The Division Bench of the High Court set aside the interim order and arrived at the conclusion that without exhausting the alternative remedy of approaching the Administrative Tribunal, writ petitions were not maintainable. It was pointed out to the Court that the total detentions were 2211, out of which 74 were ladies and only 165 male and 7 female personnel have so far been enlarged on bail which reveals pathetic condition of the arrestees. The arrestees were mainly clerks and subordinate staff. The Court, therefore, directed that those who were arrested and lodged in jails be released on bail.

That order is challenged by filing these appeals. For the same reliefs, writ petitions under Article 32 are also filed.

At the outset, it is to be reiterated that under Article 226 of the Constitution, the High Court is empowered to exercise its extra-ordinary jurisdiction to meet unprecedented extra-ordinary situation having no parallel. It is equally true that extra-ordinary powers are required to be sparingly used. The facts of the present case reveal that

this was most extra-ordinary case, which called for interference by the High Court, as the State Government had dismissed about two lacs employees for going on strike.

It is true that in *L. Chandra Kumar v. Union of India and others* [(1997) 3 SCC 261], this Court has held that it will not be open to the employees to directly approach the High Court even where the question of vires of the statutory legislation is challenged. However, this ratio is required to be appreciated in context of the question which was decided by this Court wherein it was sought to be contended that once the Tribunals are established under Article 323-A or Article 323B, jurisdiction of the High Court would be excluded. Negating the said contention, this Court made it clear that jurisdiction conferred upon the High Court under Article 226 of the Constitution is a part of inviolable basic structure of the Constitution and it cannot be said that such Tribunals are effective substitute of the High Courts in discharging powers of judicial review. It is also established principle that where there is an alternative, effective, efficacious remedy available under the law, the High Court would not exercise its extra-ordinary jurisdiction under Article 226 and that has been reiterated by holding that the litigants must first approach the Tribunals which act like courts of first instance in respect of the areas of law for which they have been constituted and therefore, it will not be open to the litigants to directly approach the High Court even where the question of vires of the statutory legislation is challenged.

In *L. Chandra Kumar's* case, the Court *inter alia* referred to and relied upon the case in *Bidi Supply Co. v. Union of India* [1956 SCR 267], wherein Bose, J. made the following observations: "The heart and core of a democracy lies in the judicial process, and that means independent and fearless Judges free from executive control brought up in judicial traditions and trained to judicial ways of working and thinking. The main bulwarks of liberty and freedom lie there and it is clear to me that uncontrolled powers of discrimination in matters that seriously affect the lives and properties of people cannot be left to executive or quasi-executive bodies even if they exercise quasi-judicial functions because they are then invested with an authority that even Parliament does not possess. Under the Constitution, Acts of Parliament are subject to judicial review particularly when they are said to infringe fundamental rights, therefore, if under the Constitution Parliament itself has not uncontrolled freedom of action, it is evident that it cannot invest lesser authorities with that power."

The Court further referred to the following observations from the decision in *Kesavananda Bharati v. State of Kerala* [(1973) 4 SCC 225] as under:

"77. From their conclusions, many of which have been extracted by us in toto, it appears that this Court has always considered the power of judicial review vested in the High Courts and in this Court under Articles 226 and 32 respectively, enabling legislative action to be subjected to the scrutiny of superior courts, to be integral to our constitutional scheme."

The Court further held:

"78. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential

feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

81. If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323-B of the Constitution."

Thereafter, the Court to emphasise that Administrative Tribunals are not functioning properly, quoted the observations with regard to the functioning of the Administrative Tribunals from the Malimath Committee's Report (1989-90), which are reproduced hereunder:â\200\224

"Functioning of Tribunals

8.63 Several tribunals are functioning in the country. Not all of them, however, have inspired confidence in the public mind. The reasons are not far to seek. The foremost is the lack of competence, objectivity and judicial approach. The next is their constitution, the power and method of appointment of personnel thereto, the inferior status and the casual method of working. The last is their actual composition; men of calibre are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory conditions of service, executive subordination in matters of administration and political interference in judicial functioning. For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such tribunals.

8.64 Even the experiment of setting up of the Administrative Tribunals under the Administrative Tribunals Act, 1985, has not been widely welcomed. Its members have been selected from all kinds of services including the Indian Police Service. The decision of the State Administrative Tribunals are not appealable except under Article 136 of the Constitution. On account of the heavy cost and remoteness of the forum, there is virtual negation of the right of appeal. This has led to denial of justice in many cases and consequential dissatisfaction. There appears to be a move in some of the States where they have been established for their abolition."

[It is to be stated that in Tamil Nadu, at present, the Administrative Tribunal is manned by only one man.]

Finally the Court held thus:â\200\224

"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of

Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier because of very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute.

Now coming to the question of right to strike  $\hat{a}$ 200\224 whether Fundamental, Statutory or Equitable/Moral Right  $\hat{a}$ 200\224 in our view, no such right exists with the government employees.

(A) There is no fundamental right to go on strike:--

Law on this subject is well settled and it has been repeatedly held by this Court that the employees have no fundamental right to resort to strike. In Kameshwar Prasad and others v. State of Bihar and another [(1962) Suppl. 3 SCR 369] this Court (C.B.) held that the rule in so far as it prohibited strikes was valid since there is no fundamental right to resort to strike.

In Radhey Shyam Sharma v. The Post Master General Central Circle, Nagpur [(1964) 7 SCR 403], the employees of Post and Telegraph Department of the Government went on strike from the midnight of July 11, 1960 throughout India and petitioner was on duty on that day. As he went on strike, in the departmental enquiry, penalty was imposed upon him. That was challenged before this Court. In that context, it was contended that Sections 3, 4 and 5 of the Essential Services Maintenance Ordinance No.1 of 1960 were

violative of fundamental rights guaranteed by clauses (a) and (b) of Article 19(1) of the Constitution. The Court (C.B.) considered the Ordinance and held that Sections 3, 4 and 5 of the said Ordinance did not violate the fundamental rights enshrined in Article 19(1) (a) and (b) of the Constitution. The Court further held that a perusal of Article 19(1) (a) shows that there is no fundamental right to strike and all that the Ordinance provided was with respect to any illegal strike. For this purpose, the Court relied upon the earlier decision in All India Bank Employees' Association v. National Industrial Tribunal & others [(1962) 3 SCR 269] wherein the Court (C.B.) specifically held that even very liberal interpretation of sub-clause (C) of clause (1) of Article 19 cannot lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise.

In Ex-Capt. Harish Uppal v. Union of India and Another [(2003) 2 SCC 45], the Court (C.B.) held that lawyers have no right to go on strike or give a call for boycott and even they cannot go on a token strike. The Court has specifically observed that for just or unjust cause, strike cannot be justified in the present-day situation. Take strike in any field, it can be easily realised that the weapon does more harm than any justice. Sufferer is the society & public at large.

In Communist Party of India (M) v. Bharat Kumar and others [(1998) 1 SCC 201], a three-Judge Bench of this Court approved the Full Bench decision of the Kerala High Court by holding thus: "There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement."

The relevant paragraph 17 of Kerala High Court judgment reads as under:

"17. No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoints, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it."

(B) There is no legal / statutory right to go on strike.

There is no statutory provision empowering the employees to

go on strike.

Further, there is prohibition to go on strike under the Tamil Nadu Government Servants Conduct Rules, 1973 (hereinafter referred to as "the Conduct Rules"). Rule 22 provides that "no Government servant shall engage himself in strike or in incitements thereto or in similar activities." Explanation to the said provision explains the term 'similar activities'. It states that "for the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called "hunger strike" for similar purposes. Rule 22-A provides that "no Government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any Government Office or inside any Office premises <sup>200\224</sup> (a) during office hours on any working day; and (b) outside office hours or on holidays, save with the prior permission of the head of the Department or head of office, as the case may be.

(C) There is no moral or equitable justification to go on strike.

Apart from statutory rights, Government employees cannot claim that they can take the society at ransom by going on strike. Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike enmasse, the entire administration comes to a grinding halt. In the case of strike by a teacher, entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by Doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a stand still; business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another. On occasions, public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike.

Further, Mr. K.K. Venugopal, learned senior counsel appearing for the State of Tamil Nadu also submitted that there are about 12 lacs Government employees in the State. Out of the total income from direct tax, approximately 90% of the amount is spent on the salary of the employees. Therefore, he rightly submits that in a Society where there is a large scale unemployment and number of qualified persons are eagerly waiting for employment in Government Departments or in public sector undertakings, strikes cannot be justified on any equitable ground.

We agree with the said submission. In the prevailing situation, apart from being conscious of rights, we have to be fully aware of our duties, responsibilities and effective methods for discharging the same. For redressing their grievances, instead of going on strike, if employees do some more work honestly, diligently and efficiently, such gesture would not only be appreciated by the authority but also by people at large. The reason being, in a democracy even though they are Government employees, they are part and parcel of governing body and owe duty to the Society.

We also agree that misconduct by the government employees is required to be dealt with in accordance with law. However, considering the gravity of the situation and the fact that on occasion, even if the employees are not prepared to agree with what is contended

by some leaders who encourage the strikes, they are forced to go on strikes for reasons beyond their control. Therefore, even though the provisions of the Act and the Rules are to be enforced, they are to be enforced after taking into consideration the situation and the capacity of the employees to resist. On occasion, there is tendency or compulsion to blindly follow the others. In this view of the matter, we had suggested to the learned senior counsel Mr. Venugopal that employees who went on strike may be reinstated in service and that suggestion was accepted by Mr. Venugopal after obtaining instructions from the State Government. Hence, on 24.7.2003, we had passed the following order:â\200\224

"Heard the learned counsel for the parties.

Mr. K.K. Venugopal, the learned senior counsel appearing for the State of Tamil Nadu after obtaining necessary instructions states that:

1. The State Government will re-instate all the government employees who are dismissed because they had gone on strike, except (i) 2,200 employees who had been arrested and (ii) employees against whom FIR had been lodged.

2. This reinstatement in service would be subject to unconditional apology as well as undertaking to the effect that employees would abide by Rule 22 of the Tamil Nadu Government Servants Conduct Rules 1973 which provides as under: -

"22. Strikes: No Government servant shall engage himself in strike or in incitements thereto or in similar activities."

Explanation â\200\224 For the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called "hunger strike" for similar purposes."

It is also stated that Government will proceed under the Disciplinary Rules only against those employees who had indulged in violence and who had incited the other employees to go on strike.

From 25th July such employees would be reinstated in service subject to their giving unconditional apology for resorting to strike and also an undertaking to the effect that in future he would abide by Rule 22.

He also states that for the employees who would be reinstated in service with regard to the period for which they remained absent, appropriate order would be passed by the State Government for regularizing their absent. However, this would not be treated as a break in service.

Ordered accordingly.

For further orders and directions list the matter on 31.7.2003."

On 31st, number of affidavits were filed contending that large

number of employees are not reinstated in service despite the assurance given by the State Government. Matter was adjourned at the request of learned counsel for the respondent for verification of the said contention. After verification, additional affidavit has been filed by Secretary to Government, Personnel and Administrative Reforms Department, Secretariat, Chennai, revealing the exact figures with regard to dismissed and reinstated employees. In paragraph 6, it has been stated as under:â\200\224

"6. The following details are submitted for reference of this Hon'ble Court:â\200\224

- |    |   |          |
|----|---|----------|
| 1. | Total number of Government servants dismissed as per Section 7 of TESMA and teachers of Aided Colleges suspended. | 1,70,241 |
| 2. | Total number reinstated so far, as per the statement made before this Hon'ble Court.                              | 1,56,106 |
| 3. | Number of employees and teachers not reinstated.  | 14,135   |

CATEGORIES OF EMPLOYEES AND GOVERNMENT TEACHERS WHO CANNOT CLAIM A RIGHT TO BE REINSTATED.

- |     |  |       |
|-----|--|-------|
| (a) | Government servants arrested.  | 2,211 |
| (b) | Secretariat staff for the reasons mentioned earlier.   | 2,215 |
| (c) | Officers holding higher position.  | 534   |
| (d) | Government servants (other than the Secretariat staff) involved in offences Under Section 5 or Section 5 read with Section 4 of TESMA. | 1,112 |

Total number of persons who cannot Claim a right to be reinstated. 6,072

REMAINING NUMBER OF EMPLOYEES WHOM THE STATE GOVERNMENT IS WILLING TO REINSTATE." 8,063

For the categories (b) and (c) i.e. Secretarial staff of 2215 and 534 officers holding higher positions, it is agreed and made clear that they would be treated as suspended instead of dismissed. Remaining 8063 employees, as stated above, will be reinstated in service (w.e.f. 25th July, 2003) on their tendering unconditional apology for resorting to strike and also an undertaking to abide by Rule 22 of Conduct Rules in future. He further makes a statement that with regard to the representations which are made or are to be made by the employees who are in category (a), (b), (c) and (d), the same would be considered by three retired High Court Judges to be named by the Chief Justice of the High Court of Madras. Each Judge would decide approximately representations of 2000 employees within a period of one month or thereabout from the date of allocation of representations. For this purpose, a convenient place for their office work and the secretarial staff would be made available to all the three Judges by the State Government within a period of seven days from today without fail. The concerned Judges would decide the representation of the employees without taking into consideration Section 7 of the Ordinance and as far as possible in accordance with the Conduct Rules and equity. Retired Judges to be paid honorarium at the rate of

Rs.50000/- per month. All the three Judges are requested to evolve a common procedure for disposing of the representations. The decision of the Judge on the representation would be binding to the State Government and the State Government would act in accordance with the same. However, if any of the employees is aggrieved, it would be open to such employee to challenge the same before an appropriate forum.

Finally, it is made clear that employees who are re-instated in service would take care in future in maintaining discipline as there is no question of having any fundamental, legal or equitable right to go on strike. The employees have to adopt other alternative methods for redressal of their grievances. For those employees who are not re-instated in service on the ground that FIRs are lodged against them or after holding any departmental enquiry penalty is imposed, it would be open to them to challenge the same before the Administrative Tribunal and the Tribunal would pass appropriate order including interim order within a period of two weeks from the date of filing of such application before it. It is unfortunate that the concerned authorities are not making the Administrative Tribunals under the Administrative Tribunal Act, 1985, functional and effective by appointing men of caliber. It is for the High Court to see that if the Administrative Tribunals are not functioning, justice should not be denied to the affected persons. In case, if the Administrative Tribunal is not functioning, it would be open to the employees to approach the High Court.

Lastly, we make it clear that we have not at all dealt with and considered the constitutional validity of Tamil Nadu Essential Services Maintenance Act, 2002 and the Tamil Nadu Ordinance No.3 of 2003 or interpretation of any of the provisions thereof, as the State Government has gracefully agreed to re-instate most of the employees who had gone on strike. For this, we appreciate the efforts made and the reasonable stand taken by the learned Counsel for the parties. Further, we have not dealt with the grievances of the employees against various orders issued by the State Government affecting their service benefits. We hope that Government would try to consider the same appropriately.

The Appeals and Writ Petitions are disposed of accordingly.

There shall be no order as to costs.

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