

U.P. GRAM PANCHAYAT ADHIKARI SANGH AND ORS.

v.

DAYA RAM SAROJ AND ORS.

DECEMBER 11, 2006

[H.K. SEMA AND P.K. BALASUBRAMANYAN, JJ.]

*Constitution of India—Articles 37, 40 and 243G—Constitution (Seventy-third Amendment) Act, 1992—U.P. Panchayat Raj Act, 1947—Sections 2(mm), 25, 25A & 34—Transfer of employees from State Departments to Gram Panchayats after amendemtn to State Act,—High Court dismissing Writ Petitions challenging the transfer holding that the employees are transferred only on deputation and that their services continue to remain with Parent Departments—State later ordered repatriation of some employees to their Parent Departments—Writ Petitions challenging repatriations were dismissed by High Court holding the earlier view—High Court, in another repatriation proceeding, held a contrary view Correctness of—Held, the principles of natural justice not followed by High Court before setting aside order of repatriation—Constitution (Seventy-third Amendment) Act, 1992 is not a basic feature of the Constitution and hence the amendment to the State Act does not violate basic structure of the Constitution—Employees are sent on deputation to Gram Panchayat and they continue to have lien with parent Departments under the State Act- Hence, order of repatriation upheld.*

State Government brought an amendment to U.P. Panchayat Raj Act, 1947 with new sections 25 and 25-A and transferred employees from some State Departments to Gram Panchayats (GPs) and re-designated them as Gram Panchayat Evam Vikas Adhikaris (GPVAs). Writ Petitions filed before High Court challenging the amendment to the Act and the subsequent transfers were dismissed. The High Court held that the employees continue to remain with their Parent Departments and are governed by their original service Rules; and that they are only on deputation to GPs.

The State Government later ordered repatriation of some of the employees back to the Parent Departments. Writ Petition challenging the repatriation before the High Court was dismissed on the same view as held earlier. A Special Leave Petition filed before this Court was also dismissed.

A The State, thereafter, ordered repatriation of tube-well operators and part-time tube-well operators to their Parent Departments. Writ Petitions were filed before the High Court challenging this repatriation also. The High Court allowed the Writ Petitions and set aside the order of repatriation on the ground that the facts are different in here. The High Court, further, held that the tube-well operators and part-time tube-well operators are inextricably connected with the cadre of GVPAs; and that the part-time tube-well operators shall be treated as permanent employees.

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C In appeal to this Court, the appellants, who supported repatriation to their Parent Department, contended that they were not parties before the High Court and hence the High Court has erred in setting aside the order of repatriation without following the principles of natural justice.

D The respondents-writ-petitioners, who opposed repatriation, contended that they were transferred as a consequence of transfer of Governmental functions to GPs by law as part of the Constitutional Scheme of devolution of powers as a permanent measure in order to enable them to function as units of self-government; that such devolution of powers by law is irreversible which cannot be undone either directly or indirectly by the Executive; that their transfer from Parent Department to the Gps was lock, stock and barrel and therefore; it is a complete and permanent transfer; that under section 34 of the Act; the property viz. the tube-wells were vested in the Gps and hence their transfer back to parent Department is impermissible; that they were not transferred on deputation; that reading sections 25 (a) and 25 (6) of the Act conjunctively; the State is empowered to transfer an employee only from one District/Panchayat to another District/ Panchayat and hence is incompetent to transfer them back to the parent Department.

F Disposing the appeals, the Court

G HELD: 1. Judicial discipline is self-discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a co-ordinate Bench of the same High Court is brought to the notice of the Bench, it is respected and is binding, subject to the right to take a different view or to doubt the correctness of the decision and the permissible course then often is to refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity.

[593-H; 594-A]

H *Kalyan Chandra Sarkar v. Rajesh Ranjan and Pappu Yadav and Anr.,*

[2005] 2 SCC 42, referred to.

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2. The High Court set aside the order of repatriation adversely affecting the appellants without their being brought on record as party respondents. They were neither a party before the Single Bench nor before the Division Bench. [594-H]

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*Ishwar Singh Ajai Kumar and Ors. v. Kuldeep Singh and Ors.*, [1995] Supp. 1 SCC 179; *B. Ramanjini and Ors. v. State of U.P. and Ors.*, [2002] 5 SCC 533 and *Bhagwanti v. Subordinate Services Selection Board* [1995] Supp. 2 SCC 663, referred to.

3. The decision of the High Court that the tube-well operators can legitimately expect to remain as multi-purpose Gram Panchayat employees unless the whole concept is totally done away with, is unsustainable. There is no pleading in the original petition about the legitimate expectation. [596-C]

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*National Building Construction Corporation v. S. Raghunathan and Ors.*, [1998] 7 SCC 66, referred to.

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4. The direction of the High Court to treat the part-time tube-well Operators as permanent employees under the same service conditions as the tube-well Operators runs in the teeth and the guidelines of the Constitution Bench Judgment of the Court. [596-E]

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*Secretary, State of Karnataka and Ors. v. Umadevi (3) and Ors.*, [2006] 4 SCC 1 CB, referred to.

1.5. The Constitution (Seventy-third Amendment) Act, 1992 was brought into force to give effect to one of the Directive Principles of State Policy, namely, Article 40 of the Constitution. Therefore, it cannot be said that the Amendment of the Constitution is the basic feature of the Constitution. Article 40 cannot be said to qualify as the basic feature of the Constitution. The Amendment came to the Constitution by way of amendment under Article 368 and, therefore, it cannot be said to be a basic feature of the Constitution. It is an enabling provision and the State is empowered either to eliminate, modify or cancel by exercising power under the enabling provision. Article 243G of the Constitution is an enabling provision. The enabling provisions are subject to the conditions as may be specified. Therefore, it is for the State Legislature to consider legal conditions and make the law accordingly. The devolution of exercise would also be open to the State to eliminate or modify. [597-B-E]

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A *M. Nagaraj and Ors. v. Union of India and Ors.*, [2006] 8 SCC 212; *Akhil Bharat Goseva sangh (3) v. State of A.P. and Ors.*, [2006] 4 SCC 162 and *Kuldip Nayar and Ors. v. Union of India and Ors.*, [2006] 7 SCC 1, referred to.

B 1.6. The contention of the respondents that their transfer from Irrigation Department to the Gram Panchayat was lock, stock and barrel and that there was a complete and permanent transfer is factually incorrect and misplaced. The facts clearly show that they had a lien with the Parent Department and they had gone back to the Parent Department. [598-B-C]

C *State of Mysore v. R.S. Kasi*, [1985] 2 SCC 110; *S.K. Saha v. Prem Prakash Agarwal*, [1994] 1 SCC 431; *Bhim Singh v. State of Haryana*, [1981] 2 SCC 673; *Jawaharlal Nehru University v. Dr. K. S. Jawatkar*, [1989] Supp. 1 SCC 679; *Commissioner of Police v. Gordhandas Bhanji*, [1952] SCR 135; *Comptroller and Auditor General of India v. K.S. Jagannathan*, [1986] 2 SCC 679 and *Terioat Estates (P) Ltd. v. U.T. Chandigarh*, [2004] 2 SCC 130, referred to.

D 1.7. Vesting of the property in the Gram Panchayat employed in Section 34 of the U.P. Panchayat Raj Act, 1947 would mean the property vested for the purpose of management and control. The property so vested is not fastened to the Panchayat and remains as its property. Public property, as defined under E the Act, refers to public building, park or garden or other place to which the public have or are permitted to have free access. A tube-well is handled by a technician - an expert hand. General public does not have free access to the tube-well. They can only have free access to the water drawn from the tube-well. Therefore, tube-well does not fall within the scope of public property referred to in Section 34 of the Act. [599-D-G]

F 1.8. From reading the provisions contained in Section 25 of the Act, the expression "Supervision and Control of the Gram Panchayat" only means to the extent of transfer of supervision to the Gram Panchayat. The expression "shall serve under the supervision and control of the Gram Panchayat" would G only mean supervisory powers and control of the Gram Panchayat. The overall control of the employee was still with the Government when Section 25(1) (b) of the Act unequivocally provides that they shall perform such duties as may be specified from time to time by the State Government. This would clearly show that they were working under the supervisory control of Gram Panchayat keeping lien with the Parent Department. It is clear that they were sent on H

deputation. Section 25 (1) (b) was clearly intended to safeguard the service conditions of the employees working under Gram Panchayats. [602-C, D, E]

1.9. By reading Section 25 of the Act as a whole and understanding the language employed therein, it is clear that the employees of various Departments were sent to Gram-Panchayats on deputation. They kept their lien in their respective Departments. This is also true to their own knowledge when they were sent to Gram Panchayats. This is also the reason why even a section of tube-well operators would like to go back to the Parent Department, who are equally aggrieved. They were sent to Gram Panchayats purely temporarily and on deputation till the Gram Panchayats themselves make appointments is also clear from the language employed in Section 25(2) of the Act. The expression "Transfer" employed in Section 25 of the Act is a misnomer. [603-D-E, E, B]

*Kunal Nanda v. Union of India and Anr.*, [2005] 5 SCC 362, referred to.

1.10. Section 25 (6) of the Act does not take away the general power of transfer as it is understood in the language used. What is intended by Section 25 (1) (b) is that apart from the general power of transfer as visualized in Section 25 (1) (a), the State Government will also be empowered to transfer the employee from one District to another District so long as he remains under the control of Panchayat. Section 25 (6), therefore, does not take away the general power of the Government of transfer/repatriation of the respondents from Gram Panchayats to the Parent Departments. [604-D-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1895 of 2006.

From the final Judgment and Order dated 8.2.2006 of the High Court of Judicature at Allahabad in S.A. No. 1009/2005.

WITH

C.A. Nos. 1896-1902, 3455, 3523/2006, 8302-8313, 8314-8315, 8316, 8317-8319/2004, 680, 1083, 1084, 2920/2005, 6090/2001 and C.P. (C)Nos. 114, 141, 2006.

Sunil Gupta, Rakesh Dwivedi, Ravindra Srivastava, N.C. Jain, Jawahar Lal Gupta, Dr. Rajeev Dhawan, Raju Ramachandran, Rajeev Dubey, Vivek Vishnoi, T. Mahipal, Kavin Gulati, Rashmi, Vibhakar Mishra, Kamal Pandey,

- A K.L. Janjani, Ejaz Maqbool, Taruna Singh, Jeevan Prakash, Vishvendra Verma, Ambhoj Kumar Sinha, Kamalendra Mishra, S.W.A. Qadri, Manoj Mishra, Gaurav Bhatia, Adarsh Upadhyay, Fuzail Khan, Kunal Verma, M. Mannan, Arjun Garg, Rajul Shrivastava, Mahalakshmi Pavani, G. Balaji (for M/s. Mahalakshmi Balaji & Co.), Amit Pawan, T.N. Rao, E.C. Agrawal, Mahesh Agrawal, Subhash Chandra Birla, Subrat Birla, Lalita Kaushik, Sanjay Jain, Mukesh Kumar, Vinay Arora, Manita Verma, S.K. Sinha, Sunil Kumar Jain, V.A. Syed Muhammad, Subramonium Prasad, Raghavendra S. Srivatsa, R. Gopalkrishnan, Jai Kishor Singh, Karun Mehta, Shail Kumar Dwivedi, G.V. Rao, Sunil Singh, Mukti Singh, Dr.Kailash Chand, T.T.K Deepak & Co., Praveen Swarup, Pramod, Dayal and T.V. George for the appearing parties.

C The Judgment of the Court was delivered by

H.K. SEMA, J. The Constitution (Seventy-third Amendment) Act, 1992 came into force on 24.4.1993. The said amendment was brought into force to give effect to one of the Directive Principles of State Policy - Article 40 of the Constitution of India, which directs the State to organise village panchayats as units of self-government. Article 40 reads as under:

D “*Organisation of village panchayats.* The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

E *PART IV* of the Constitution deals with ‘*Directive Principles of State Policy*’. Article 37 provides that the provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

F By 73rd Constitutional Amendment Article 243G was introduced in the Constitution of India. Article 243G reads as under:-

G “243G. *Powers, authority and responsibility of Panchayat.* Subject to the provisions of this Constitution the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, at the appropriate level, subject to such conditions as may be specified therein, with

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respect to

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.”

Article 243G, thus, endows the Panchyats with such power and authority as may be necessary to enable them to function as institutions of self government. Such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, subject to conditions as may be specified, with respect to the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule of the Constitution.

To implement the 73rd Constitution Amendment, the Uttar Pradesh Panchayat Raj Act 1947 (U.P. Act No. 26 of 1947) (hereinafter ‘the Act’) was amended and various Government Orders were passed. We shall advert to the amendment and orders passed thereunder at an appropriate time.

We have heard S/Sh. Sunil Gupta, P.N. Mishra, Ashok H. Desai, Rakesh Dwivedi, N.C. Jain, Jawahar Lal Gupta, L. Nageshwar Rao, M.N. Rao, P.P. Rao, A.K. Ganguli, Arun Jaitley, Mathai M. Paikdey Dr. Rajiv Dhawan, Raju Ramachandran, S.K. Kalia, Ravindra Srivastava, learned Senior advocates appearing for various appellants/respondents. We have also heard other learned counsel appearing for different parties.

#### *FACTS*

The facts in these appeals have a chequered history, which we may recite briefly. By Government Orders (GOs) dated 12.4.1999, 29.4.1999, 5.5.1999 and 27.5.1999 the services of the employees of eight Departments were transferred to the Gram Panchayats. The employees, so transferred, were to serve the Gram Panchayats (GPs) as multi-purpose workers or Gram Panchayat Evam Vikas Adhikaris (GPVAs). The aforesaid orders were challenged by filing Writ Petitions on the grounds of (i) arbitrariness and (ii) (executive) interference with the statutory rights of Government employees under Service Rules made under Article 309 of the Constitution. The basic grievance raised was that whereas in the Parent Department, they were governed by respective Service Rules framed under Article 309 of the Constitution, they were being

A transferred to Gram Panchayats where there were no Service Rules governing the service conditions and their services became insecure.

B On the aforesaid premise, the Govt. by an order dated 27.6.1999 brought up an Ordinance followed by Amendment Act (U.P. Act No. 27 of 1999). Sections 25 and 25-A of the U.P. Panchayat Raj Act 1947 were substituted by new Sections 25 and 25-A. Thereafter, by G.O. dated 30.6.1999, the G.Os. Dated 12.4.1999 and 29.4.1999 were revoked. On 1.7.1999, a G.O. was issued transferring the services of 55,548 employees from eight Departments, including Tube-well Operators (TOs), from Irrigation Department to the Gram Panchayats for providing Multi-purpose workers to the Gram Panchayats and by G.O. C dated 26.7.1999 they were re-designated as Gram Panchayat Vikas Adhikaris (GPVAs). They were put under the control of the Gram Panchayats while discharging the functions of their respective Departments.

D Aggrieved thereby, several Writ Petitions, including Writ Petition No. 33929 of 1999 were filed challenging the constitutional validity of new Section 25 and Section 25A and the G.O. dated 1.7.1999. The High Court, after hearing the parties, upheld the validity of the Section and G.O. dated 1.7.1999 and held that such employees, transferred as GPVAs, continue to remain Government Servants and to be governed by the original and respective Service Rules. It was held they are on deputation to Gram Panchayats.

E By G.O. dated 6.6.2001, 10,102 employees of two Departments, viz. Irrigation (Seenchpal Canal Div.-4782 employees) and Health (Male Health Workers - 5320 employees) were repatriated to their Parent Departments. Similarly, on 21.9.2001, 479 employees of Land Development and Water Resources Department were also repatriated/called back.

F The aforesaid Govt. Orders were challenged by one Krishna Kant Tewari by filing a Writ Petition in the High Court. The learned Single Judge by his order dated 8.1.2002 dismissed the Writ Petition and upheld the G.Os. dated 6.6.2001 and 21.9.2001. It was held inter-alia that their original cadres were not dead; they continued in their original cadres; they had been sent only on deputation to the GPs; they were merely re-designated as GPVAs; they had never been absorbed into any new cadre of GPVAs and they could always be repatriated to their original cadres.

G Aggrieved by the order of the learned Single Judge, an appeal was H preferred before the Division Bench being Special Appeal No. 94 of 2002, which was dismissed by the Division Bench on 28.1.2002.

Against the order of the Division Bench, a Special Leave Petition (C) A No. 7842 of 2002 was preferred before this Court, which was dismissed by a three Judge Bench of this Court on 26.4.2002, in which one of us (Sema, J.) was a party.

Legally speaking, the whole controversy about the status of transferred employees as to whether their service conditions were well protected under the Rules governing them in the Parent Department and whether they were permanently transferred to GPVAs or on deputation has been set at rest and it has become final. B

Thereafter, a G.O. dated 20.7.2004 was again issued for repatriation of the employees of three Departments, viz. Agriculture (5322 employees), Cane Development (2593 employees) and Rural Development (6906 employees) [totaling 14821 employees] to their Parent Departments. A Writ Petition was filed by Gauri Shanker challenging the G.O. dated 20.7.2004, which was dismissed by the learned Single Judge on 6.8.2004. Special Appeal against the order of the learned Single Judge Bench was dismissed by the Division Bench on 25.8.2004 holding that the transferred employees remained Government Servants and retained their lien on the posts in their original Departments and they could always be repatriated. Several similar Writ Petitions were also filed by Subhash Chandra Pande, Braj Kishore, Lal Sahab Singh, Gram Vikas Adhikari Sangh etc. challenging the G.O. dated 20.7.2004, which were dismissed on 20.8.2004, 15.9.2004, 18.9.2004 and 5.11.2004 respectively. C D E

The present controversy arises from the G.O. dated 19.7.2005 issued to re-transfer all Tube-well Operators and repatriate the Tube-well Operators as well as part-time Tube-well operators of Irrigation Department to their Parent Departments under the control of the Parent Departments. The Order reads: F

“No.3334/05-27-1-5-31-TW/2005

From,

Smt. Neera Yadav,  
Chief Secretary, Uttar Pradesh Shasan,

To,

1. All Divisional Commissioner, U.P.
2. All District Magistrate, U.P.

Irrigation Section-5 Lucknow Dated 19th July, 2005

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**A** Sub: Regarding transfer of all Tube Well Operators/ Part time Tube Well Operators back to Irrigation Department for proper operation and maintenance of state Tube Well who had been transferred to Gram Panchayat.

Dear Sir,

**B** In reference to the above subject the Government has taken following decisions with immediate effect for proper operation and maintenance of state Tube Wells transferred to Gram Panchayats:-

**C** (1) All State Tube Wells alongwith their assets may again be transferred to Irrigation Department from Gram Panchayats.

**D** (2) Tube Well Operators/ Part time Tubewell Operators of Irrigation Department, who were transferred as multipurpose employees along with tubewells on the post of Gram Panchayats Development Officer under the control of Gram Panchayats, may be again transferred alongwith tube-wells back to their substantive posts of tubewell operators/ part time tube-well operators and under the control of Irrigation Departments. To maintain the control of Gram Panchayats also on these employees their monthly attendance be sent to the concerning officer of the tubewell section by the Chairman of Water Management Committee.

**E** (3) Right of water distribution and management of tubewell be given to Water Management Committee constituted for tubewell but in case of any dispute the decision of Executive Engineer, tubewell section shall be final.

**F** (4) Entry of daily irrigation/delivery of water, daily filing of jamabandi register and distribution of irrigation fees along with equipments of tubewells, water management system, previous record list, pump efficiency chart, tube-well repair register and inspection register etc. shall be maintained and entries therein shall be made by the Tubewell operator-Part time tubewell operator, Tubewell mechanic/ Junior Engineer (Tubewell) as done before.

**G** (5) Maintenance expenditure of tubewell and income expenditure provision for establishment of tubewell operators/part time tubewell operator and electrical energy may be made from the grants of irrigation department as before.

**H**

It is requested to ensure compliance of aforesaid decision on priority basis. A

Yours,  
Sd/-  
(Neera Yadav)  
Chief Secretary” B

The aforesaid G.O. was challenged before the learned Single Judge by filing Civil Misc. Writ Petition No. 53127 of 2005. In the Writ Petition, inter-alia, the contentions raised in paragraphs 13 and 15 are as under:

“13. That vide Government Order/Notification dated 20.07.2004 a new cadre was created, which comprised of employees of three Departments i.e. Gram Panchayat Adhikari, Gram Vikas Adhikari (Social Welfare) and regular Tube-well Operators. After creation of new cadre, the petitioners ceased to be employees of Irrigation Department and their earlier post of Tube-well Operator stood abolished. The petitioner became Gram Panchayat Vikas Adhikari and they were posted in different Gram Panchayats to work as Gram Panchayat Vikas Adhikari. C D

15. That, from perusal of impugned circular dated 19.07.2005 it is obvious that while issuing circular dated 19.07.2005 the Chief Secretary to the Government of U.P. did not look at the earlier Government Order/Notification dated 20.07.2004 which was a decision taken by His Excellency, the Governor of U.P. by which a new cadre of Gram Panchayat Vikas Adhikari was created. The Chief Secretary totally ignoring the Government Order dated 20.07.2004 and provisions made therein which have statutory force, issued impugned circular without even referring or taking note of the Government Order dated 20.07.2004. Thus, the impugned circular is apparently without application of mind and arbitrary.” E F

The prayers made in the Writ Petition are as under:

- (A) “Issue a writ, order or direction in the nature of certiorari, quashing the impugned circular dated 19.7.2005, issued by the Chief Secretary, Government of U.P. (Annexure 3 to this writ petition). G
- (B) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties not to interfere in the working of the petitioners as Gram Panchayat Vikas Adhikari and to give H

- A the petitioners all consequential service benefits for which they are found entitled under law.
- (C) Issue any other and further suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- B (D) Award the cost of this petition to the petitioners."

A perusal of the Writ Petition, particularly paragraphs 13, 15, 16, 17, 18 and 21 discloses that the contention, raised by the petitioners that by G.O. dated 20.7.2004, a cadre had been created and after creating a new cadre, the writ petitioners cease to be employees of the Irrigation Department and the earlier posts of Tube-well Operators stood abolished and their order of repatriation, is bad. A contention has also been raised that the petitioners could not be treated as on deputation in the Gram Panchayats and they be treated as simple transferees from Irrigation Department to Gram Panchayat Department.

D As already noticed, the G.O. dated 20.7.2004 was questioned in *Gauri Shanker* (supra) by employees of three Departments, viz. Agriculture, Cane Development and Rural Development, which was dismissed by the learned Single Judge and affirmed by the Division Bench. In the aforesaid decision, the High Court was of the view that the transferred employees were actually on deputation to the Gram Panchayat retaining lien in their Parent Department and, therefore, the Government is competent to bring them back in their Parent Department, as and when the necessity arises.

F Keeping the aforesaid background in mind, we will now examine the merits of the Writ Petition filed by the petitioners/respondents herein questioning the legality of the G.O. dated 19.7.1999 and the impugned judgment of the Division Bench of the High Court.

G As already noticed, out of the employees of eight Departments sent to Gram Panchayats as multi-purpose workers, the employees of Five Departments had been repatriated by G.Os. 6.6.2001, 21.9.2001 and 20.7.2004, which were assailed by filing Writ Petitions. The writ petitions were dismissed by learned Single Judge, and the orders were affirmed by the Division Bench of the High Court which had attained finality as far as a co-ordinate Bench of the same High Court was concerned. Having noticed the aforesaid decision, the learned H counsel for the petitioners (respondents herein) fairly conceded before the

learned Single Judge and noted by the learned Single Judge as under: A

“..conceded and stated that the petitioners have a lien with the parent department and that the petition has not been filed on those grounds on which this Court had dismissed the earlier petitions.”

In fact the earlier judgments of the Co-ordinate Bench were taken note of by the Division Bench in its Judgment as under: B

“It is to be noted that the repatriated workers of the five departments did not take their repatriation lying down, those were challenged in the Courts of law; Writ Petitions were filed and in each and every case those workers have been unsuccessful. We make references to the cases of Krishna Kant Tripathi, 2002 (1) U.P.L.B.E.C. 256. Certain other references would also be found in one of the judgments under appeal delivered on the 11th of August, 2005 in Civil Misc. Writ Petition No. 53174 of 2005 and others. Reference should also be made to the main case of Gauri Shanker and others Vs. State of U.P. and others which is a decision given in Special Appeal No. 1005 of 2004. The judgment was delivered on the 25th of August, 2004. C  
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In each of these cases, the Court laid down that the repatriated workers have never lost their lien on their original posts in the different Government Departments and, as such their repatriation could not be challenged on any ground. It was held that they were doing the work as Gram Panchayat Vikas Adhikaris no more than as the deputationists. These decisions are binding decisions on us and we cannot in any manner decide differently on a point of law from the decisions given in these cases, we being also a Division Bench of two Judges. E  
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Having noticed as above, the learned Division Bench took a turn and set at naught the order passed by the Co-ordinate Bench on the ground that the facts are different.

We do not see any new facts that had arisen to enable the learned Division Bench to do so. G

#### *JUDICIAL DISCIPLINE*

Judicial discipline is self discipline. It is an inbuilt mechanism in the system itself. Judicial discipline demands that when the decision of a co- H

**A** ordinate Bench of the same High Court is brought to the notice of the Bench, it is respected and is binding, subject of course, to the right to take a different view or to doubt the correctness of the decision and the permissible course then often is to refer the question or the case to a larger Bench. This is the minimum discipline and decorum to be maintained by judicial fraternity.

**B** The doctrine of judicial discipline has been succinctly enunciated by the three Judge Bench of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav & Anr.*, [2005] 2 SCC 42 in paragraph 19 SCC as under:

**C** “The principles of res judicata and such analogous principles although are not applicable in a criminal proceeding, still the courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher court or a coordinate Bench must receive serious consideration at the hands of the court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the courts must give due weight to the grounds which weighed with the former or higher court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be reargued on the same grounds, as the same would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.”

**E** We have been taken through the entire impugned judgment of the High Court. The judgment is full of inconsistencies. The Division Bench of the High Court held that under Section 25 of the Act, there is no provision for creation of posts. In the same breadth the High Court also held that paragraph **F** 4 of the G.O. dated 20.7.2004 created a new cadre and revived a cadre in the Panchayat. By the same breadth, the High Court blew hot and cold.

**G** There is yet another reason as to why the impugned decision of the Division Bench of the High Court is unsustainable. Civil Appeal No. 1900 of 2006 was filed by the employees of Social Welfare Department against the judgment. They wanted to go back to their Parent Department. Civil Appeal **H** No. 1901 of 2006 was filed by Tube-well Operators against the same judgment. They also wanted to go back to their Parent Department, namely, Irrigation Department. By the impugned order, the High Court set aside the order of repatriation adversely affecting them without their being brought on record as party respondents. They were neither a party before the Single Bench

nor before the Division Bench.

A

Mr. Ashok H. Desai, learned Senior counsel appearing for the appellants in C.A. Nos. 1900 and 1901 of 2006 contended that in these cases the High Court has flouted the settled principles of natural justice by passing an order adversely affecting the appellants without hearing them.

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In *Ishwar Singh Ajai Kumar & Ors. v. Kuldeep Singh and Ors.*, [1995] Supp 1 SCC 179, this Court held as under:

“It is not disputed by the learned counsel for the parties that except Ishwar Singh, no other selected candidate was impleaded before the High Court. The selection and the appointments have been quashed entirely at their back. It is further stated that even Ishwar Singh, one of the selected candidates, who was a party, had not been served and as such was not heard by the High Court. We are of the view that the High Court was not justified in hearing the Writ Petition in the absence of the selected candidates especially when they had already been appointed. We, therefore, set aside the judgment of the High Court dated December 8, 1992 and send the case back for fresh decision after notice to the parties. The appeals are allowed in the above terms. No costs.”

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In *B. Ramanjini & Ors. v. State of U.P. & Ors.*, [2002] 5 SCC 533, this Court held in paragraph 19 SCC as under:

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“19. Selection process had commenced long back as early as in 1998 and it had been completed. The persons selected were appointed pursuant to the selections made and had been performing their duties. However, the selected candidates had not been impleaded as parties to the proceedings either in their individual capacity or in any representative capacity. In that view of the matter, the High Court ought not to have examined any of the questions raised before it in the proceedings initiated before it. The writ petition filed by the respondents concerned ought to have been dismissed which are more or less in the nature of a public interest litigation. It is not a case where those candidates who could not take part in the examination had not challenged the same nor was any public interest, as such, really involved in this matter. It is only in the process of selection and standardization of pass marks that some relaxation had been

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A given which was under attack. Therefore, the High Court ought not to have examined the matter at the instance of the petitioners, particularly in the absence of the parties before the Court whose substantial rights to hold office came to be vitally affected.”

B The same decision was reiterated in *Bhagwanti v. Subordinate Services Selection Board*, [1995] Supp 2 SCC 663.

C Another reason why the decision of the High Court is unsustainable is that the High Court held that the Tube-well Operators can legitimately expect to remain as multi-purpose Gram Panchayat employees unless the whole concept is totally done away with. There is no pleading in the original petition, not even a whisper, about the legitimate expectation. It appears that the High Court, at the appellate stage made observations which induced some of the appellants at the last minute to urge the ground of legitimate expectation which was permitted and on the basis of it such finding has been recorded. Such an approach is not permissible. See *National Building Construction Corporation v. S. Raghunathan & Ors.*, [1998] 7 SCC 66.

E The High Court has also directed that the part-time Tube-well Operators shall be treated as permanent employees under the same service conditions as the Tube-well Operators as far as practicable. This direction runs in the teeth and the guidelines of the Constitution Bench Judgment in *Secretary, State of Karnataka & Ors. v. UmaDevi (3) & Ors.*, [2006] 4 SCC 1. In fact, on this score alone the decision of the Division Bench of the High Court deserves to be set aside.

F We, now proceed to consider the contentions raised by the respective parties:

G The principle contention which appears to be common is that the Tube-well Operators were transferred as a consequence of transfer of Governmental functions inter-alia relating to minor irrigation, water management and watershed development etc. as part of the Constitutional Scheme of devolution of powers on Gram Panchayats by law as a permanent measure in order to enable them to function as units of self-government. It is argued that this is one of the basic features of the Constitution of India. The transfer of Government employees engaged in discharging the functions along with the tube-wells was the necessary consequence of the State Legislature transferring certain functions of the Government permanently to the Gram Panchayats to achieve

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the Constitutional goal. A sustained bureaucracy was sought to be created. Such devolution of powers by law is irreversible. In any event, it cannot be undone either directly or indirectly by the Executive which has to function in accordance with the law, namely the U.P. Panchayat Raj Act, 1947 as amended in 1994 and again in 1999. A

This contention, in our view, is not tenable in law. We have already said that the 73rd Amendment was brought into force on 24.4.93 to give effect to one of the Directive Principles of State Policy, namely, Article 40 of the Constitution. Therefore, it cannot be said that the 73rd Amendment of the Constitution is the basic feature of the Constitution. Article 40 cannot be said to qualify as the basic feature of the Constitution. The 73rd Amendment came to the Constitution by way of amendment under Article 368 and, therefore, it cannot be said to be a basic feature of the Constitution. It is an enabling provision and the State is empowered either to eliminate, modify or cancel by exercising power under the enabling provision. Article 243G is an enabling provision. Article 243G enables the Panchayats to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats, subject to such conditions as may be specified therein, with respect to the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. The enabling provisions are further subject to the conditions as may be specified. Therefore, it is for the State Legislature to consider legal conditions and make the law accordingly. The devolution of exercise would also be open to the State to eliminate or modify. See Constitution Bench Judgment in *M. Nagaraj & Ors. v. Union of India & Ors.*, [2006] 8 SCC 212. Also see *Akhil Bharat Goseva Sangh (3) v. State of A.P. & Ors.*, [2006] 4 SCC 162 and *Kuldip Nayar and Ors. v. Union of India & Ors.*, [2006] 7 SCC 1. where a Constitution Bench of this Court considered the basic structure theory in paragraph 107 of the Judgment and held as under: B  
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“107. The basic structure theory imposes limitation on the power of Parliament to amend the Constitution. An amendment to the Constitution under Article 368 could be challenged on the ground of violation of basic structure of the Constitution. An ordinary legislation cannot be so challenged. The challenge to a law made, within its legislative competence, by Parliament on the ground of violation of the basic structure of the Constitution is thus not available to the G  
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A petitioners.”

*TRANSFER—LOCK, STOCK AND BARREL*

B The contention of the learned Senior counsel for the respondent that the transfer of the Tube-well Operators from Irrigation Department to the Gram Panchayat was lock, stock and barrel and, therefore, it is a complete and permanent transfer. This contention is factually incorrect and misplaced. In fact, out of 26,117 operators in the Irrigation Department, only 22329 were transferred and out of that 13,000/- joined back the Irrigation Department pursuant to the G.O. dated 19.7.2005. This would also clearly show that they had a lien with the Parent Department and they had gone back to the Parent Department.

C Mr. P.P. Rao learned senior counsel referred to the case of *State of Mysore v. R.S. Kasi*, [1985] 2 SCC 110 where this Court held that the constitutional scheme is irreversible. He has also referred to the case of *S.K. Saha v. Prem Prakash Agarwal*, [1994] 1 SCC 431 where this Court held that the transfer of entire department along with the posts to a university is a complete transfer. He has also referred to the cases of *Bhim Singh v. State of Haryana*, [1981] 2 SCC 673 and *Jawaharlal Nehru University v. Dr. K. S. Jawatkar*, [1989] Supp. 1 SCC 679. In our view, the aforesaid decisions of this Court cited by learned Senior counsel have no application in the facts and circumstances of the case at hand.

E Dr. Dhawan learned Senior counsel contended that the power of the legislature is coupled with duty. They have a duty to perform consistent with the constitutional goal. In this connection, he has referred to the decisions of this Court in the cases of *Commissioner of Police v. Gordhandas Bhanji*, [1952] SCR 135, *Comptroller and Auditor General of India v. K.S. Jagannathan*, [1986] 2 SCC 679 and *Terioat Estates (P) Ltd. v. U.T. Chandigarh*, [2004] 2 SCC 130. In the view that we have taken the aforesaid decisions have also no application in the facts of the present controversy.

G *PROPERTY VESTED IN THE GRAM PANCHAYAT*

H It is contended that under Section 34 of the Act, the property, namely, the Tube-wells were vested in the Gram Panchayat and by the impugned order the Tube-well Operators were sought to be transferred back to the Irrigation Department along with the Tube-wells, which is not permissible.

Section 34 is in the following terms:

“34. *Property vested in [Gram Panchayat]*—(1) Subject to any special reservation made by the State Government, *all public property situated* within the jurisdiction of a [Gram Panchayat] shall vest in and belong to the [Gram Panchayat] and shall, with all other property which may become vested in the [Gram Panchayat], be under its direction, management and control.

(emphasis supplied)

(2) All markets and fairs or such portion thereof as are held upon public land shall be managed and regulated by the [Gram Panchayat] and the [Gram Panchayat] shall receive to the credit of the Gaon Fund all dues levied or imposed in respect thereof.”

Firstly, vesting of the property in the Gram Panchayat employed in Section 34 would mean the property vested for the purpose of management and control. Not that the property so vested is fastened to the Panchayat and remains as its property. Secondly, public property has been defined under Section 2(mm) of the Act as under:

“Public Property” and “Public Land” mean any public building, park or garden or other place to which for the time being the public have or are permitted to have access whether on payment or otherwise.”

Public property, as defined under Section 2(mm) shows it is referable to public building, park or garden or other place to which for the time being public have or are permitted to have free access.

It is common knowledge that a tube-well is handled by a technician-an expert hand. General public does not have free access to the tube-well. They can only have free access to the water drawn from the tube-well. In our opinion, therefore, tube-well does not fall within the scope of public property referred to in Section 34 of the Act.

#### *THE BASIC QUESTION FOR CONSIDERATION*

The basic question that calls for consideration is the import and intent of Section 25 of the Act which substituted the original Section 25 by the U.P. Act No. 27 of 1999 w.e.f. 27.6.1999.

A Section 25, as amended in 1999, was in the following terms:

“25. *Staff—(1)* Notwithstanding anything contained in any other provisions of this Act, any Uttar Pradesh Act, rules, regulations, or bye-laws or in any judgment, decree or order of any Court,-

B (a) the State Government may, by general or special order, transfer any employee or class of employees serving in connection with the affairs of the State to serve under Gram Panchayats with such designation as may be specified in the order and thereupon posting of such employee or employees in Gram Panchayats of a district shall be made by such authority in such manner as may be notified by the State Government;

C (b) the employee or employees on being so transferred and posted in a Gram Panchayat, shall serve under the supervision and control of the Gram Panchayat on the same terms and conditions and with the same rights and privileges as to retirement benefits and other matters including promotion as would have been applicable to him immediately before such transfer and shall perform such duties as may be specified from time to time by the State Government.

D (2) Subject to the provisions of sub-section (1) a Gram Panchayat may, after prior approval of the prescribed authority, appoint from time to time such employees as may be considered necessary for efficient discharge of its functions under this Act in accordance with such procedure as may be prescribed:

E Provided that the Gram Panchayat shall not create any post except with the previous approval of the prescribed authority.

F (3) The Gram Panchayat shall have power to impose punishment of any description upon the employees appointed under sub-section (2) subject to such conditions and restrictions and in accordance with such procedure as may be prescribed.

G (4) The Gram Panchayat may delegate to the Pradhan or to any of its Committees, subject to such conditions and restrictions as may be prescribed, the power to impose any minor punishment upon the employees appointed under sub-section (2).

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(5) An appeal from an order imposing any punishment on an employee under sub-section (3) shall lie to such officer or committee as may be specified by the State Government by notification. A

(6) The prescribed authority may, subject to such conditions as may be prescribed, transfer any employee referred to in clause (b) of sub-section (1) from one Gram Panchayat to any other Gram Panchayat within the same district and the State Government or such other officer as may be empowered in this behalf by the State Government may similarly transfer any such employee from one district to another. B

(7) A Nyaya Panchayat may, with the previous approval of the prescribed authority, appoint any person on its staff in the manner prescribed. The person so appointed shall be under the administrative control of the prescribed authority who shall have power to transfer, punish, suspend, discharge or dismiss him. C

(8) Appeal shall lie from an order of the prescribed authority punishing suspending, discharging or dismissing a person under sub-section (7) to an authority appointed in this behalf by the State Government.” D

Section 25, thus, clearly discloses that the transfer shall be made with such designation as may be specified in the Government Order; transfer and posting in Gram Panchayat shall be made by such authority in such manner, as may be notified by the State Government; the transferred employee to the Gram Panchayat shall be under the supervision and control of the Gram Panchayat; the service conditions of the employee shall be on the same terms and conditions and with the same rights and privileges as to retirement benefits and other matters, including promotion, as would have been applicable to him immediately before such transfer; while in service in Gram Panchayat, they shall perform such duties as may be specified from time to time by the State Government. E F

*WHETHER IT IS DEPUTATION SIMPLICITER OR TRANSFER* G

Apart from the provisions contained in Section 25, paragraph 9 of the Government Order dated 1.7.1999 further clarifies the position. Paragraph 9 as translated (which is stated to be a correct translation) reads:-

“9. Disbursement of salary of all the employees referred to in Para 4 H

A & 6 and working under the control of Gram Panchayat would be done by the departments in the same manner as is being done at present, but the salary of the next month would be disbursed on the basis of attendance verification and monthly report of the Gram Panchayat Committee concerned. Deductions would be made from the salary of employees who are unauthorizedly absent.”

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There is no dispute that while working under Gram Panchayats, the Tube-well Operators were continued to be paid salaries by the Irrigation Department. They were under the disciplinary control of the Irrigation Department and also got promotions in the Irrigation Department. There is also no dispute that their service conditions were governed by the Service Rules framed under Article 309 of the Constitution. The expression “Supervision and Control of the Gram Panchayat” only means to the extent of transfer of supervision to the Gram Panchayat. The expression “shall serve under the supervision and control of the Gram Panchayat” would only mean supervisory powers and control of the Gram Panchayat. The overall control of the employee was still with the Government when Section 25(1)(b) unequivocally provides that they shall perform such duties as may be specified from time to time by the State Government. This would clearly show that they were working under the supervisory control of Gram Panchayat keeping lien with the Parent Department, which is the Irrigation Department. It is clear that they were sent on deputation.

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Section 25(1)(b) was clearly intended to safeguard the service conditions of the employees working under Gram Panchayats.

*WHETHER IT IS TRANSFER?*

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The next question to be considered is whether they were under transfer as visualized under Section 1(a) of Section 25 of the Act.

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It is contended by Senior counsel for the respondents that it cannot be termed as deputation, because, to be on deputation, tri-partite consent is necessary, namely, that of the lending Department, the borrowing Department and the employees.

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We are unable to accept this contention for more reasons than one. Firstly, the respondents (writ petitioners) did not protest on their being sent to the Gram Panchayats. They accepted the transfer with conditions without

demur knowing fully well their rights and obligations. They also accepted the terms and conditions of Section 25 of the Act, as quoted above. No protest, whatsoever, was raised either by the employees or by Gram Panchayats. It is not the case of the respondents nor of the Gram Panchayats that the transfers were made against their consent despite protests. It is, in these circumstances, that the consent is implied. The expression "Transfer" employed in Section 25, in our view, is a misnomer.

It is true that the language used in Section 25 is "Transfer", but one has to read the Section as a whole, to get the real meaning. The pay and allowances are paid by the parent department. Their service conditions are governed by the Service Rules in their respective Parent Departments under Article 309 of the Constitution. The over all control was vested in the respective Departments. It is also true that in the Govt. Order various expressions have been used like transfer, repatriation, dead cadre etc., which have been subsequently clarified in the counter of the Government. Hundred errors do not make one right. By reading Section 25 as a whole and understanding the language employed therein, it is clear that the employees of various Departments were sent to gram-panchayats on deputation pure and simple. They kept their lien in their respective Departments. This is the correct reading of the Section and nothing more. This is also true to their own knowledge when they were sent to Gram Panchayats. This is the reason why the employees of five Departments were sent back to their Departments and they joined their own Department without any protest. This is also the reason why even a section of Tube-well operators would like to go back to the Parent Department, the Irrigation Department. They are equally aggrieved by the impugned order of the High Court and have preferred Civil Appeal No. 10091 of 2006.

That they were sent to Gram Panchayats purely temporarily and on deputation till the Gram Panchayats themselves make appointments is also clear from the language employed in Section 25(2) of the Act.

We, accordingly, hold that the expression 'Transfer' is used in Section 25 loosely. They were actually sent on deputation keeping their lien with their Parent Departments.

Once we hold that the respondents were on deputation to Gram Panchayats, the position of deputation in service is well settled by a catena

A of decisions of this Court. Avoiding multiplicity, we refer to *Kunal Nanda v. Union of India and Anr.*, [2005] 5 SCC 362 as under:

B “The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation.”

C We may also dispose off one contention of Dr. Rajiv Dhawan, learned Senior counsel despite our holding that the respondents were sent on deputation and not on transfer. According to Dr. Dhawan, reading Section 25(a) and Sections 25(6) conjunctively, the State Government is empowered to transfer any such employee only from one District to another or from one Panchayat to another. According to him, therefore, the State is incompetent to pass an order to transfer them back to the Irrigation Department. We are D unable to accept this submission. Sub-section 6 does not take away the general power of transfer as it is understood in the language used. What is intended by sub-section (b) is that apart from the general power of transfer as visualized in Section 25(a), the State Govt. will also be empowered to transfer the employee from one District to another District so long as he E remains under the control of Panchayat. Sub-section(6), therefore, does not take away the general power of the Government of transfer/repatriation of the respondents from Gram Panchayats to the Parent Departments.

F In the view that we have taken, the judgment and order of the Division Bench dated 8.2.2006 is not sustainable in law. The judgment and order of the Division Bench quashing G.O. dated 19.7.2005, 25.1.2006 and 8.9.2005; the direction that the Tube-well Operators and part-time Tube-well Operators are inextricably connected with the cadre of Gram Panchayat Vikas Adhikari; the direction that the Part-time Tube-well Operators shall be treated as permanent employees are all hereby, set aside. The order of the learned Single Judge dated 11.8.2005 is restored. The C.W.P. No. 53127 of 2005 stands dismissed. G The Government Order dated 19.7.2005 with all consequential orders passed thereunder is restored.

H We also noticed that the Division Bench of the High Court has quashed the Orders dated 8.9.2005 and 25.1.2006, which are not the subject matter of

the writ petition. The High Court order to that effect is also set aside. The Government Orders dated 8.9.2005 and 25.1.2006 are restored. A

The employees are directed to go back to their Parent Department and resume duties within two weeks from today.

The net result is Civil Appeal Nos. 1895/06, 1896/06, 1897/06, 1898/06, 1899/06, 1900/06, 1901/06, 1902/06, 3455/06, 3523/06 are allowed. Civil Appeal Nos. 8302-8313/04, 8314-8315/04, 8316/04, 8317-8319/04, 1083/05, 1084/05, 2920/05, 680/05 and 6090/01 are dismissed. B

Contempt Petition Nos. 114 & 141 of 2006 are discharged. C

No order as to costs.

B.S. Appeals dismissed and Contempt Petitions discharged.