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REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11525 OF 2018

Sunil Subhash Ekhande,
Age: 48 years, R/at Type 'A' 2383, HAL,
Township, Ozar MIG, Tal: Niphad,
Zilla: Nashik

...Petitioner

~ versus ~

1. **State of Maharashtra,**
   Through Principal Secretary School,
   Education and Sport Department,
   Mantralaya, Mumbai
2. **Education Officer,**
   Zilla Parishad, Nashik
3. **Chairman/Secretary,**
   Gokhale Education Society,
   Tal: Nashik Dist: Nashik
4. **Head Master,**
   HAL High School & Jr. College
   Ozhar Township, Tal: Niphad Dist:
   Nashik

...Respondents

WITH

WRIT PETITION NO. 314 OF 2018

Jitendra Kalidas Pathak,
Age: 43 yrs., R/at 302, Ganesh Niwas,
Lokmanya Nagar, Pada No.2, Near TMC
School No.46, Thane 400 606. ...Petitioner

~ versus ~

1. **State of Maharashtra,**
   Through Principal Secretary School,
   Education and Sport Department,
   Mantralaya, Mumbai
2. **Education Officer,**
   Zilla Parishad, Thane.
3. **Chairman/Secretary,**
   Sheth TJ Education Society,
   Sheth NKT & Jr. College,
   Kharkar Ali, Thane.
4. **Head Master,**
   Sheth TJ High School & NKT Jr
   College, Thane ...Respondents

WITH

WRIT PETITION NO. 328 OF 2018

Rahul Ramesh Khismatrao,
Age: 42 yrs., R/at Old Agra Road,
Near Marimata Mandir, Shivaji Chowk,
Asangaon East, Dist.Thane. ...Petitioner

~ versus ~

1. **State of Maharashtra,**
   Through Principal Secretary School,

Education and Sport Department,
Mantralaya, Mumbai

2. **Education Officer [Secondary],**
Zilla Parishad, Thane.

3. **Chairman/Secretary,**
Khardi Vibagh Education Society,
Khardi, Tal: Shahpur, Dist. Thane

4. **Head Master,**
Khardi Vibagh Education Society's
Secondary & Higher Secondary School
Khardi, Tal: Shahpur, Dist. Thane ...**Respondents**

WITH

WRIT PETITION NO. 302 OF 2018

Rajendra Bhaskarao Sonawane,
Age: 44 yrs., R/at Niwara Bunglow,
Nampur Road, Satana Tal: Baglan,
Dist: Nashik. ...**Petitioner**

~ versus ~

1. **State of Maharashtra,**
Through Principal Secretary School,
Education and Sport Department,
Mantralaya, Mumbai

2. **Education Officer [Secondary],**
Zilla Parishad, Nashik.

3. **Chairman/Secretary,**
Nashik Zilla Vidhayak Karya Samiti,
Satana, Tal: Baglan, Dist: Nashik

4. **Head Master,**
Janata Vidayala, Meshi, Tal: Devla,
Dist: Nashik ...Respondents

WITH

WRIT PETITION NO. 1944 OF 2018

Suhas Madhukar Shirsath,
Age: 47 yrs., R/at Anant Tara Apartments,
Ghodwinde Nagar Vashind,
Tal Shahapur, Dist: Thane 421604 ...Petitioner

~ versus ~

1. **State of Maharashtra,**
Through Principal Secretary School,
Education and Sport Department,
Mantralaya, Mumbai

2. **Education Officer [Secondary],**
Zilla Parishad, Thane.

3. **Chairman/Secretary,**
Padmashri Anna Saheb Jadhav,
Bhartiya Samaj, Unnati Mandal,
Bhiwandi, Thane.

4. **Head Master,**
Saralgaon Vibhag High School & Jr.
College, Saralgaon, Tal: Murbad,
Dist. Thane. ...Respondents

Appearances

for the petitioners **Mr Mandar Limaye.**

for respondents- **Ms PN Diwan, AGP.**

STATE

CORAM : G.S.Patel &
Neela Gokhale, JJ.

RESERVED ON : 28th June 2023

PRONOUNCED ON : 1st August 2023

JUDGMENT (*Per Neela K. Gokhale J*):-

1. **Rule**. By consent of parties, rule is made returnable forthwith.

2. The Petitioners in all these Petitions raise an identical issue. They all seek to assail Clauses No. 1, 3 and 4 of the Government Resolution ("**GR**") dated 3rd August 2006. as being illegal and contrary to the recommendations of Chiplunkar Samiti accepted by the State and further seek status The Petitioners were all initially appointed as part-time librarians in various institutions. They now seek an order that from the dates of those initial appointments as part-time librarians, they should be held to be full-time libraries. They claim this is only 'notional' but agree that such an order will indeed have monetary implications (for any difference in pay scales and retiral benefits). They also say that the GR in question is contrary to the recommendations of the Chiplunkar Committee, and which recommendations the State Government accepted. They seek orders that they be reckoned as full-time librarians.

3. The Petitioners are employed in their respective Respondent educational institutions as part-time librarians. The 2nd Respondent in all Petitions is the corresponding Education Officer/Director of Education of various regions in the 1st Respondent, State of Maharashtra.

4. The Petitioners were working as part-time librarians in various aided schools across Maharashtra. In 1994, the State Government appointed a committee under the chairmanship of Shri VV Chiplunkar, former Director of Education of the State, to ascertain the prevailing scope of work of non-teaching staff in educational institutions, the terms and conditions of their engagement and make recommendations in that regard. The Chiplunkar Committee submitted a report. The State accepted the report and resolved to amend the provisions of Secondary and Higher Secondary Code to the extent of such acceptance. Accordingly, it notified a GR dated 28th June 1994.

5. The Committee recommended a staffing structure. The number of posts, full-time or otherwise, were to be in proportion to the strength of students. One post of a full-time librarian was recommended if the strength of students was between 1001 to 1500. The strength of students in each of the Respondent institutions was either 1000 on the date of the GR or was increased to 1000 and more after the GR.

6. Subsequently, the State Government notified the impugned GR dated 3rd August 2006. This GR, in aid of the earlier 1994 GR,

provided for upgrading the posts of part-time librarians to full-time librarians where, in a particular school, the student strength in a school was more than 1000 and part-time librarians had served for at least five years. However, this was subject to certain conditions mentioned in the GR. One of the conditions was that the upgrading of a part-time librarian was to be considered as 'fresh appointment' and not a 'promotion', and any such appointment was made subject to a two-year probation period. Accordingly, the Petitioners and others similarly placed, all of whom had completed five years as part-time librarians, were granted the status of full-time librarians subject to the student-strength requirement and these other two conditions (of the appointments being 'fresh appointments' and with a two-year probation period). They were also granted entitlements as per the pay-scale of full-time librarians as 'fresh appointments' with effect from 3rd August 2006.

7. The Petitioners were all part-time librarians. They seek benefits of Chiplunkar Committee recommendations, accepted by the State Government, on the presumption that the 1994 GR itself created full-time posts. The Petitioners are also aggrieved by Clauses 1, 3 and 4 of the 3rd August 2006 GR: they contend that although the 2006 GR led to the absorption of Petitioners as full-time librarians, it considers their appointments as fresh ones and provides for pay-scales with effect only from 3rd August 2006. They are aggrieved by the exclusion of their past services as part-time librarians. While they waive back wages for past services, they claim what they call 'notional' salary and retiral benefits with effect from the date of their initial appointments as part-time librarians.

8. The legal issue that arises is whether the impugned GR of 3rd August 2006 can be given retrospective effect to the extent of creating (or being deemed to have created) full-time posts of librarian from the earlier part-time posts, thus entailing salary and retiral benefits with effect from the dates of initial appointments as part-time librarians.

9. Several Petitions were filed earlier with a similar grievance. Mr Limaye, Learned Counsel for the Petitioners, has placed the following decisions of this Court:

(i) *Shri Pramod Shriram Salunke v State of Maharashtra & Ors*, decided on 17th April 2015;[1]

(ii) *Vithoji Dinkar Rane v. State of Maharashtra & Ors*, decided on 4th October 2018;[2]

(iii) *Uttam Badak & Ors v. State of Maharashtra & Ors*, decided on 22nd February 2019;[3]

(iv) *Balasaheb Munde v. State of Maharashtra & Ors*, decided on 9th October 2019;[4]

(v) *Anil Parasram Shende v. State of Maharashtra & Ors*;, decided on 9th December 2019;[5]

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1 Writ Petition No.7087 of 2010.

2 Writ Petition No. 11224 of 2017.

3 Writ Petition No. 10426 of 2015.

4 Writ Petition No. 15008 of 2017.

5 Writ Petition No. 1994 of 2018.

(vi) *Ganesh Narhar Chavan & Ors v State of Maharashtra & Ors*, decided on 11th March 2022.[6]

10. In all these decisions, the Court took the view that since the State Government had accepted the Chiplunkar Committee recommendations and treated the report as being part of Secondary and Higher Secondary School Code, the State could not have refused the benefits of the recommendations to the petitioners, who are treated as part-time librarians even after the strength of students increased beyond 1000. This Court also negatived the objections of the State Government regarding delay in approaching the Court in seeking retrospective effect of the August 2006 GR. This Court directed that the petitioners in those petitions be considered as full-time librarians from the date of their initial appointments as part-time librarians. That date was to be considered for notional pay fixation and other retiral and pensionary benefits. It is important to note that although back wages were not granted, all the Petitioners were made entitled to pensionary benefits computed from the date of their initial appointments as part-time librarians.

11. Ms Diwan, learned AGP, relies upon a decision of a Division Bench of this Court (Mohit Shah, CJ (as he then was) and Ravindra Ghuge, J) in *Satish Ganpatrao Patil & Ors v State of Maharashtra & Ors.*[7] This decision is dated 31st March 2015 and therefore pre-dates all six decisions relied on by Mr Limaye. The *Satish Patil* judgment deals in detail with the legality and consequences of the claimed

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6 Writ Petition No. 14935 of 2017 and connected Petitions.

7 MANU/MH/0547/2015.

retrospective application of the 3rd August 2006 GR. The Court upheld the GR and held that since the part-time librarians had willingly accepted the benefits of the GR without a murmur, they could not now challenge it. The Court has also held that, in the regular course, when posts of full-time librarians were to be filled, the schools would have been obliged to follow the recruitment procedure in the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 ("**MEPS Act**"). As such, the Petitioners would have been required to apply pursuant to an advertisement for recruitment and compete with several applicants. Their 'selection' under the impugned GR would then have been subject to the result of a selection procedure. The Court said that, evidently, the Petitioners had derived the benefits of the GR by ensuring their appointments as full-time librarians. Having acquired these benefits, there was no justification for questioning the 2006 GR or any of its clauses. The general principle in law is clear: no one can simultaneously derive a benefit and yet sustain a challenge. If the challenge is to be maintained, the benefit must be foresworn. Whether this is traced to the principle in equity of an estoppel in pais, an election, or a prohibition against approbating and reprobating matters little.

12. Every one of the decisions relied on by the Petitioners are all subsequent to the decision in *Satish Patil*. Some of the decisions notice the view of this Court in *Satish Patil* but fail to distinguish it. The decision in Satish Patil is a judgment. It has a ratio. It was binding on all later benches of coordinate strength, unless distinguished (or held to be rendered per incuriam). Orders made after *Satish Patil* do not consider the legality of a retrospective effect

of 2006 GR. Furthermore, in the orders preceding *Satish Patil*, there is neither any discussion nor consideration in relation to a challenge to the *vires* of the offending clauses of the GR. Pensionary benefits and notional pay-scale are granted to the Petitioners in those petitions without striking down the impugned provisions of the GR.

13. The orders prior to *Satish Patil* lay down no law and have no discernible ratio, and therefore constitute no binding precedent. On any fundamental principle of stare decisis,[8] the attempt to wholly elide the jurisprudentially binding effect of *Satish Patil* on *all* later benches of coordinate strength cannot succeed. For it is well settled that a decision is a binding precedent only for what it actually *decides*.[9] In *Sarva Shramik Sanghatana (KV), Mumbai v State of Maharashtra & Ors*,[10] the Supreme Court said:

> **14.** On the subject of precedents, Lord Halsbury, L.C., said in *Quinn v. Leathem* [1901 AC 495: (1900-1903) All ER Rep 1 (HL)]: (All ER p. 7 G-I)
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> > "Before discussing Allen v. Flood [1898 AC 1: (1895-1899) All ER Rep 52 (HL)] and what

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8 '*Stare decisis et non quieta movere*' : "to stand by decisions and not disturb what is settled". *See*: *Waman Rao v Union of India*, (1981) 2 SCC 362, paragraph 42:

> "In fact, the full form of the principle, *stare decisis et non quieta movere* which means to stand by decisions and not to disturb what is settled, was put by Coke in its classic English version as: 'Those things which have been so often adjudged ought to rest in peace."

Also see: *State of Gujarat v Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SC 534.

9 *Deepak Bajaj v State of Maharashtra & Anr*, (2008) 16 SCC 14; *Government of Karnataka & Ors v Gowramma & Ors*, (2007) 13 SCC 482.

10 (2008) 1 SCC 494.

> was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before—that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, *but are governed and qualified by the particular facts of the case* in which such expressions are to be found. **The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it.** Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."
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> (emphasis supplied)

We entirely agree with the above observations.

(*Emphasis in bold added*)

14. The *ratio* of any decision must be understood in its factual context.[11] Observations of courts are neither to be read as Euclidean theorems nor as statutes.[12]

15. Nobody has ever urged that *Satish Patil* is not good law, or not a binding precedent. It has not been overturned in appeal. It has never been held to be a decision rendered per incuriam. What we are

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11 *Ambica Quarry Works v State of Gujarat*, (1987) 1 SCC 213.

12 *Bharat Petroleum Corporation Ltd v NR Vairamani*, (2004) 8 SCC 579.

being asked to do today is, in our view, the unthinkable: to wholly ignore a decision of a bench of coordinate strength, one that interprets the law and therefore constitutes a binding precedent, by simply — we dare say, even mechanically — following a slew of later decisions, not one of which followed *Satish Patil*, although all were bound by it. Some did not even notice it.

16. A Constitution Bench of the Apex Court in *M Ramanatha Pillai v The State of Kerala & Anr*[13] held that the power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of government policy. Every sovereign government has this power in the interest and necessity of internal administration. The creation or abolition of a post is an executive or legislative function, involving economic factors and dictated by policy decisions, exigencies of circumstances and administrative necessities.[14] Courts cannot direct the creation of posts. A status of permanency cannot be granted by the Court where no such posts exist. Executive functions and powers (regarding the creation of posts) are not judicial functions.[15]

17. We have considered the material on record and the orders and judgments cited. Of the decisions cited by Mr Limaye, those that noticed the decision in *Satish Patil* failed to distinguish it. The others did not reference it at all. Furthermore, the decisions preceding *Satish Patil* did not consider the legal position settled by a

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13 (1973) 2 SCC 650.

14 *Divisional Manager, Aravali Golf Club and Anr v Chander Hass and Anr*, (2008) 1 SCC 683.

15 *Maharashtra State Road Transport Corporation and Anr v Casteribe Rajya Parivahan Karamchari Sanghatana*, (2009) 8 SCC 556.

Constitution Bench of the Supreme Court in the *Ramanatha* and other Supreme Court decisions. The legal issues discussed in *Satish Patil* have neither been considered nor distinguished at all. The legal ramifications of having enjoyed benefits under the assailed GR and then challenging it have been totally ignored.

18. A plain reading of the GR of 28th June 1994 does not indicate the 'creation' of posts. It simply declares the contents of the Chiplunkar Committee report and resolves to accept it by creating full-time posts. That GR did not actually create these posts. It is only by the GR of 3rd August 2006 that the government acted in furtherance of its earlier resolutions and upgraded the earlier posts to full-time posts with conditions.

19. The present cases show that the Petitioners admittedly enjoyed the benefits of the impugned 2006 GR, by accepting the status of full-time librarians *without facing any selection procedure*. It is only now that they claim retrospective effect from the date of their initial appointments. The Petitioners cannot be permitted to approbate and reprobate. We find that without dealing with the challenge to the impugned GR of 3rd August 2006, many of the orders cited by Mr Limaye simply proceeded to grant pensionary benefits and notional pay-scale to the Petitioners. In doing so, they impliedly created posts of full-time librarians retrospectively.

20. Ms Diwan draws our attention to the unreasonable delay on the part of the Petitioners in approaching this court. Further, she says that once having accepted the prospective effect of the

impugned GR and enjoyed the benefits of the same even to the extent of accepting confirmation and approval as a full-time librarian, without having to face a selection procedure, the Petitioners shall not be permitted to now challenge the same.

21. We believe Ms Diwan is correct. The full-time librarian post was with a condition attached, viz., that it would be an appointment (not a selection) from the date of the appointment. The Petitioners cannot accept the appointment — take the benefit — and simultaneously assail the condition. Without an acceptance of the condition, there could be no question of availing of the benefit. Conversely, an acceptance of the benefit was an acceptance of the attached condition. There is much law in this regard, i.e., the prohibition against approbating and reprobating, and of accepting a benefit and therefore being estopped from assailing the attached condition.

22. In *Shyam Telelink Ltd v Union of India*,[16] the Supreme Court held:

> 22. Although the appellant had sought waiver of the liquidated damages yet upon rejection of that request it had made the payment of the amount demanded which signified a clear acceptance on its part of the obligation to pay. If the appellant proposed to continue with its challenge to demand, nothing prevented it from taking recourse to appropriate proceedings and taking the adjudication process to its logical conclusion before exercising its option. Far

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16 (2010) 10 SCC 165. Also see: *Bharti Cellular Ltd v Union of India & Ors*, (2010) 10 SCC 174; *Man Singh v Maruti Suzuki India Ltd & Anr*, (2011) 14 SCC 662.

from doing so, the appellant gave up the plea of waiver and deposited the amount which clearly indicates acceptance on its part of its liability to pay especially when it was only upon such payment that it could be permitted to avail of the migration package. **Allowing the appellant at this stage to question the demand raised under the migration package would amount to permitting the appellant to accept what was favourable to it and reject what was not. The appellant cannot approbate and reprobate.**

23. **The maxim *qui approbat non reprobat* (one who approbates cannot reprobate) is firmly embodied in English common law and often applied by courts in this country. It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument.**

27. **In America estoppel by acceptance of benefits is one of the recognised situations that would prevent a party from taking up inconsistent positions qua a contract or transaction under which it has benefited.** American Jurisprudence, 2nd Edn., Vol. 28, pp. 677-80 discusses "estoppel by acceptance of benefits" in the following passage:

> "**Estoppel by the acceptance of benefits.— Estoppel is frequently based upon the acceptance and retention, by one having knowledge or notice of the facts, of benefits from a transaction, contract, instrument, regulation which he might have rejected or contested. This doctrine is obviously a branch of the rule against assuming**

> **inconsistent positions.**
>
> As a general principle, **one who knowingly accepts the benefits of a contract or conveyance is estopped to deny the validity or binding effect on him of such contract or conveyance.**
>
> This rule has to be applied to do equity and must not be applied in such a manner as to violate the principles of right and good conscience."
>
> (*Emphasis added*)

23. The principle against 'approbating and reprobating' was explained in some detail by the Supreme Court recently in *Union of India v N Murugesan*:[17]

> ***Approbate and reprobate***
>
> 26. These phrases are borrowed from the Scots law. **They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction.** This principle has to be applied with more vigour as a common law principle, if such a party actually

17 (2022) 2 SCC 25.

> enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. **It is also a species of estoppel dealing with the conduct of a party.** We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.
>
> (*Emphasis added*)

24. The Supreme Court then re-affirmed the decision in *Nagubai Ammal v B Shama Rao*:[18] no party can accept and reject the same instrument'; and the principle is not confined to instruments; it is an application of the doctrine of election. In *N Murugesan*, the Supreme Court also reaffirmed *State of Punjab v Dhanjit Singh Sandhu*:[19] once a party derives a benefit under an order or an instrument, he cannot challenge it on any ground. No one can simultaneously accept and reject the same instrument. Where a person wittingly accepts the benefits under an order, that party is estopped from denying its validity or binding effect.[20] Yet this is precisely what these Petitioners attempt in these Petitions: all of them want the benefit of appointment as full-time librarians, without undergoing a selection procedure, and yet they assail the condition on which that benefit was granted, viz., that the post of full-time librarian would operate only from the date of the appointment and not from any prior date.

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18 1956 SCR 451.

19 (2014) 15 SCC 144.

20 *Rajasthan State Industrial Development & Investment Corp v Diamond & Gem Development Corporation Ltd*, (2013) 5 SCC 470.

25. Ms Diwan also draws our attention to some important dates in respect of the Petitioners.

S/ N.	Name of Ptr	Writ Pet No.	Date of Appointment as part time librarian	Date of appointment as Full Time Librarian	Date of Approval	Date of Filing
1.	Rajendra Sonawane	302 of 2018	01.12.1994	01.04.2006	05.04.2007	29.11.2017
2.	Sunil Ekhande	11525 of 2018	01.08.1995	01.04.2006	05.04.2007	29.11.2017
3.	Suhas Shirsath	1944 of 2018	13.08.1996	01.04.2006	05.04.2007	18.12.2017
4.	Rahul Khismatrao	328 of 2018	13.06.1998	01.04.2006	05.04.2007	29.11.2017
5.	Jitendra Pathak	314 of 2018	26.11.1998	01.04.2006	05.04.2007	29.11.2017
6.	Suresh Bodalkar	336 of 2018	01.12.1999	01.04.2006	05.04.2007	29.11.2017
7.	Manohar Gite	3390 of 2022	15.01.1995	-	-	21.10.2021

26. These dates clearly shows that the Petitioners have accepted the status of full-time librarians from the year 2006 and have filed petitions after a delay of more that 11 years after accepting the benefits of their full-time status. There is no explanation for the delay. Ms Diwan is correct in criticising the Petitioners for selectively taking benefits of the GR and at the same time assailing it.

27. Moreover, all orders and decisions that ignore *Satish Patil* or fail to distinguish it are orders or judgments rendered per incuriam whether on the question of the 2006 GR, on the aspect of delay or on the impermissibility of petitioners simultaneously obtaining benefit and yet seeking to challenge the very instrument that confers the very benefit. Our view is fortified by the failure of those orders to consider the settled legal position as laid down by the Constitution Bench of the Supreme Court in the *Ramanatha* case and other judgments cited above.

28. We therefore hold that the decisions cited by Mr Limaye do not lay down the correct position in law. It is the decision in *Satish Patil* that is binding so far as the 2006 GR is concerned. We will not upset the operative portions of those decisions; we only hold them not to constitute binding precedent.

29. For these reasons, we hold that the prayers in the Writ Petitions are unsustainable. We, therefore, do not find the assailed clauses of the GR dated 3rd August 2006 to be in any way arbitrary or in violation of Articles 14 or 21 of the Constitution of India.

30. The Writ Petitions are without merits and are dismissed. However, we clarify that we have not disturbed any benefits already received by any Petitioners by virtue of the decisions earlier rendered.

31. In the result, Rule stands discharged. There will be no order as to costs.

(Neela Gokhale, J) **(G. S. Patel, J)**