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Court : Patna

Decided On : Dec-23-1994

Judge : Choudhary S.N. Mishra, J.

Appeal No. : Civil Writ Jurisdiction Case No. 7995 of 1990

Appellant : Harendra Kumar Pandey and ors.

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Prior history : Choudhary, S.N. Mishra, J. 1. In this writ application, the petitioners have questioned the legality/validity of the appointments of 234 persons on various posts by respondent No.2, namely, the Speaker of the Bihar Legislative Assembly in between 15.6.1990 and 1.11.1990 and for quashing the Office Order No.l Accounts 15/90-39, Vidhan Sabha, Patna, dated 14.9.1990 by which respondents Nos. 6 to 10 were appointed as Assistants in the Accounts Section of the Bihar Legislative Assembly, Patna, (he

Judgement :

Choudhary, S.N. Mishra, J.

1. In this writ application, the petitioners have questioned the legality/validity of the appointments of 234 persons on various posts by respondent No.2, namely, the Speaker of the Bihar Legislative Assembly in between 15.6.1990 and 1.11.1990

and for quashing the Office Order No.l Accounts 15/90-39, Vidhan Sabha, Patna, dated 14.9.1990 by which respondents Nos. 6 to 10 were appointed as Assistants in the Accounts Section of the Bihar Legislative Assembly, Patna, (hereinafter referred to as 'the Assembly') including the letters of appointment of Respondent Nos. 11 to 17, dated 15.11.1990. Copies of he said orders of appointment are made Annexure-2 series to this writ application.

2. In order to appreciate the controversies and submissions raised on behalf of respective parties, It is necessary to mention some relevant faces and the case of the respective parties on the basis of the pleadings. The petitioners are duly qualified for the posts, which were filled up by respondent No.2 in between the aforesaid period. According to the petitioner Nos. 2, 3 and 4, they could not apply for the post of Assistant, Typist, Routine Clerk, Peon etc. in the Bihar Vidhan Sabha nor applications were invited from the prospective candidates through any Employment Exchange. Respondent Nos. 6 to 17 were appointed on 14.9.1990 and 15.9.1990 and he appointment letters were issued accordingly, as per Annexure-2 series, as stated above. That apart, 234 persons were appointed on various posts of Assistant, Typist Hindi Research Assistant, Personal Assistant, Hindi Experts, Security Guard, Darwan, Daftary, Peon and Sweeper, by the Speaker in between the period from 15.6.90 to 1.11.1990 through different appointment letters. All he aforesaid 234 persons including respondent Nos. 6 to 17 were appointment without any advertisement and/or without having held any competitive test. The minimum academic qualification required for appointment to the post of Assistant in the Assembly is a Bachelor's Degree in Arts, Science and Commerce, for the post of Personal Assistant, Bachelor's Degree in the same faculties having knowledge of shorthand and typing with the minimum speed of 80 to 120 words per minute and for the post of Typist, Intermediate having knowledge of typing with the minimum speed of 30 words per minute and for Routine Clerk and Peon, Matriculation and Middle pass, respectively, Similarly, the age limit for the aforesaid posts is 18 to 30 years. The petitioners claim to be duly qualified and eligible for appointment to the posts of Assistant, Personal Assistant and Typist. It has also been alleged that out of 234 persons, who have been appointed in the Assembly on different posts, 20 persons are overage and one person is minor and most of the persons are sons, brothers, daughters-in-law, daughters and relations

of the Officers and employees of the Assembly and he Members of the Assembly, Lastly, it has been stated that while making such appointments, the Bihar Legislative Council published advertisement in the Daily Newspaper 'Nav Bharat Times', on 1.11.90; whereas respondents 1 to 5 did not follow the prescribed procedure while making such appointments.

3. A counter-affidavit has been filed on behalf of respondents 2 to 5 wherefrom it appears that they have not denied the aforesaid basic facts alleged by the petitioners in this writ application. What has been alleged, inter alia , is that this writ application is not maintainable in absence of the aforesaid 234 persons, who have not been impleaded as party respondents in this writ application. It is further alleged that Petitioner No.1 was appointed in the Assembly and, as such, he cannot question the validity of such appointments. It is further alleged that the authority has power to condone the age-limit. It is also alleged that all the appointments were made by respondent No.2 after assessing the merit of the respective candidates through the interview. It is also alleged that the Speaker is fully empowered to make such appointments under the Bihar Vidhan Sabha (Recruitment and Conditions of Service) Rules, 1964 thereinafter referred to as 'the Rules'). So far as Petitioner Nos. 2 to 4 are concerned, their case was also considered by respondent Nos. 2 to 5, but they were not found fit for appointment to the said posts. This statement in the counter-affidavit filed on behalf of respondents 2 to 5 has been controverted by the petitioners in their rejoinder alleging that the petitioners had neither applied for the post at any point of time nor did they join the post and, as such, die question of consideration of their case does not arise at all. Had they ever applied for appointment to the said posts, respondent Nos. 2 to 5 must have produced their applications even at the time of final hearing of this writ application.

4. On the basis of the aforesaid pleadings, learned Counsel, appearing on behalf of the petitioners, submitted that the appointments of 234 persons including respondents 6 to 17 made by respondent No, 2 without making advertisement and/or holding any test, as required under he Rules and violative of Articles 14 and 16 of the Constitution, He further submitted that respondent No.2 completely ignored the provisions of the Rules inasmuch as, without inviting applications from

the qualified persons like the petitioners, appointed 234 persons, and, as such, the appointments of the aforesaid persons are wholly illegal, arbitrary and without jurisdiction. learned Counsel further submitted that no notice whatsoever specifying the requisite qualification of the candidates for filling up the aforesaid posts was published anywhere at any point of time by respondents 1 to 5 and no examination for testing the competitive merit of the individual competitors was held before appointing the aforesaid 234 persons. This procedure according to the learned Counsel adopted by respondent No.2 is wholly unknown and contrary to the provisions laid down in the Rules while making such appointments, which has violated the equality Clause enshrined under Articles 14 and 16 of the Constitution of India, and, thus tie appointments of the aforesaid 234 persons including respondents 6 to 17 are as initio void. In this connection, learned Counsel also submitted that earlier 89 persons were appointed on the posts of Assistant, Typist and Routine Clerk by the then Speaker, but such appointments were cancelled by the successor Speaker on the ground that those appointments had been made directly without advertisement and/or without following the procedures prescribed under the Rules. That order of the Speaker cancelling previous appointments was brought under challenge before this High Court in C.WJ.C. No. 7953 of 1989 disposed of on 6.9.1990 wherein, a counter-affidavit has been filed on behalf of the Speaker of the Assembly that those appointments had been made by the then Speaker without any advertisement. Ultimately, the order of cancellation of the appointments of 89 persons made by his predecessor Speaker was confirmed by this Court. learned Counsel, appearing on behalf of the petitioners, accordingly, submitted that respondent No.2 has adopted the same arbitrary procedure while making appointments under challenge in the present writ application without advertisement and without holding any examination for testing the competitive merit of the individual candidates and, therefore, it was not open for the respondents 2 to 5 to make such appointments without following the procedures prescribed under the Rules. learned Counsel, however, submitted that all the 234 appointments including the appointment of respondents 6 to 17 were made purely on political consideration as the appointees are related to the Officers, employees and the Members of the Assembly. It was further alleged that in exercise of the power under Rule 4(2) of the Rules, a notification was issued by the Assembly

wherein it has been categorically stated that the appointment on he posts of Assistant shall be made through the competitive examination, but admittedly in the instant case, no such examination and/or interview was ever held, which is violative of Articles 14 and 16 of the Constitution as also in contravention of the mandatory provisions mentioned in the aforesaid notification which was issued in exercise of power under Rule 4(2) of the Rules (Rule 9 is a mistake for Rule 4(2) of he Rules under which the aforesaid notification was issued by the Assembly). The submissions made by the learned Counsel for the petitioners may now be summarised as follows:

(i) The entire appointments of 234 persons including respondents 6 to 17 in between the period 15.6.90 and 1.11.1990 are in contravention of the mandatory . provisions of the Rules and the notification issued thereunder:

(ii) No advertisement or any kind of notice was ever issued inviting applications from the prospective candidates nor the names were called from the Employment Exchange and, therefore, such appointments are wholly vitiated;

(iii) No competitive examination and/or test as envisaged under the aforesaid Rules has ever been held for filling up such posts, and

(iv) The entire appointments were made purely on political consideration as all the persons appointed on he different posts are closely related to the politicians and the officers and staff of the Assembly and, as such, their appointments cannot be held to be valid.

Learned Counsel, in support of his contention, has relied upon various decisions, namely, Krishna Yadav and Anr. v. State of Haryana and Ors. reported in : (1995)IILLJ77SC , Vijay Kumar v. The State of Bihar and Ors., reported in 1993 (1) P.L.J.R. 99, Birendra Prasad Singh and Ors. v. The State of Bihar and Ors. reported in 1993 (1) P.LJ.R. 206, Probodh Verma and Ors. etc., v. State of Uttar Pradesh and Ors. etc., reported in : [1985]1SCR216 , J and K. Public Service Commission etc. v. Dr. Narinder Mohan and Ors. etc. reported in A.I.R. 1984 Supreme Court 1808, Shivaji Rao Nilangekar Patil v. Dr. Mahesh Madhav Gosavi and Ors. reported in : [1987]1SCR458 and Ram Janam Singh v. State of Uttar

Pradesh and Anr. reported in : (1994)ILLJ901SC .

5. In opposition to the aforesaid submissions, learned Counsel for the respondent Nos. 2 to 5, had argued that this writ application is not maintainable in absence of the persons whose appointments have been challenged. learned Counsel next submitted that the Petitioner No.1 has been appointed by the respondent No.2, and, as such, he cannot challenge the appointments made by respondent No.2. According to the learned Counsel, the Speaker is fully competent under the Rules to make appointments and in making such appointments, advertisements and/or written test are not necessary. According to the learned Counsel, all appointments have been made strictly in conformity with the Rules and hence, the same cannot be challenged in the courts of law. The last submission of the learned Counsel is that all the appointments have been made in order to meet the emergent exigencies as respondent No.2, the Speaker, was going abroad and the long Session of the Assembly .was to commence soon. In that situation, respondent No.2, the Speaker was well within his jurisdiction to relax the provision of he notification made under he Rules, and accordingly, while going abroad, it was not possible for the Speaker to conduct the Assembly Session in absence of sufficient number of staff and, therefore, he made the aforesaid appointments after scrutinising the applications received from the various candidates and taking interview, which cannot be said to be arbitrary and/or in contravention of the Rules. While developing his argument, learned Counsel submitted that the advertisements of the vacancies for appointments on such posts are not necessary if reasonably the authority adopt the mode and method of recruitment, which is by and large just and fair. Then in that event, this Court cannot interfere with the appointments merely on the ground of some hyper-technical infraction. learned Counsel further submitted that respondent No.2, namely, the Speaker, had made appointments of those persons, who had applied for the same came to him, and due to the urgent need of the staff in the Assembly, and, particularly, when he was going out of the country and in view of the ensuing long session, filled up the posts and in such a situation there had been unavoidable departure from the observance of the normal rules. The learned Counsel, in support of his connection, has relied upon two decisions, namely, Sardara Singh and Ors. etc. v. State of Punjab and Ors. reported in : AIR 1991 SC2248 , and Daljit Singh Minhas

and Ors. The State of Punjab and Ors. reported in A.I.R. 1978, Punjab and Haryana 117.

6. Before I proceed to examine the respective submissions of the parties, 1 feel it worthwhile to quote the relevant provisions of the Rules. Rule 2(e) defuses 'Post' as follows:

2(e). 'Post' means a post in the Secretariat and a post shall be deemed to' be a ' pout in Class I, Class II, Class III or Class IV, according as such post is specified as Class II, Class 111 or Class IV, . as the case may be in the Second Schedule ;

XX XX XX .

4. Method of Recruitment.--(1) Subject to the provision of Sub-rule (a) of Rule 6, recruitment to a post or class of posts may be made by one of the following methods, namely:

(a) and (b) XX XX

(c) by direct recruitment.

(2) Subject to the provisions of Sub-rule (a) of Rule 6, the Speaker may, by order, from time to time:

(a) specify the method or methods by which a post or class of pose may be filled:

5. Qualifications for recruitment, --Subject to the provisos of Sub-rule (a) of Rule 6, the qualifications for recruitment to any post or class of posts shall be such as Speaker may, from time to time, by general or special order, specify.

6. Appointing Authority.--(a) The appointment to the post of Secretary or Join Secretary shall be made by the Governor in consultation with the Speaker amongst persons serving in the Bihar Superior Judicial Service.

(b) Appointment to all other posts shall be made by the Speaker:

Provided that the Speaker may, by general of special order delegate to the Secretary or any other officer of the Secretariat his power to make appointment to

any post or class of posts in Class III or Class IV as may be specified in such order.

7. XX XX XX

8. XX XX XX

9. Other Conditions of Services.--In respect of other matters regulating the conditions of service of officers for which no specific provision has been made in these rules, officers shall be governed by such rules, order or directions as are applicable to the officers of the corresponding rank in he Civil Secretariat of the State Government, subject to such modifications, variations or exceptions, if any, in such rules as the Speaker may, after consultation with the Finance Department, by order, from time to time, specify.

Explanation.--For the purposes of this rule and the preceding rule the Speaker may, after consultation with the Finance Department, by order, specify the posts in the Civil Secretariat which shall correspond to the post in this Secretariat.

10. Relaxation in exceptional cases.--Where the Speaker is satisfied that the operation of any rule or provision in the matter of the conditions of service of an officer causes undue hardship in any particular case, the Speaker may, after consultation with the Finance Department, by order, dispense with or relax the requirements of that rule or provision to such conditions as may be considered necessary for dealing with the case in a just and equitable manner.

11. to 14. XX XX XX

15. Disciplinary action against an officer on deputation to the Secretariat.--If in the case of an officer on deputation to the Secretariat, and without prejudice to the provisions of the foregoing rules, the Speaker or the Secretary or any other officer, as the case may be, is of opinion that any of the penalties referred to in Rule 13 should be imposed upon the said officer, his services shall be replaced at fee disposal of the lending authority and the relevant papers connected with the inquiry, if any held, shall also be seat to that authority. Final orders in the disciplinary matter shall be passed by lending authority which shall forward a copy

thereof to the Secretariat.

16. to 19. XX XX XX

20. Residuary powers.--Subject to the provisions of Rule 9, all matters not % specifically provided for in these rules, whether incidental or ancillary to the provisions of these rules or otherwise, shall be regulated in accordance with such orders as the Speaker may, from time to time, make.

7. In reply to the submission that the writ application is not maintainable in absence of the 234 persons, who were appointed by respondent No.2, learned Counsel for the petitioners, firstly, submitted that this writ application has been filed adding respondent Nos. 6 to 17 in the representative capacity and, as such, it is not necessary to implead all those persons, who have been illegally appointed, as party-respondents in this writ application. Secondly, it was submitted that the petitioners have not sought any relief against any individual, but they have sought intervention of this Court to declare the actions of the respondent No.2, namely, the Speaker, as arbitrary and without jurisdiction and, as such, the petitioners are not required to implead all the persons, who have been appointed even though they may be affected by the result of this writ application. He submitted that if anyone is going to be affected by the verdict of this Court, he or they can challenge the verdict of this Court in an appropriate proceeding. learned Counsel, in support of his contention, relief upon the decision in Ram Janam Singh (supra) and Prabodh Verma and Ors. etc. etc. (supra). It is true that all the persons, who have been appointed, have not been made party-respondents in this writ application because of the reasons, firstly, that their whereabouts and parentage are not known to the petitioners, as they have not been appointed through the prescribed procedure and, secondly, that in the facts and circumstances of this case, it is not either necessary for the petitioners to implead those persons as party-respondents, who have been appointed during the aforesaid period by respondent No.2. Since, however, the matter has been brought to the notice of this Court, this Court irrespective to the fact whether those appointees have been impleaded as party-respondents in this writ application or not, can very well examine the propriety of the orders making appointments on different posts in

Government/public office. In an almost identical situation, in Shivaji Rao Nilangekar Patil's case (supra), their Lordships of the Supreme Court have observed in Paragraph 36 of the judgment as follows:

36. The allegations made in the petition disclose a lamentable state of affairs in one of the Premier Universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of he examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the court, it was the duty of court to the public that the truth and the validity of the allegations made be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided. If it is necessary and essential for the administration of justice.

Accordingly, the preliminary objection as to the maintainability of this writ application raised by the learned Counsel for the respondents is rejected.

8. It is now a well settled principle of law that once the Rules have been framed for appointment on the different posts, that have to be strictly followed. In this connection, reference may be made to the notification, dated the 22nd of November, 1967, as contained in Annexure-4 to this writ application, which, has been issued in exercise of the power conferred under Rule 4(2) of the Rules, which specifically provides that the appointments 10 Class III posts shall be made through competitive examination. Admittedly, in the instant case, no examination whatsoever has ever been held before making the aforesaid appointments.

9. According to the learned Counsel for respondents 2 to 5, Rule 4(2)(b) empowers the Speaker to make appointments in the Assembly and, accordingly, respondent No.2 the Speaker, has made 234 appointments after scrutinising the applications and taking oral interview. The same cannot be interfered with. The learned Counsel further relied upon Rule 10 of the Rules and submitted that in the given situation, the Speaker can relax the provision of the Rules, since he was going abroad and in order to ensure smooth functioning of the Assembly, the Speaker filled up the vacant posts and in that unavoidable situation, the usual

rules of procedure have been relaxed. The submission of the learned Counsel for respondents Nos. 2 to 5 cannot be accepted for the simple reason that once the Rules prescribe the procedure that cannot be relaxed and/or overlooked. As has been stated above, the notification has been issued in exercise of the power conferred under the Rules, which categorically fixes the qualification, age and the procedure for appointments to the different posts. One of such procedure is that appointments to Class ' III posts shall be mace through the competitive examination. Admittedly, that has not been done in this case. Therefore, in my considered view, the procedure prescribed under the Rules cannot be subsequently altered and appointments cannot be made through backdoor. It is true that the Speaker can relax the age-limit in a suitable case, but cannot alter the academic qualification fixed for appointment to such posts and also the fundamental requirement of the examination fixed under the notification as well as holding of the competitive examination in order to judge the comparative merit of the individual candidates. The Supreme Court in J. and K. Public Service Commission's case (supra) has held as follows:

Existence of Statutory Rules is not a condition precedent to appoint an eligible and fit person to a post. The executive power is co-extensive with legislative power of the State and under Article 162, the State can create civil posts and fill them according to executive instructions consistent with Articles 14 and 16 of he Constitution. It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules.

XX XX XX .

No express power was conferred and, in fact, cannot be conferred to relax he rules of recruitment. Having made he rules, the executive cannot fall back upon its general power under Article 162 to regularise he Ad hoc appointments under the Rules.

Backdoor Ad hoc appointments at the behest of power, source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair play, the latter are the products of order and regularity. Every eligible person no necessarily

be appointed to a post of office under the Sate, selection according to rules by a properly constituted commission and fitment for appointment assures fairness in selection and inhibits arbitrariness in appointments.

If, therefore, the notification issued in exercise of the power conferred under the Rules prescribes that the appointment shall be made through the competitive examination, the appointments made without holding such examination, and in some cases even persons do not fulfill the minimum requirement as envisaged in the notification, in my view, are violative of Articles 14 and 16 of the Constitution and, thus, the appointments of 234 persons including respondent Nos. 6 to 17 dehors the Rules and, accordingly, cannot be held to be valid appointments. In this case, admittedly, no advertisement and/or notice even worth the name, for the aforesaid appointments has at all be published or exhibited. The contention of the learned Counsel for the petitioners that had there been an advertisement issued/published for appointments to the aforesaid posts, petitioner Nos. 2 to 4, being properly qualified, must have applied for the same, but in absence of such advertisement and/or publication of notice, they could not apply, though they fulfilled the requisite qualification for appointment o the different posts in Class III. learned Counsel for the respondent Nos.2 to 5, on the other hand, submitted that for appointment to public posts, in every case, advertisement is not necessary. He further submitted that a notice to that effect was exhibited on the Notice Board of the Assembly office and in pursuance thereof, applications were made and after scrutinising the same, respondent No.2 namely, the Speaker, appointed suitable candidates out of those applicants to the different posts on the basis of the interview held by him. In support of his contention, learned Counsel relied upon the decision in the case of Daljit Singh Minhas (supra). In that case, the constitutional validity of the Sate Government's notification authorising regularisation of services of the teachers appointed on Ad hoc basis, if they satisfied he conditions specified therein, was the subject-matter of challenge wherein different questions were raised including the appointment as being not in accordance with laws and the procedures prescribed under the rules. In that case, while interpreting Rule 2(e) of the Punjab Educational Service Class Hi School Cadre Rules, 1955, their Lordships have held as follows :

11. I would therefore, hold on principle that it is hot the requirement of the Constitution under Article 16 that for direct recruitment to an office under the State, there must be an advertisement in the public press, so as to reach every conceivable candidate within the country. Indeed, such a requirement appears to me as both doctrinaire and also impossible of actual implementation. Nor do I find anything in the particular rules, which are under consideration which may warrant a similar requirement.

It is true that in all cases, the advertisement through press is not essential, but for the purpose of appointment on public posts, some sort of notice must be issued/published in order to invite applications from suitable candidates. In this case though it was submitted by the learned Counsel for respondents 2 to 5 that a notice was published on the Notice Board of the Assembly office, but neither a copy of any such notice nor any sort of notice inviting application has been produced before this Court except the oral submission made in this behalf in course of arguments that such a notice was exhibited on the Notice Board of the Assembly office. The decisions, which have been relied upon by the learned Counsel for the respondent Nos. 2 to 5 will not help him for simple reason that their Lordships, while interpreting Rule 2(e) of the aforesaid Rules have held as follows:

Therefore, cm the particular language of Rule 2(e) as also the general import of the rules, there seems to be nothing to warrant that direct appointments here necessarily require a resort to the public a large and, therefore, an advertisement in the press in resorting to this source of recruitment either.

10. The next submission of the learned Counsel appearing on behalf of the petitioners was that the appointments were made by respondent No.2 namely, the Speaker, not in accordance with the Rules, but on political considerations. This submission on behalf of the petitioners has to be considered in the backgrounds, as mentioned above. As has been stated above, no advertisement and/or notice was ever published nor any competitive examination was ever held in terms of the notification made under the Rules, the only reasonable inference would be that such appointments on large scale were made in a hush-hush manner only to get

the near and dear ones of the politicians as well as the relation of the officers and staff of the Assembly. On the other hand, learned Counsel for the respondent Nos. 2 to 5 submitted that in order to meet the emergent situation, the provisions of the Rules have been unavoidably relaxed. In course of arguments, I wanted to ascertain the total sanctioned strength of Class III and Class IV employees of the Assembly including the vacant posts and the number of appointments made during the period in question by respondent No. 2. By a supplementary counter-affidavit enclosing a chart therewith showing the total sanctioned posts including the total sanctioned vacant posts and the appointments made against such posts, the information has been furnished. The Chart shows the total strength of different Class III and Class IV posts numbering 603; number of vacant posts shown as 191 and the appointments made as 191, it is also mentioned in the Chart that as many as 94 posts were newly created, meaning thereby 191+94 = 285 persons were appointed during the aforesaid period although the petitioners have, no doubt, stated that apart from 234 persons including respondent Nos. 6 to 17, some other persons have also been appointed. Such a submission has not been denied by the respondent Nos. 2 to 5. From the Chart furnished annexed with the supplementary counter-affidavit, it is almost clear that 285 persons have been appointed by respondent No. 2 during the aforesaid period. Appointments in such a large scale, in my view, cannot be held to have been made to meet the emergent situation. Obviously, therefore, the connection of the learned Counsel for the respondent Nos. 2 to 5 is no acceptable that the appointments were made in order to ensure smooth functioning of he Assembly in absence of respondent-No. 2, the Speaker. this Court, while dealing with such a question, has held in the case of Bijay Kumar (supra) as follows:

20. this Court, times without number, have pointed out that appointments in the State of Bihar are made either for monetary consideration or for other extraneous consideration. Frequently, appointments are made in violation of the recruitment rules and/or guidelines given by the State from time to time. Even the reservation policies are not followed in such cases. Taking into consideration the facts and circumstances of this case, we are of the view that the appointment of the petitioner has been made in a hush-hush manner and in violation of he recruitment rules as also Act. 16 of the Constitution of India.

11. Learned Counsel for the respondents 2 to 5, with reference to the various provisions of the Rules quoted above, submitted that the Speaker, respondent No.2 while making appointments on different posts, has followed the procedure prescribed in Rule 4(2)(a) of the Rules. He also relied upon Rules 15 and 20 of the Rules and submitted that in the given situation, the Speaker is fully empowered to exercise his discretion in such matters. The submission of the learned Counsel seems to be misconceived inasmuch as these rules do not, in any way, confer power on the Speaker to make appointments in such a large scale without following the normal procedure, as has been stated above, in exercise of his power. Under Rule 4(2)(a) of the Rules, the aforesaid notification was issued wherein a definite procedure for appointment to Class HI posts has been laid down, which has, admittedly been not followed. Therefore, in that view of the matter, it cannot be said that the respondent No. 2, the Speaker has followed the procedures in making the aforesaid appointments. In the backgrounds of this case, it is not open for the respondents 2 to 5 to say that the appointments, aforesaid, were made due to exigencies of the situation as a result of which the normal rules of procedure have not been followed. As has been stated above, similar appointments had been made by the then Speaker of die Assembly without making any advertisement and without holding competitive examination, which had been cancelled by his successor-in-office only on the ground that the normal rules of procedure in making those appointments had not been followed and in that situation, the appointments of 89 persons to the posts of Assistant, Typist and Routine Clerk had been cancelled. The aforesaid order of cancellation was challenged before this Court wherein a counter-affidavit was filed on behalf of the Speaker stating, inter alia, that the then Speaker had appointed those persons on different posts without making any advertisement and/or following the provisions of the rules and, ultimately, on the pleadings of the parties, this Court upheld the order of cancellation, In the facts and circumstances of this case, it is highly unfortunate and regrettable that the holder 'of a high public office has completely forgotten his responsibilities while discharging the statutory duties entrusted to him. The entire system of appointments in the instant case, in my considered view, is wholly illegal, arbitrary and without jurisdiction, in the case of Krishan Yadav and Anr. (supra), their Lordships of the Supreme Court, while dealing with somewhat a

similar question, have held as follows:

18. It may not be too much to draw an inference that all was motivated by extraneous considerations. Otherwise, how does not account for selection without interview, fake and ghost interview, tampering with he final records, fabricating documents, forgery? Each of this would attract the penal provisions of Indian Penal Code. They have been done with impunity.

19. The sorry does not end here. From out of the 'selection list' secret communicates have been sent to the candidates. Selections were made without medical test or verification of antecedents.

20. It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trusts, Such offices are mean for use and not abuse. From a Minister to a mental, everyone has been dishonest to gain undue advantages. The whole examination and die interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud. It is somewhat surprising the High Court should have taken the path of least resistance stating in view of he destruction of records it was helpless. It should have helped itself. Law is not that powerless.

In the facts and circumstances of this case particularly when the basic facts have not been denied by the respondents, I do not feel it necessary to deal with the other cases cited by the learned Counsel for the petitioners.

12. After going through the pleadings of the respective parties and after having heard the submissions of the learned Counsel appearing on their behalf in great details, I find that the respondent No. 2, the Speaker, has made the appointments of 285 persons including those of the respondent Nos. 6 to 17 without complying with the requirement of law as also in violation of the constitutional mandate enshrined in Articles 14 and 16 of the Constitution of India. Thus, such appointments made by respondent No.2, the Speaker, is as initio void and, as such, cannot be sustained and are, accordingly, liable to be quashed.

13. In the result, this writ application is allowed and the orders of appointments of 285 persons including made by the respondent No. 2, the Speaker of the Assembly, as contained in Annexures-2 Series are hereby quashed being declared as void as initio, but in the circumstances of the case, there shall be no order as to costs.

Before, however, parting with this judgment, I must observe that the respondent Nos. 2 to 5, if so advised, may now take steps to fill up the vacancies on various posts afresh in accordance with law.

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