

State of Bihar and ors. Vs. Prashant Kr. Sharma and ors.

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Court : Patna

Decided On : Jan-29-2003

Judge : Nagendra Rai and R.S. Garg, JJ.

Acts : Service Law

Appeal No. : L.P.A. Nos. 675, 676, 677, 678, 680, 681, 687, 689, 690, 691, 693, 694, 696, 708, 712, 778 and 1542

Appellant : State of Bihar and ors.

Respondent : Prashant Kr. Sharma and ors.

Advocate for Def. : T.K. Jha, Sr. Adv. and P.C. Jha, Adv. in LPAs 691, 694 and 708 all of 2000, Chandra Shekhar, Sr. Adv. and Pankaj Kr. Sinha, Adv. in LPAs 681, 690, 693 and 712 of 2000, Rajendra Pd. Singh and Rajeev Kr

Advocate for Pet/Ap. : V.N. Sinha, G.P. 9 and SC Jha, JC to GP 9 and Barun Kr. Chaudhary, Adv. in LPAs No. 696, 778 and 1524/2000

Prior history : R.S. Garg, J. 1. This order shall dispose of LPA No. 675 of 2000 (The State of Bihar and Ors. v. Prashant Kr. Sharma, arising out of CWJC No. 3822/97), LPA No. 676 of 2000 (The State of Bihar and Ors. v. Nirmat Kr. Sinha and Ors., arising out of CWJC No. 4337 of 1997), L.P.A. No. 677 of 2000 (The State of Bihar and Ors. v. Satish Kr. Singh, arising out of CWJC No. 4982 of 1997), LPA 678 of 2000, (The State of Bihar and Ors. v. Ravindra Narayan Thakur and Ors. arising out of 3345 of 1997) LP

Judgement :

R.S. Garg, J.

1. This order shall dispose of LPA No. 675 of 2000 (The State of Bihar and Ors. v. Prashant Kr. Sharma, arising out of CWJC No. 3822/97), LPA No. 676 of 2000 (The State of Bihar and Ors. v. Nirmat Kr. Sinha and Ors., arising out of CWJC No. 4337 of 1997), L.P.A. No. 677 of 2000 (The State of Bihar and Ors. v. Satish Kr. Singh, arising out of CWJC No. 4982 of 1997), LPA 678 of 2000, (The State of Bihar and Ors. v. Ravindra Narayan Thakur and Ors. arising out of 3345 of 1997) LPA No. 680 of 2000 (The State of Bihar and Ors. v. Ram Ayodhya Prasad, arising out of CWJC No. 6200 of 1998), LPA No. 681 of 2000 (The State of Bihar and Ors. v. Siya Ram Choudhary, arising out of CWJC No. 9591 of 1997), LPA No. 687 of 2000 (The State of Bihar and Ors. v. Binod Kumar., arising out of CWJC No. 10490 of 1997), LPA No. 689 of 2000 (The State of Bihar and Ors. v. Abhiram Jha and Ors., arising out of CWJC No. 10436/97), LPA No. 690 of 2000 (The State of Bihar and Ors. v. Fuldeo Sah, arising out of CWJC No. 9473/97), LPA No. 691 of 2000 (The State of Bihar and Ors. v. Kishore Kumar Jha and Ors., arising out of CWJC No. 10995/97), LPA No. 693 of 2000 (The State of Bihar and Ors. v. Krishna Kant Jha and Ors., arising out of CWJC No. 9608 of 1997), LPA No. 694 of 2000 (The State of Bihar and Ors. v. Baidya Nath Jha and Ors., arising out of CWJC No. 6070 of 1998), LPA No. 696 of 2000 (Dina Nath Sah v. The State of Bihar and Ors., arising out of CWJC No. 6904 of 1998), LPA No. 708 of 2000 (The State of Bihar and Ors. v. Dhanpati Jha and Ors., arising out of CWJC No. 10991/97), LPA No. 712 of 2000 (The State of Bihar and Ors. v. Sri Narayan Kumar, arising out of CWJC No. 10210/ 97), LPA No. 778 of 2000 (Braj Nath Singh @ Baijnath Singh v. The State of Bihar and Ors., arising out of CWJC No. 6904/98), LPA No. 1524 of 2000 (Ganesh Ram v. The State of Bihar and Ors., arising out of CWJC No. 6904/98). All the writ applications were disposed of by an Hon'ble Single Judge of this Court by common order passed in CWJC No. 3345 of 1997 and others of 1st March, 2000.

2. At the same time this order shall also dispose of LPA No. 271 of 2002 (The State of Bihar and Ors.v. Mithilesh Sharma, arising out of CWJC No. 8631 of

2001) LPA272 of 2002 (The State of Bihar and Ors.v. Akhilesh Kumar Sinha, arising out of CWJC No. 14268/2001) LPA No. 274 of 2002 (The State of Bihar and Ors. v. Ajay Kumar Singh, arising out of CWJC No. 8602/2001) LPA No. 287 of 2002 (The State of Bihar and Ors. v. Binod Kumar Paswan, arising out of CWJC No. 9142/2001) LPA No. 289 of 2002 (The State of Bihar and Ors. v. Sachin Thakur, arising out of CWJC No. 15876/2001) LPA No. 322 of 2002 (The State of Bihar and Ors. v. Ram Sagar Prasad, arising out of CWJC No. 9655/2001) LPA No. 334 of 2002 (The State of Bihar and Ors. v. Smt Radha Devi and Ors., arising out of CWJC No. 13527/2000) LPA 363 of 2002 (The State of Bihar and Ors. v. Mukesh Kumar Jha. arising out of CWJC No. 9380/2001), LPA No. 512 of 2002 (The State of Bihar and Ors. v. Uday Pd. Singh, arising out of CWJC No. 15526/2001). These 10 LPAS arising out of judgment of another Hon'ble single Judge who had disposed of nine matters by common judgment dated 10-1-2002 while LPA No. 512/2002 was disposed of by a separate judgment.

3. This order shall also dispose of LPA No. 546/2001 (The State of Bihar and Ors. v. Bilash Yadav, arising out of CWJC No. 1200/2001).

4. This order shall, in all, dispose of these 27 Letters Patent Appeals. These were argued simultaneously and are being disposed of by this common order.

5. It is not in dispute before us that the original writ petitioners are Class III or IV employees who are appointed on temporary/ad-hoc basis in various project offices of the Land Acquisition works dealing with the work of rehabilitation connected with the projects is question under the Water Resources Department, Government of Bihar. The services of the writ petitioners were terminated by different orders mainly on the ground that their initial appointments were bad, illegal and contrary to the settled norms and were infact not made by the competent officer/authority. In some of the termination orders it has been also made a ground that the incumbent could not produce his/their appointment letters which was leading to an irresistible conclusion that either they were not appointed properly or their appointments were illegal or void-ab-initio. In the different writ applications individuals/set of the petitioners/ association of the petitioner had challenged the termination orders inter alia submitting that the termination orders were patently

illegal, bad, were contrary to the principles of natural justice and were contrary to the exercise of the administrative powers. In some of the writ applications some of the petitioners have prayed for regularisation of their services.

6. In the 19 writ applications, which were heard and disposed of by a common judgment the learned Single Judge categorised the cases in three categories, viz, 'A', 'B' and 'C'. The writ petition in which the impugned orders of termination were passed on the ground that even after notice the petitioners failed to produce their original letters of appointment and therefore, the appointments were deemed to be illegal were placed in category 'A'. The category 'A' consisted of CWJC 3345, 3822, 4837 and 4982 all of 1997. The writ applications wherein the impugned orders of termination were passed on the ground that subsequent appointment of petitioners as retrenched employees by competent authority, the Director of the Department, was of no consequence, because their initial appointment was itself illegal and therefore, they could not be accepted as legally retrenched employees. These matters were categorised in category 'B'. This category consisted of 11772/97 and 6596/98. In the other 10 writ applications including CWJC Nos. 9473, 9591, 9608, 10210, 10436, 10490, 10991, 10995 all of 1997 and 6070 and 6200 both of 1998 the orders of termination were passed upon the ground that the rehabilitation Officer who had initially appointed the petitioners had no legal authority to make such appointments. These cases were included in category 'C'. The learned single Judge after taking into consideration the arguments raised in support of the writ applications allowed the four writ petitions falling under category 'A', quashed the orders of termination and remitted the matters back to the concerned authority to re-examine the matter afresh keeping in view the observations made in the said judgment because the learned single Judge was of the opinion that these writ petitioners were in possession of the appointment orders and the department was unjustified in observing that on a notice, the writ petitioners could not produce their appointment orders with their show-cause. The cases falling under the category 'B' in all five the writ applications wherein the services of the retrenched employees were terminated on the ground that the initial appointments were invalid, were dismissed as meritless. The cases falling under category 'C' were also allowed and the impugned orders of termination were quashed and the respondent State were directed to consider the matter of

regularization of services of such petitioners, if required, in accordance with law within a period of six months from the date of judgment. It would be noteworthy that the State Government has filed 14 different Letters Patent Appeals against grant of the writ petitions filed by different set of petitioners wherein the order of termination were set aside and the matters were remitted to the authorities of reconsider the case relating to termination or for regularisation. The writ petitioners of CWJC Nos. 10830, 10971, 11722 all of 1997 and 6596 of 1998 did not prefer any appeal while three different writ petitioners of CWJC No. 6904/1998 have filed LPA No. 696, 1524, 778 all of 2000.

7. Against the judgments delivered in CWJC No. 1200/2001 the State has filed LPA No. 546/2001.

8. In the other set of ten Letters Patent Appeals nine were disposed of by common order while the 10th one was disposed of by another order. In all these 10 cases the learned single Judge without entering into the merits of the appointment order without considering the rival contentions regarding the validity/propriety of the initial appointment placed his reliance upon a single bench judgment of this Court in the matter of Sunil Kumar v. State, CWJC No. 6586/1998, which was upheld in LPA No. 270/2000 filed by State against Sunil Kumar. It would be noteworthy that some other single bench judgments were taken into consideration and the learned Single Judge observed that it was settled law that if an employee continues on a post for several years then his services should not be terminated. He placed his reliance upon certain judgments of the Supreme Court also.

9. Learned Government Counsel arguing for the State submitted that from the judgments of the learned Single Judge and the facts floating on the surface of the records it would clearly appear that the initial appointments of each and every petitioner was illegal, contrary to law, against the settled norms, without following the proper procedure for appointment and were by an authority which had no jurisdiction to issue the appointment orders. According to him if the initial appointment itself was bad or contrary to law then any extension given by the competent officer would not add any premium to the illegal appointment and the learned Single Judge was unjustified in observing that because the period and

appointment was extended by the competent officer, therefore, the same would be deemed to be valid. It is also his contention that if the appointments are void-ab-initio, absolutely illegal and have no foundation to stand then the length of the service or the period of stay in the department would not confer any right upon the such incumbent/employee and on detection of the illegality the State/the Department would also be justified in terminating the services. It is also contended by him that in cases like present the equity has no role to play because if the illegal entries are protected on the ground of equity then it would lead to a chaotic situation. His submission in fact is that the equity would protect those who came to the Court with clean hands. According to him if the entry itself is bad or under the orders of an officer who had no authority to open the doors for these persons then grant of permission by competent officer to these persons to stay for some days or years would not make their initial entry valid. His submission also is that in these cases the principles of estoppel, which also is based on the canons of equity would not apply nor the length of service would provide any protection to these persons. His submission in fact are that in view of the illegal entry and appointment by an Officer, who was not authorized, would not extend any benefit or create right in favour of the writ petitioners and in such circumstances neither the cases could be remitted nor the learned single Judge in different set of writ applications could say that because of the long stay of those petitioners in the Department, their services could not be terminated.

10. On the other hand learned Counsel for the respondents with their usual vehemence submitted that even if the initial entry was irregular then too the Department after a period of 14, 15 or 16 years could not come out of their slumber, make a farce in the name of enquiry and terminate the services. It is also contended by them that long stay for all these years has provided the assurances in favour of these writ petitioners that they would be allowed to continue in their offices and now would not be thrown on roads after a lapse of decades, In LPA No. 696, 1524 and 778 all of 2000 the writ petitioners whose writ applications were dismissed have raised the same questions and have submitted that though their services were terminated after sometime of their first entry but their re-entry on the ground that they were illegally retrenched on the facts would provide them a shelter, even if the authority was unjustified in observing that they were illegally

retrenched. The order directing their re-appointment can be taken to be an order of fresh appointment. Their submission in fact is that their initial appointments were irregular and not illegal. It is contended by the appellants/writ petitioner and the respondents writ petitioners that irregular appointments would not visit the capital punishment of termination. According to them the writ petitioners are settled into services and are also settled in the life, therefore, at this stage the termination orders would have a cyclonic effect. Replying to these arguments learned Counsel for the State Government submitted that if the initial entry is bad then in absence of a foundation any repair work or any construction in the air would not provide any favour to the writ petitioners. He also submitted that ordinarily the law of the land is that where the appointments are irregular then in a given case the Department may be asked to suffer or bear with such an incumbent but the said principle would not be of universal application specially in cases where the initial entry is void because what is absolutely void cannot be converted into a valid piece of order.

11. We have heard the parties at length and have also perused the orders passed by the learned Judges in their different judgments.

12. The basic question in all these matters is that whether the initial entry or the initial entry of the writ petitioners or the initial appointment of the writ petitioners are in accordance with law or not. In the judgment dated 1st March, 2000 wherein 19 writ applications were disposed of the learned single Judge had observed that the initial entry of all the writ petitioners was bad. He, however, observed that in category 'A' cases the State appears to have not applied its mind because the petitioners of those four writ applications were possessing the orders of appointment. In cases falling under category 'C' the learned single Judge observed that the appointments were made by the Rehabilitation Officer, the said Officer was not authorised to issue the appointment orders but in some of the matters the appointment order contained the statement that the appointments were made on temporary/Ad-hoc basis as per order of the Director. The learned single Judge also observed that the initial appointments were issued with specific approval by competent authority or the Director General approved the said appointments by extending the period of appointment pursuant to which the petitioners in those

cases continued in service for long period.

13. It is not in dispute before us that barring a single line in the appointment orders no other material is available with the petitioners to say or show or to satisfy our judicial conscience that the orders or appointments were issued under the directions of the Director General or with his prior approval or post-facto approval was given to these appointments. In absence of such material it would not be possible for us to hold that the appointment orders of some of the writ petitioners falling under the category 'C' were issued with the prior approval or concurrence of the Director General. We could appreciate the argument of the writ petitioners if at any point of time they could obtain the earlier order of approval issued by the Director General. In the administrative area oral order approvals for confirmations have no legs to stand. When an order of appointment is to be issued by a competent officer then he is not competent to issue such an oral order. Assuming the exception could be applied that such competent officer had given the consent and had delegated his powers to some subordinate then any beneficiary of such order has to prove the fact. The State cannot be asked to produce such an order specially in a case where it has come out with a specific plea that neither there was an approval nor a consent. The writ petitioners if are relying upon the observations made in those appointment orders then it would be for them to bring on record certain material that their appointment orders were issued with prior approval of the Director General or any post facto sanction was given by him. In our considered opinion the learned single Judge was not justified in observing that mention of this fact in the appointment order that the same were issued as per orders of the Director, would clinch the issue. In our considered opinion the burden was upon the writ petitioners to prove the fact which they miserably failed to discharge.

14. For cases falling under category 'C' where there was no mention in the appointment orders that the same were issued in accordance with the orders of the Director, the learned single Judge has observed that because the Director General extended the period of appointment, therefore, it must be presumed that there was a tacit consent/approval. True it is that under the cover and protection of the extension order the writ petitioners continued in service but it would be wrong

to say that they were treated as duly appointed temporary employee. The initial entry of these persons falling under category 'C' was bad and illegal. The door for their entry was opened by a person who had no authority, if they were allowed to stay in for sometime by the director then that would not create a right in their favour. It would be wrong to say that by issuing extension order the Director General approved their initial appointments. In the administrative field there is nothing like a tacit or indirect or half hearted consent, If the appointment was to be regularised at the initial stage then nothing prevented the then Director General from issuing straight orders that the appointments were made in accordance with this directions or the initial orders were bad or were issued by a person not authorised by law but he was approving the orders and was giving post facto sanction and was granting extension to such incumbents. We are of the considered opinion that grant of extension to those persons falling under category 'C' would not create any right in their favour.

15. The question for consideration still would be that if the initial appointments were bad and illegal would the State be justified in terminating these illegal appointments or the State would be estopped from acting contrary to the original appointment orders and such incumbents would be entitled to a protection under law of equity.

16. For proper appreciation of the question posed before us it would be necessary to refer to some judgments of this Court and the Apex Court. In the matter of R N. Nanjundappa v. T. Thimmaiah, AIR 1972 SC 1967, while appreciating the provisions of Article 309 the Apex Court observed 'that Article 309 speaks of rules for rules for appointment and general conditions of service. Regularisation of appointment by stating that notwithstanding any rules the appointment is regularised strikes at the root of the rules and if the effect of the regularisation is to nullify the operation and effectiveness of the rules, the rule itself is open to criticism on the ground that it is in violation of current rules. Therefore the Mysore Rules of 1967 cannot be permitted to stand to operate as a regularisation of appointment of one person in utter defiance of rules in requiring consideration of seniority and merit in the case of promotion and consideration of appointment by selection or by competitive examination.' The Supreme Court also observed, 'if the

appointment itself is in infraction of the Rules or if it is in violation of the provisions of the Constitution, illegality cannot be regularised, Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment.'

17. From this judgment of the Apex Court it would clearly appear that if the appointment itself is in infraction of the rule or is in violation of the provisions of the Constitution such an illegality cannot be cured nor the services can be regularised. According to the Supreme Court ratification or regularisation is possible of an act which is within the power and province of the authority but there is some non-compliance which can later on be cured.

18. In the matter of K.S.P. College Stop-Gap Lecturers Assocn. v. State of Karnataka, AIR 1992 SC 677 deprecated the practice of the management of the private college to go on for ad hoc appointments. The Supreme Court observed that if the vacancies are available and there are budgetary provisions then regular appointments should be made. We are referring to these judgments simply to say that ad-chocism or temporary appointments should not work like termites in our system, they should not eat the roots of the administration and open the backdoors for such appointee who may sometime come before the Court and say that they had been working for long many years therefore, they be regularised or confirmed or be granted the status of permanent employees. What the Supreme Court said for a private college is applicable with its fullest force to the Government also. The Government cannot rely upon the policy of hire and fire. The Government must be honest not only to its constitutional responsibility but to the public so also to the service law.

19. In the matter of V. Sreenivasa Reddy v. Government of A. P., AIR 1995 SC 586, the Supreme Court was considering a case of direct recruits and temporary appointees. Though the question of seniority was involved in the said matter but the observations quoted below would be of some assistance to us. The Supreme Court had observed 'Even by applying the test of equity the temporary appointees

cannot be put on a higher pedestal over the PSC candidates who stood the test of merit and became successful and secured ranking according to the merit in the approved list of the candidates prepared by the PSC.'

20. The Supreme Court in fact was observing that temporary employees are appointed looking into the requirement of the date and the exigencies. Such temporary employees do not come into the main stream after observing the appointment/ Selection process. In our opinion such appointees who are brought in by following the principle of pick and choose cannot say that they should be allowed to continue. The State or its functionaries neither can be allowed to follow 'pick and choose' or . 'kick and choose'. The service law does not authorise the State or its functionaries to pick some people or kick some people. The law relating to appointment is common for all and it has to be observed irrespective of caste, colour, sex or creed.

21. In the matter of E. Ramakrishnan v. State of Kerala, 1996 (10) SCC 565, it was submitted before the Supreme Court that as those petitioners were continuing for more than 14 years they were required to be regularised. The Supreme Court observed that the post were to be filled through PSC and other candidates came to be selected. Under those circumstances the candidates who were found to be eligible and selected and recommended for appointment by the PSC was required to be appointed. The Supreme Court refused to interfere in the said matter. The Apex Court also observed that any decision of the Government to regularise the services of the ad-hoc employees would run into the teeth of statutory requirements under Article 320 of the Constitution, The continuance of the writ petitioners for 14 years was not considered to be a qualification either for their continuance in services or for their regularisation.

22. In the matter of Ashwani Kumar v. State of Bihar, AIR 1997 SC 1628, the question considered by the Supreme Court was that if the initial appointment is bad whether such persons can be allowed to continue in service and whether their services can be regularised. The Supreme court in the said matter observed:

23. 'Question of regularisation in any service including any Government service may arise in two contingencies. Firstly, if on any available clear vacancies which

are of a long duration appointments are made on ad hoc basis or daily wage basis by a competent authority and are continued from time to time and if it is found that the concerned incumbents have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad-hoc basis for a given substantial length of time to regularise them so that the concerned employees can give their best by being assured security of tenure: But this would require one pre-condition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularisation may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment; A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by competent authority and the irregular initial appointment may be regularised and security of tenure may be made available to the concerned incumbent. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment. In any case back door entries for filling up such vacancies have got to be strictly avoided. However, there would never arise any occasion for regularising the appointment of an employee whose initial entry itself is tainted and is in total breach of the requisite procedure of recruitment and especially when there is no vacancy on which such an initial entry of the candidate could ever be effected. Such an entry of an employee would remain tainted from the very beginning and no question of regularising such an illegal entrant would ever survive for consideration, however competent the recruiting agency may be.'

24. When the Supreme Court says that there would not arise any occasion for regularising the appointment of an employee whose initial entry itself is tainted and is in total breach of the requisite procedure of recruitment then it would be too much to say that because of the long stay of the incumbent for a period of 10, 15, 20 years he cannot be removed from service. Initial appointment if is bad would

not become good because the validity of the initial appointment was not looked into by the department. If an illegality remains undercover or is not detected for long many years it would not culminate into legal act.

25. In the matter of *Amrendra Singh v. State of Bihar*, 1993(3) PLJR 984, a Division Bench of this Court considered two aspects in relation to the public appointments. Firstly the Division Bench observed that public authorities and State functionaries cannot and should not be restrained on principle of estoppel from taking stand that their predecessor in office or other officers in control of matters earlier had in fact acted contrary to law and had taken a wrong stand of law or under the Constitution of India. The Court observed that there is no estoppel against law. The Court also observed that Article 14 cannot be used in negative manner so as to perpetuate an illegality, Placing reliance upon different judgments of the Apex Court and this Court the Division Bench observed that the appointments made in violation of Articles 14 and 16 of the Constitution of India are void-ad-initio and, therefore, confer no legal rights. The Court also observed that the persons whose appointments were illegal or contrary to the norms or without any advertisement would be bad and. such persons cannot be granted any relief.

26. Almost similar question again came up for consideration before a Division Bench of this Court, in the matter of *Ranjeet Kumar Singh v. State of Bihar*, 2000 (3) BLJR 2167; 2000(4) PUR 567. A Division Bench of this Court after categorically examining the judgments of this Court and placing reliance upon the judgment of *Ashwani Kumar* observed that the appointments which were made after coming into force of certain legal provisions without approval of the State Government would be bad and if such appointments are against the constitutional mandate as well as against the mandatory provisions contained in a particular statute such appointments would be bad and would not confer any right upon such persons.

27. In the matter of *State of Bihar v. Vijay Kumar Jha*, 2001 (2) BLJR 1435; 2001 (3) PLJR 297 a Division Bench of this Court cautioned that due care should be taken while giving any direction to the Government for regularisation since it not

only tells upon the public exchequer but also increases the cadre strength. The Court further observed that any ad-hoc or temporary appointment made in administrative exigencies should not be allowed to continue for long and should be replaced by a regular selection as early as possible because such ad-hoc/temporary employees working for number of years have a right to claim regularisation provided they fulfil the eligibility criteria.

28. On the other hand learned Counsel for some of the respondents had placed their reliance upon certain judgments of the Supreme Court to say that in cases like present the termination would be illegal and the regularisation must be observed as a rule. Placing reliance upon the judgment of the Supreme Court in the matter of Commissioner of Police v. Gordhandas Bhandji, AIR 1952 SC 16, it was submitted that when orders are issued by the administrative authorities or statutory authorities then it must be taken to be valid order because it affects the public at large. In the said matter the Supreme Court observed as under:--

29. 'Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. 'Public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order'.

30. We are of the opinion that the observations made by the Apex Court in the matter of Commissioner of Police (supra) were in a different context. If a true interpretation is given to the observations made by the Supreme Court then in fact this judgment may go against the writ petitioners. The Supreme Court had observed that the public officer cannot be allowed to submit his explanation later on but has to justify his own orders on the language employed in the order itself. In the present matters we have already found that the appointments were illegal, bad

and contrary to the settled norms. If that be so then any plea by anybody that it was with the approval or an assumed tacit approval would not better the case to the writ petitioners.

31. In the matter of Roshni Devi and Ors. v. State of Haryana, 1998(8) SCC 59, it was submitted before the Supreme Court that the earlier judgment of the High Court, which was not challenged earlier was incapable of being implemented. The Supreme Court deprecated the said practice. On an earlier occasion in the matter of Sudesh Kumari the High Court recorded a finding that the last candidate appointed out of the list prepared on 15-10-1989 was at Sl. No. 4645 and therefore, directed the respondent State to appoint all those, who were higher in merit. The State Government did not challenge validity of the decision in the matter of Sudesh Kumari. Thereafter in another writ application the validity of the list dated 15-10-1989 was challenged and the full Bench of the High Court issued certain directions which had the effect of virtually abrogating the reliefs given in the case of Sudesh Kumari and annulling the appointments made pursuant to that. Persons who were adversely affected by the full Bench directions came before the Supreme Court, the respondent State which had not earlier challenged the validity of Sudesh Kumari's judgment this time sought to challenge the validity of the said judgment. The Supreme Court found that in the meanwhile the persons benefited by the judgment of Sudesh Kumari were in service for more than nine years. In these circumstances the Supreme Court observed that the equity could be invoked in favour of those persons and their appointments could not be annulled or terminated after a long lapse of nine years. That was a judgment on peculiar facts and by no stretch of imagination it could be argued that the judgments is of universal application.

32. The respondents have also placed reliance upon on the judgment of the Supreme Court in the matter of Gujrat Agricultural University v. Rathod Labhu Bechar, 2001 (3) SCC 574. In the said matter the appellant University had engaged 5100 daily rated labourers for various activities. Their appointments were made in the exigencies of work dehors the recruitment rules. Some of such workers came before the Industrial Tribunal and the Tribunal directed that such workers who had completed 10 years of service as on 1-1-1993 be regularised.

The High Court directed the appellant University to make the payment to the workmen at the minimum of the payscale and also to frame a scheme for the regularisation of such daily rated labourers. Though the Gujarat Agricultural University went up in appeal but the University itself submitted a scheme for absorption of those employees. The Supreme Court in such circumstances observed that if a scheme is framed that the appellant had no impressive sources of its own being an Agricultural University, depending upon the State fund the labourers who were not regularised and were continuously working for 10 or more years with a minimum of 240 days in each calendar year should be paid minimum wages as prescribed by the Government from time to time. Present is not a case where the daily rated or such ad hoc appointees are required to be regularised in a scheme. In the present matters the State has come out with a straight case that the appointments are patently illegal and such appointees do not have any right to continue.

33. When the writ petitioners say that equity be applied in their favour and they be not asked to go back then they are required to show to this Court that what legal authority the officer who had issued orders and what right they had to join the services. The equity is not an empty concept, the equity in fact tilts the balance when all other things are equal. The petitioners cannot be allowed to say that though their entry was illegal despite that they would hold the post. The petitioners' also cannot be allowed to say that though their entry was bad but was later on validated. We have already observed that what was illegal and void could not become legal and valid. In fact the equity must come against such employees who had enjoyed the illegal employment and received salary for long years though they had no right or authority to occupy the post/office or receive the salary simply because the doors were opened for them by some unauthorised officer by his unauthorised act. Can it be argued before a Court of law that stay for a long period though was unauthorised and illegal would create a right in favour of those who illegally entered in the office. In the field of service law the principle of adverse possession has no application. In a case of adverse possession if a person remains in unauthorised possession openly, publicly with hostility then he acquires right by prescription but the said principle cannot be applied to the service jurisprudence. If such persons whose initial appointments are bad are allowed to

occupy the office and post simply because they continued to hold the same then it would be adding premium to an illegality. What was illegal would continue to be illegal. What was void would continue to be void. Either of these cannot be legalised nor can the Court grant relief in favour of such persons applying the principles of equity. The equity bridges the gaps and not the voids. Under the service law, appointments are to be made following certain norms and principles. When a procedure is prescribed then the same is to be followed. If contrary to all these anyone can be appointed then everyone must be appointed. If everyone cannot be appointed then anyone, a blue eyed baby or chosen one, picked one, selected one or elected one by the concerned officer cannot be appointed. Principle of equity cannot run contrary to law and the right of equality enshrined under the Constitution of India. An Officer howsoever high he is cannot favour a group of persons, a particular caste, particular sex or politically protected persons. The Constitution of India guarantees the right of equality saying that if I am to be selected through a process then everybody must be selected through the process. If someone can be appointed without following the procedure then I must also be appointed without following the procedure/process. According to us everyone has an equal right. The preamble of the Constitution makes it clear that we have given the Constitution to ourselves, no-one has thrust or forced the Constitution upon us. It says 'We, the people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship ; Equality of status and of opportunity ; and to promote among them all; Fraternity assuring the dignity of the individual and the unity and integrity of the Nation; In Our Constituent Assembly this twenty-sixth day of November, 1949, do hereby Adopt, Enact and Give to Ourselves this Constitution.' When we have taken the oath we have assured ourselves and assured all others that there would be equality of status and opportunity then the Constitution of India which guarantees our other rights cannot be ignored by applying the principles of equity. We have assured all of equality, how can the State or its functionaries be allowed to be dishonest to others. A Court of law cannot join either the State or its functionaries in its illegal designs, The Courts are meant for curbing the illegality. The Court has to find that what is right and wrong if right is based upon a legal

right then the Court would always approve it and would give the relief. But in cases like present the Court of law would not apply the principle of equity and protect an illegality rather perpetuate an illegality ad-infinitum.

34. It is indeed gratifying to note that the State is taking some interest in matters like present and is trying to remove those who were allowed to enter in services illegally or from the backdoor.

35. The question of continuance in service would in fact be based upon the application of policy of mercy or policy of estoppel or on the fact of long stay. We have already found that long stay of an incumbent in an establishment/Government Officer would not make his stay justifiable. The question of estoppel would not arise in a matter like present. The question of mercy does not arise because they have already obtained from the State for long many years what they were otherwise not entitled to. In our opinion such a protection now would be adding premium to illegality and would be in violation of the principles of Justice, equity, fair play and good conscience. The illegal stay howsoever long would not make the same legal, If the question of mercy arises then the petitioners must show to this Court that why mercy should not be shown in cases of those who are awaiting their turn of appointment/employment for long but are still out of employment and are unable to earn anything or get anything from State either in form of salary or subsistence.

36. The matter may also be appreciated from another angle. The writ petitioners were appointed in the year 1985 or so. Some of the petitioners were immediately terminated but were later on re-employed showing that they were illegally retrenched. The matter did not end there and an enquiry into the subject was made. The enquiry showed that all such persons were illegally appointed and the appointments were motivated, The State Government after finding that the appointments were illegal proposed to terminate the services of such persons and directed registration of first information report against the officer who had issued such order. It is not in dispute before us that the said Officer is facing prosecution because he had issued, as alleged by the State Government, illegal orders which were contrary to law and were for reasons best known to the said officer. On one

side the said officer/officers is/are being prosecuted because they issued appointment orders in favour of the petitioners and on the other hand the petitioners, who were benefited by those illegal orders are requesting the High Court that they be allowed to continue and their services be regularised. Would it not be fallacy of law that the person who issued the orders is being prosecuted and the persons who are benefited by the said orders are to be rewarded reinstatement in services or their regularisation? Would it not mean that the High Court is agreeing to the appointments and is finding the same to be valid or is exercising its extra-ordinary jurisdiction in favour of those persons who are benefited by illegal orders? The High Court certainly would not be a party to all these illegal exercises.

37. In our considered opinion the judgments under appeal cannot be allowed to stand, these deserve to and are accordingly set aside. The appeals filed by the State Government are allowed. The appeals filed by the writ petitioners are dismissed. All the writ applications are dismissed. However, there shall no order as to costs.

Nagendra Rai, J.

38. I agree.

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