The District Judge and the Hon'ble High Court of Judicature through Its Registrar Vs. Sri Anurag Kumar, Son of Sri G.B. Sinha,

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Court : Allahabad

Decided On : May-31-2005

Reported in : 2005(2)ESC1509

Judge : B.S. Chauhan and ;Arun Tandon, JJ.

Acts : The Subordinate Civil Courts Ministerial Establishment Rules, 1947 - Rules 9, 10, 11, 14, 14(3) and 15; Uttar Pradesh Recruitment of Ministerial Staff of the Subordinate Offices Rules, 1950; Constitution of India - Articles 14, 16, 16(1), 21, 226, 235 and 309; Code of Civil Procedure (CPC) , 1908 - Order 39

Appeal No. : Special Appeal No. 702 of 2005

Appellant : The District Judge and the Hon'ble High Court of Judicature through Its Registrar

Respondent : Sri Anurag Kumar, Son of Sri G.B. Sinha, ;Deepak Nigam, S/o Sri L.P. Nigam, ;Narendra Kumar Khare, S

Advocate for Def. : Vikrant Rana and ;Anup Trivedi, Advs.

Advocate for Pet/Ap. : Sudhir Agarwal and ;Amit Sthalekar, Advs.

Judgement :

B.S. Chauhan, J.

1. The District Judgeship of Baghpat, which came into existence on account of the newly created District of Baghpat, has engaged the attention of the High Court continuously on account of un-ending controversies surrounding the appointments made in the Ministerial Cadre and has given rise to litigation which, in turn, has been the subject matter of adjudication on the judicial side of this Court. The present litigation is the second in the series of the recent controversial appointments made which have been scrutinized on the [judicial side and we have been again called upon to pronounce a verdict which, as the facts would disclose hereinafter, contain a disclosure of unsavoury acts which are not only unsustainable in the eyes of law but have also provided an opportunity to this Court to again seriously think over to provide for remedial measures in order to prevent any future mishaps which might tarnish the image of our system.

2. This newly created Judgeship has become a site of alternate unlawful invasions, by unscrupulous officers as if it was their favourite hunting resort, which historically Baghpat was during the Moghul period, and which requires an immediate favourable treatment from this Court in order to bring to an end this scene of perpetual infamous attempts made to defame the system.

3. The genesis of this litigation is to be found with the creation of new posts in the year 1998-1999 in the Ministerial Cadre in the District Judgeship of Baghpat. We are presently concerned with such Class-III posts which carry with them a pay-scale of Rs. 3050-4590/-. Even though the present controversy is in respect of four persons, yet this decision pronounces upon the legal position that shall be applicable in respect of all such appointments, as that of the four petitioners of the writ petition giving rise to the present Special Appeal.

4. We have heard Shri Sudhir Agarwal, learned Additional Advocate General assisted by Shri Aimit Sthalekar on behalf of the appellants and Shri Vikrant Rana, holding brief of Shri Anup Trivedi, on behalf of the respondents. With the consent of the parties, we have also summoned the records of the writ petition and we are proceeding to decide the fate of the writ petition along with this Special Appeal as well, to which learned counsel for the parties have no objection.

5. Reverting back to the facts of this case, the appointments in respect of the posts in question are governed by The Subordinate Civil Courts Ministerial Establishment Rules, 1947 (hereinafter called the '1947 Rules) read with the Uttar Pradesh Rules for the Recruitment of Ministerial Staff of the Subordinate Offices in Uttar Pradesh, 1950 (hereinafter called the '1950 Rules). The 1950 Rules have been considered by the Apex Court in the case of O.P. Shukla v. A.K. Shukla : [1986]1SCR855 and it has been held that these Rules are complementary to the 1947 Rules and are applicable for the selection of Ministerial posts in Subordinate Judiciary. It is also admitted to the parties that the posts, against which the writ petitioners are claiming continuance, were advertised on 23rd December, 1999. A copy of the advertisement has been appended along with the writ petition as Annexure-1, which indicates the availability of 10 posts of Clerks and four posts of Stenographers with the rider that the posts are likely to increase or decrease. We are presently concerned with the posts of Clerks in the pay scale of Rs. 3050-4590/-. The records further disclose the undisputed position that the date of examination was 5th March, 2000 and the list of selected candidates which is the subject matter of present controversy was declared on 05.04.2000. This list which is the source of all trouble enlists 72 persons against 10 posts of Clerks which were advertised. 32 persons out of these 72 were given immediate appointments on 5th April, 2000. However, the four petitioners, who are before us, were not amongst the said 32 persons. The petitioners No. 1 and 2, namely, Anurag Kumar and Deepak Nigam have themselves disclosed their dates of appointments as 02.02.2002. The petitioner No. 3 Shri N.K. Khare has disclosed his date of appointment as 16.05.2001 and the petitioner No. 4, Mr. T.P. Yadav has disclosed his date of appointment as 04.02.2002.

6. The first question that calls for determination in this controversy is as to whether the aforesaid four petitioners could have been offered appointments. This necessarily brings us to the question as to whether the declaration of the list on 05.04.2000 was in accordance with the Rules or not and as to whether the said list, even if found to be competent on the date of its declaration, could survive on the date when the petitioners were offered appointment or not.

7. The Rules, in our opinion, are absolutely clear and which have made our task easier to pointedly answer the aforesaid questions. Shri Sudhir Agarwal, learned counsel appearing for the appellants invited our attention to Rules 9, 10, 11, 14 and 15 of the 1947 Rules, referred to hereinabove. Rule 9 empowers the District Judges to recruit as many candidates as are required for the vacancies likely to occur in the course of the year'. The exercise has to be commenced early in each year or as the circumstances may require. This entails an exercise by the District Judges of identifying the number of vacancies existing or likely to occur in the course of the year. This is in conformity with the Rule 4 of the 1945 Rules, referred to hereinabove, which requires that such vacancies shall be calculated and necessary steps shall be taken to make this fact generally known. Which follows is that the advertisement to be made has to be preceded by an exercise by calculating the number 01' vacancies in the manner indicated hereinabove.

8. Then comes Rule 10 of the 1947 Rules which provides for an advertisement inviting applications in a particular form which should particularly disclose the number of candidates to be recruited. The advertisement, therefore, will be presumed to have included only such number of vacancies/posts which are available in accordance with the calculation made under Rule 9 and no other future vacancy. The Rule does not contemplate advertisement of future vacancies which can be taken into account after the advertisement has been made.

9. The recruitment thereafter is to be made on the basis of the result of the examination under Rule 11 and for the said purposes, the list of selected candidates has to be entered in a register in order or merit to be maintained by the District Judges under Rule 14. Sub-rule 3 of Rule 14, in no uncertain terms, provides that in case a candidate who has not been offered appointment in accordance with the said list within one year from the date of his recruitment, his name shall automatically be removed from the register.

10. A perusal of the aforesaid Rules would establish that the number of vacancies which have to be advertised are to be in accordance with the Rule 9 and, therefore, the recital in the advertisement that the vacancies are likely to increase or decrease has to be strictly construed in accordance with the aforesaid Rules.

What logically follows is that the District Judge is not at liberty to prepare a list dehors the number of vacancies advertised. This position stands further clarified by the Circular Letter No. 9/VIIb-104 Admin. Dated 29.04.1999 issued by the High Court which clearly states that the select list shall not be prepared by the District Judges for more than the double of the vacancies advertised. The said Circular has been referred to in the report of the then learned Administrative Judge, Baghpat in his report which has been appended as Annexure- 1 to the stay application in this appeal. In the instant case, 72 persons were enlisted for recruitment on 05.04.2000 as against 10 vacancies, which stood advertised.

11. On the basis of the aforesaid provisions and the Circular, referred to hereinabove, it is explicit that the select list, which was prepared on 5th April, 2000, was in flagrant violation of the Rules, referred to above. The then District Judge has proceeded to prepare the list in an absolute arbitrary and whimsical fashion which list could not have included, by any means, more than 20 names. The first step of derailment of the process of selection seals the fate of all such candidates who are claiming themselves to have been appointed under the said list in excess of first twenty names and leaves no room for doubt that the select list was prepared with some oblique and ulterior motive.

12. The petitioners are admittedly much below the 20 candidates in the merit list dated 05.04.2000 and as such they could not have been included in the list prepared by the District Judge. Their very inclusion is invalid. The same is the position with regard to such other candidates who stand on a similar footing. The District Judge proceeded to place 52 persons in the select list in excess of 20 names, including that of the petitioners, and subsequently appointed them which appointments are also invalid, as they are from the same invalid list. We, therefore, hold that the preparation of the select list in excess of 20 names was absolutely illegal and contrary to the Rules applicable. The question of preparing the select list of more than 20 or filling up the vacancies against more than 10 posts is in contravention of Articles 14 and 16 of the Constitution of India.

13. Ashok Kumar and Ors. v. Chairman, Banking Service Recruitment Board and Ors. : (1996)ILLJ 1103 SC , the Supreme Court held as under:-

'5. Article 14 read with Article 16(1) of the Constitution enshrines fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution. Boards should notify the existing and excepted vacancies and the Recruitment Board should get advertisement published and recruitment should strictly be made by the respective Boards in accordance with the procedure to the notified vacancies but not to any vacancies that may arise during the process of selection'. (Emphasis added)

14. In Gujarat State Deputy Executive Engineer's Association v. State of Gujarat and Ors., 1994 Suppl. (2) SCC 591, the Hon'ble Supreme Court quashed the appointments made over and above the vacancies advertised holding that such an action was neither permissible nor desirable for the reason that it would amount to 'improper exercise of power' and only in a rare and exceptional circumstance and in emergent situation, this rule can be deviated from and it can be done only after adopting policy decision based on some rational as the authority cannot fill up more posts than advertised as a matter of course.

15. In Prem Singh and Ors. v. Haryana State electricity Board and Ors. : (1996)IILLJ786SC , the Apex court observed as under-

'...The selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only, the State cannot make more appointments than the number of posts advertised.... State can deviate from the advertisement and make appointments on the posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf.'

16. The said judgment in Prem Singh was followed with approval by the Hon'ble Supreme Court in Virendrer Singh Hooda v. State of Haryana : (1999)IILLJ800SC .

17. In Union of India and Ors. v. Ishwar Singh Khatri and Ors, 1992 Suppl. (3) SCC 84, the Court held that selected candidate have right to appointment only against 'vacancies notified' and that too during the life of the select list as the panel of selected candidate cannot be valid of indefinite period. Moreover, impanelled candidates 'In any event cannot have a right against future vacancies.' In State of Bihar and Ors. v. The Secretariat, Assistant S.E. Union, 1986 and Ors., : AIR 1994 SC736 , the Apex court held that ' a person who is selected does not, on account of being empanelled alone, acquire any indefeasible right of appointment. Empanelment is at the best a condition of eligibility for purposes of appointment, and by itself does not amount to selection or create a vested right to be appointed unless relevant service rules say to the contrary.' In the said case as the selection process was completed in five years after the publication of the advertisement, the contention was raised that the empanelled candidates deserved to be appointed over and above the vacancies notified. The Hon'ble Supreme Court rejected the contention observing that keeping the selection process pending for long and not issuing any fresh advertisement in between, may not be justified but offering the posts in such a manner would adversely prejudice the cause of those candidates who achieved eligibility in the meantime.

18. In Surinder Singh and Ors. v. State of Punjab and Ors. AIR 1998 SC 18, the 'Apex Court Court held as under:-

19. A waiting list, prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the persons from the waiting list may be pushed UP and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who became eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as infinite stock for appointment, there is danger that the State may resort to the device of not holding the examination for years

together and pick up candidates from the waiting list as and when required. The Constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetuating the waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service Exercise of such power has to be tested on the touch-stone of reasonableness. It is not a matter of course that the authority can fill up more posts than advertised.' (Emphasis added).

20. In Kamlesh Kumar Sharma v. Yogesh Kumar Gupta and Ors. : AIR 1998 SC1021 , the Apex Court similarly observed as under:-

'As per the scheme of the Act and the aforesaid provisions, for each academic year in question, the management has to intimate the existing vacancies and vacancies likely to be caused by the end of the ensuing academic year in question. Thereafter, the Director shall notify the same to the Commission and the Commission, in turn, will invite applications by giving wide publicity in the State of such vacancies. The vacancies cannot be filled except by following the procedure as contained therein. Sub-section (1) of Section 12 has incorporated in strong words that any appointment made in contravention of the provisions of the Act shall be void. This was to ensure to back-door entry but selection only as provided under the said sections.' (Emphasis added).

21. Similar view has been reiterated by the Hon'ble Supreme Court in Sri Kant Tripathi v. State of U.P. and Ors. (2001) 10 SCC 237; and State of J&K; v. Sanjeev Kumar and Ors., : (2005)4SCC148 .

22. In State of Punjab v. Raghbir Chand Sharma and Ors. : AIR 2001 SC2900 , the Apex Court examined the case where only one post was advertised and the candidate whose name appeared at Serial No. 1 in the select list joined the post, but subsequently resigned. The Court rejected the contention that post can be filled up offering the appointment to the next candidate in the select list observing as under:-

'With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select list prepared, the panel ceased to exist

and has outlived its utility and at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently.'

23. In view of the above, we are of the considered opinion that as only ten vacancies had been advertised, there could be no justification for the authority concerned to fill up more than ten vacancies as it included the then existing as well as vacancies likely to occur in the course of the year. Once ten vacancies had been filled up, the selection process stood exhausted, and the authority concerned become functus officio. Any appointment made by him beyond that number, is without jurisdiction, therefore a nullity, inexecutable and unenforceable in law.

24. In such an eventuality after issuing appointment letters to ten candidates, the select list/waiting list stood exhausted and could not have been used as perennial source for appointment against any other vacancy. There can be no controversy to the settled legal proposition that even if a successful candidate joins the post and resigns or dies or stands transferred, his vacancy stands exhausted merely by his joining and the post could not be filled up from the waiting list as the statutory rules do not provide for such a course.

25. In the instant case, the candidates appointed against those vacancies had been transferred to different Judgeships and vacancies were created time and again artificially and the select list which could not have been for more than 20 names, had been used as a reservoir by the statutory authority for making illegal appointments. The Court being the' custodian of law cannot close its eyes where the facts are so startling that it shocks the conscience of the Court. However, we restrain ourselves to hold that appointments could have been made on extraneous considerations only for the reason that the then District Judge is not a party by name before us. We are told that though the officer has retired but he is facing Departmental Enquiry on such charges.

26. The question of appointment dehors the Rules has been considered by the Hon'ble Supreme Court time and again and the Court held that such appointments are unenforceable and inexecutable. It is settled legal proposition that any

appointment made de hors the Rules violates the; Public Policy enshrined in the rules and, thus, being void, cannot be enforced. (Vide Smt. Ravinder Sharma and Anr. v. State of Punjab and Ors., : (1995)IILLJ589SC ; State of Madhya Pradesh v. Shyama Pardhi : AIR 1996 SC2219 ; State of Rajasthan v. Hitendra Kumar Bhatt : (1997)6SCC574 ; Patna University v. Dr. Amita Tiwari : AIR 1997 SC3456 ; Madhya Pradesh Electricity Board v. S.S, Modh and Ors. : AIR 1997 SC3464 ; and Chancellor v. Shankar Rao and Ors. : (1999)6SCC255 .

27. In Dr. M.A. Haque and Ors. v. Union of India and Ors. : (1993)ILLJ 1139 SC , the Supreme Court observed as under:-

'We cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in breach. If a disregard of the rules and by passing of the Public Service Commissions are permitted, it will open a back-door for illegal recruitment without limit. In fact this Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional provisions requiring recruitment to the services through the Public Service Commissions. It appears that since this Court has in some cases permitted regularisation of the irregularly recruited employees, some governments and authorities have been increasingly resorted to irregular recruitments. The result had been that the recruitment rules and the Public Service Commissions have been kept in cold storage and candidate dictated by various considerations are being recruited as a matter of course.'

28. Deprecating the practice of making appointment de hors the Rules by the State or its instrumentalities in Dr. Arundhati A. Pargaonkar v. State of Maharashtra, : (1995)ILLJ927SC , the Court rejected the claim of the petitioner therein for regularisation on the ground of long continuous service observing as under:-

'Nor the claim of the appellant, that she having worked as Lecturer without break for 9 years' on the date the advertisement was issued, she should be deemed to have been regularised appears to be well founded. Eligibility and continuous working for howsoever long period should not be permitted to over-reach the law. Requirement of rules of selection.... cannot be substituted by humane

considerations. Law must take its course.'

29. In Harpal Kaur Chahal v. Director Punjab Instructions, 1995 Supp (4) SCC 706, a similar contention was rejected though the appellant therein had worked for about 24 years.

30. In Binod Kumar Gupta v. Ram Ashray Mahoto and Ors., : AIR 2005 SC2103 , the Apex Court did not grant indulgence to an illegal appointee though he had worked for more than 15 years, observing as under:-

'The District Judge, who was ultimately responsible for the appointment of Class-IV staff violated all norms in making the appointments. It is regrettable that the instructions of the High Court were disregarded with impunity and a procedure evolved for appointment which cannot be said to be in any way fair or above board. The submission of the appellants that they had been validly appointed is in the circumstances unacceptable. Nor can we accede to their prayer to continue in service. No doubt, at the time of issuance of the notice on the special leave petition, this Court had restrained the termination of services of the appellants. However, having regard to the facts of the case as have emerged, we are of the opinion that this court cannot be called upon to sustain such an obvious disregard of the law and principles of conduct according to which every judge and anyone connected with the judicial system are required to function. If we allow the appellants to continue in service merely because they have been working in the posts for the last 15 years we would be guilty of condoning a gross irregularity in their initial appointment.'

31. The Hon'ble Supreme Court in State of UP. and Ors. v. U.P. State Law Officers Association and Ors., : [1994]1SCR348 observed as under:-

'This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back door have to go by the same door. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all

appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoiled system. There need be no legal anxiety to save them."

32. Appointments made in contravention of the statutory provisions remain in-executable.

33. Coming to the next question with regard to the period for which the said select list survived, it is apparent that the list for recruitment was prepared finally on 05,04.2000. On a simple mathematical calculation, the period of one year, as per the Gregorian Calendar, cannot, in any circumstance, stretch beyond 04.04.2001. Thus, according to Rule 14(3) of the 1947 Rules, all names that were existing up to 04.04.2001, stood automatically removed with effect from 05.04.2001 and no person could either have claimed appointment or could have been appointed by the District Judge under the said select list. The Rule, referred to hereinabove, is ruthless and negatively worded. It brings about automatic removal and is not subject to any relaxation. The word 'automatic' in its ordinary sense means 'on its own'. Thus, the removal of the name does not require any action to be taken and stands removed accordingly. The removal of the name, therefore, brings about a complete and unqualified cessation of any semblance of claim under the select list. To put it otherwise, the District Judge looses all authority and jurisdiction and is completely forbidden from picking up any name out of the said list after the expiry of the aforesaid period of one year for appointment. In short, the District Judge becomes functus officio vis-a-vis to that extent. This position with regard to the existence of the select list and the automatic removal of the names from the list was subject matter of consideration of several decisions and the final pronouncement in this regard is in the case of D.N. Srivastava v. State of U.P., a Full Bench decision of our Court reported in 1996 (2) UPLBEC 1037. This view stands fortified by the judgments of the Hon'ble Apex Court in State of Bihar and Ors. v. Mohd. Kalimuddin : [1996]1SCR314 ; State of U.P. and Ors. v. Harish Chandra and Ors. : (1996)IILLJ627SC ; and & State of U.P. and Ors. v. Ram Swarup Saroj : AIR 2000 SC1097 .

34. Examining the facts of the present case, as admitted to the petitioners themselves, the first appointment claimed is by the petitioner No. 3 on 16.05.2001 and that by petitioners No. 1 and 2 on 02.02.2002 and by petitioner No. 4 on 04.02.2002. To support the enlargement of the period of the life of the list, the petitioners (respondents herein) have relied on an order of then District Judge (Annex-3) whereby the District Judge himself has purported to extend the life of select list for one year, i.e. up to 05.04.2002. The aforesaid order of the District Judge is not only an order without authority of law but appears to be contemptuous as well. It is in teeth of the Circulars of this Court and the decisions pronounced on the judicial side. The District Judge, in our opinion, had no authority in law to give extension to the life of a list which not only, by operation of the Rules but also by declaration of law, stood exhausted. The District Judge, therefore, clearly tried to overreach the law and has acted malafidely by issuing such an order. The petitioners (respondents herein), therefore, cannot get any benefit out of the said letter issued by the District Judge and consequently, the appointments of all four petitioners are void being dehors the Rules, Their consequential transfers respectively to Barabanki, Kanpur, Lucknow and Meerut also cannot confer any benefit to them.

35. The petitioners contend that they were neither given any opportunity prior to the issuance of the termination orders dated 28.02.2005 inasmuch as inspite of the demand having been raised, no documents were supplied to them and the reply submitted by them has not received any consideration from the District Judge, The impugned orders terminating their services reflect non-application of mind and that no objection was ever raised in respect of the select list which was prepared on 05.04.2000. It has been further urged that the candidates out of the said list, whose names were in excess of the double the number of vacancies advertised, are still continuing in service and their services have not been terminated and as such the termination of the petitioners' services are accordingly violative of Article 14 of the Constitution of India, being discriminatory in nature. It has been further urged that the stay order granted in a similar writ petition being Writ Petition No. 52654 of 2003 in respect of 15 employees out of the same list is pending and operating and as such the learned Single Judge did not commit any error in extending the same benefit by granting the interim order in favour of the

petitioners.

36. In reply, Shri Sudhir Agarwal, learned Senior Counsel and Additional Advocate General appearing on behalf of the appellants has urged that there were no posts in the pay scale of Rs. 3050-4590/- in existence and sanctioned against which the petitioners-respondents could have claimed appointments. He has further submitted that the petitioners were given an opportunity which they failed to avail and even before this Court, the petitioners have miserably failed to establish the validity of their selections and appointments. He has further submitted that the termination orders were issued on 28.02.2005 and after having remained out of employment for about two months, the petitioners were favoured with an interim order on 28.04.2005 which could not have been done as the termination orders have already been given effect to. He contends that by an interim order the petitioners could not have been allowed to continue in service and that the interim order amounts to granting the final relief which could not have been done in view of the settled position of law in this regard.

37. Coming to the first objection raised by Shri Sudhir Agarwal, it is settled that a final relief cannot be granted at the interim stage. We are, therefore, of the view that the interim order under appeal is unsustainable.

38. It is settled legal proposition that no interim relief at the initial stage which amounts to final relief should be granted. The Hon'ble Apex Court has consistently and persistently held that the Court should not pass an order at the interim stage, which can be granted only at the time of disposal of the petition. (Vide Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and Ors. : 1985ECR4(SC) ; State of Rajasthan and Ors. v. Swaika Properties and Anr. : [1985]3SCR598 ; A.P. Christians Medical Educational Society v. Govt. of A.P. : [1986]2SCR749 ; State of Jammu & Kashmir v. Mohd Yakoob Khan and Ors. : (1992)4SCC167 ; U.P. Junior Doctors Action Committee and Ors. v. Dr. B. Shital Nandwani, 1992 Suppl (1) SCC 680; Guru Nanak Dev University v. Parminder Kumar Bansal and Anr. : AIR 1993 SC2412 ; Saint John's Teachers Training Institute (for Women) and Ors. v. State of Tamil Nadu and Ors. : [1993]3SCR985 ; Burn Standard Co. Ltd. and Ors. v. Dinabandhu Majumdar and Anr. :

[1995]3SCR712 ; Dr. B.S. Kshirsagar v. Abdul Khalik Mohd Musa, 1995 Suppl (2) SCC 593; Shiv Shankar and Ors. v. Board of Directors, U.P.S.R.T.C. and Anr., 1995 Supp. (2) SCC 726; The Bank of Maharastra v. Race Shipping and Transport Co. (P) Ltd. : AIR 1995 SC1368 ; Commissioner/Secretary, Government of Health & Medical Education Department v. Dr. Ashok Kumar Kohli, 1995 Suppl (4) SCC 214; Union of India v. Shree Ganesh Steel Rolling Mills Ltd., : 1996(84)ELT3(SC) ; State of Madhya Pradesh v. M.V. Vyavsaya and Co., : AIR 1997 SC993 ; and C.B.S.E. and Anr. v. P. Sunil Kumar and Ors., : [1998]3SCR327 ; Indian School Certificate Examination v. Isha Mittal and Anr., : (2000)7SCC521 ; Regional Officer, CBSE v. Km. Sheena Peethambaran and Ors. : AIR 2003 SC3720 ; and State of U.P. v. Ram Sukhi Devi 2004 AIR SCW 6955).

39. In Union of India v. Era Educational Trust, : [2000]2SCR1001 , the Hon'ble Supreme Court after considering its large number of judgments held that while passing interim order in exercise of writ jurisdiction under Article 226 of the Constitution, principles laid down for granting interim relief under Order XXXIX of Code of Civil Procedure, 1908 should be kept in mind. It can neither be issued as a matter of right nor it should be in the form which can be granted only as final relief.

40. In Morgan Stanley Mutual Fund v. Kartick Das, : (1994)4SCC225 , the Hon'ble Apex Court held that ex-parte injunction could be granted only under exceptional circumstances. The factors which should weigh for grant of injunction are - (a) whether irreparable or serious mischief will ensue to the plaintiff; (b) whether the refusal of ex-parte injunction would involve greater injustice than grant of it would involve; (c) even if ex-parte injunction should be granted, it should only be for limited period of time; and (d) general principles like prima facie case, balance of convenience and irreparable loss would also be considered by the Court.

41. The logic behind this remains that the ill-conceived sympathy emasculates as interlocutory judgment exposing judicial discretion to criticism to degenerating private benevolence and the Court should not be guided by misplaced sympathy, rather it should pass interim orders making accurate assessment of even the prima facie legal position. The Court should not embrace the authorities under the

Statute by taking over the functions to be performed by them.

42. Accordingly, the interim relief granted by the learned Single Judge is not Justified as the petitioners did not have the prima facie case, more so, they could be compensated in terms of money, if they succeeded in the petition finally.

43. An interim order cannot be held to be having a binding force. (Vide Jay Pratap Singh v. State of U.P. and Ors. (2005) 29 AIC 157).

44. However, the Court is fully alive of the legal position that it should pass similar interim orders in the cases having similar facts and circumstances and which are governed by the similar statutory provisions.

45. In Vinod Trading Company v. Union of India, : (1982)2SCC40 ; and Bir Bajrang Kumar v. State of Bihar AIR 1987 SC 1345, the Hon'ble Apex Court has expressed the view that the interim orders should not be contradictory to each other if the facts and circumstances of the cases are identical. Similarly, in Vishnu Traders v. State of Haryana, 1995 Suppl (1) SCC 461, the Supreme Court has observed as under:-

'In the matters of interlocutory orders, principle of binding precedent cannot be said to apply. However, the need for consistency approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievance of discriminatory treatment requires that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is an assurance of consistency, uniformity, predictability and certainty of judicial approach.'

46. Similar view has been taken by this Court in Smt. Rampati Jaiswal v. State of U.P. : AIR1997 All170 .

47. Similarly, Article 14 is not meant to perpetuate an illegality. Therefore, we are not bound to direct any authority to repeat the wrong action done by it earlier. This view stands fortified by the judgments of the Hon'ble Apex Court e.g., Sneh Prabha v. State of U.P. and Ors. : AIR 1996 SC540 ; Secretary, Jaipur Development Authority, Jaipur v. Daulat Mai Jain and Ors. : (1997)1SCC35 ; State

of Haryana and Ors. v. Ram Kumar Mann : (1997)IILLJ 1039 SC ; and Faridabad CT Scan Centre v. D.G. Health Services and Ors. : 1997ECR801(SC) .

48. In Finance Commissioner (Revenue) v. Gulab Chandra and Anr. 2001 AIR SCW 4774, the Hon'ble Apex Court rejected the contention that as other similarly situated persons had been retained in service, the petitioner could not have been discharged during the period of probation observing that if no action has been taken in a similar situation against similarly situated persons, it did lot confer any legal right upon the petitioner therein.

49. In Jalandhar Improvement Trust v. Sampuran Singh : [2001]2SCR927 and Union of India and Ors. v. Rakesh Kumar : [2001]2SCR927 the Hon'bie Supreme Court held that Courts cannot issue a direction that the same mistake be perpetuated on the ground of discrimination or hardship.

50. In Harpal Kaur Chahal (supra), the Hon'bie Supreme Court examined a case where the High Court had wrongly extended the benefit to certain ineligible candidates considering them eligible and upheld their appointments. The Court held that such a judgment cannot be a ground for the Court to extend the benefit thereof to other candidates appointed illegally.

51. Any action/order contrary to law does not confer any right upon any person for similar treatment. (Vide State of Punjab and Ors. v. Dr. Rajeev Sarwal, : (2000)ILLJ122SC ; Yogesh Kumar and Ors v. Government of NCT Delhi and Ors. : [2003]2SCR662 ; and Union of India and Anr. v. International Trading Company and Anr., : AIR 2003 SC3983 ; Anand Button Ltd. v. State : [2003]2SCR662 of Haryana and Ors., 2005 AIR SCW 67). Even otherwise, Article 14 provides only for positive equality and not negative equality. Article 14 does not provide for passing wrong order, if it had been committed by an authority. No person can claim any right on the basis of division which is de hors the statutory rules, nor there can be any estopple.

52. Thus, the argument on behalf of the respondent-petitioners, that similarly situate 15 persons have been favoured with an interim order in Writ Petition No. 52654 of 2003, and as such they should not be discriminated, is an altogether

misconceived argument, inasmuch there can be no claim of parity in illegality. In view of our findings, hereinabove, we see no reason to extend any such benefit. Even otherwise, interim orders are not precedent and have no binding effect, more so when this matter is being disposed of. As we are disposing of the Appeal finally, the plea so raised on behalf of the respondents is not tenable and, thus, rejected being preposterous. Nor they can be permitted to contend that as they have been working for last several years, they cannot be removed even if they had illegally been appointed.

53. The question which remains to be answered by us is as to whether the orders of termination of the petitioners are in violation of principles of natural justice as not containing any reasons in support of the order. A plain reading of the impugned orders indicate that the same have been passed without recording any reasons and are cryptic and mechanical in nature. It is, by now, well settled that an order which determines any semblance of claim of a person, be it an administrative order, should record reasons.

54. It is also settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In Shrilekha Vidyarthi v. State of U.P. and Ors. : AIR 1991 SC537 , the Apex Court has observed as under:-

'Every such action may be informed by reason and if follows that an act un-informed by reason is arbitrary, the rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that be you ever so high, the laws are above you.' This is what a man in power must remember always.'

55. In State of West Bengal v. Atul Krishna Shaw, 1991 (Suppl.) 1 SCC 414, the Supreme Court observed that 'giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review.'

56. In S.N. Mukherjee v. Union of India : 1990 CriLJ2148a , it has been held that the object underlying the rules of natural justice is to prevent miscarriage of justice

and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons Is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

57. In Krishna Swami v. Union of India and Ors., : AIR 1993 SC1407 , the Apex Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. The Court further observed that 'reasons are the links between the material, the foundation for these erection and the actual conclusions. They would also administer how the mind of the maker was activated and actuated and there rational nexus and syntheses with the facts considered and the conclusion reached. Lest it may not be arbitrary, unfair and unjust, violate Article 14 or unfair procedure offending Article 21.'

58. Similar view has been taken by the Supreme Court in Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and Ors. : (1983)ILLJ1SC ; and Institute of Chartered Accountants of India v. L.K. Ratna and Ors. : [1987]164ITR1(SC) .

59. In Vasant D. Bhavsar v. Bar Council of India and ors., : (1999)1SCC45 , the Apex Court held that an authority must pass a speaking and reasoned order indicating the material on which its conclusions are based. Similar view has been reiterated in Indian Charge Chrome Ltd. and Anr. v. Union of India and Ors. AIR 2003 SC 953; Secretary, Ministry of Chemicals and Fertilizers, Government of India v. Cipla Ltd. and Ors. : AIR 2003 SC3078 ; Union of India and Anr. v. International Trading Co. and Anr. : AIR 2003 SC3983 ; state of Rajasthan v. Sohan Lal and Ors. : 2004 CriLJ3842 ; and Cyril Lasrado v. Juliana Maria Lasrado and Ors., : (2004)7SCC431 .

60. Since the impugned termination orders do not contain any reason, there is no option but to quash the same. We accordingly quash the said termination orders impugned in the writ petition with a direction to the District Judge, Baghpat to decide the matter again within a period of one month from today keeping in view

the law enunciated by us hereinabove and after affording an opportunity to the petitioners-respondents. All the four petitioners are required to present themselves before the District Judge, Baghpat on 13th June, 2005 and the District Judge thereafter shall proceed to pass appropriate orders.

61. We further set aside the interim order dated 28.04.2005 granted by the learned Single Judge and allow this appeal as well as the writ petition to the extent, indicated hereinabove. We further direct that the petitioners of the writ petition shall be entitled to benefits which they are entitled in law as a consequence of the setting aside of the termination orders only till the final orders are passed by the District Judge, as directed hereinabove.

62. Before parting with the case, we find it absolutely necessary in the interest of the Institution, to strike a note with regard to the manner and functioning relating to appointments in Subordinate Judiciary. As already expressed in the opening paragraphs of this judgment, the District Judgeship of Baghpat had earlier been the subject matter of a similar controversy pertaining to appointments of Stenographers. This Court, in its decision rendered in the case of District and Sessions Judge, Baghpat v. Ratnesh Kumar Srivastava and Ors., Special Appeal No. 1582 of 2004 decided on 20.01.2005, by a Bench to which one of us (Hon'ble Dr. B.S. Chauhan, J.) was a Member, had the occasion to comment upon the favourtism and nepotism in matters of appointment resulting in lowering the standards of efficiency and bringing a bad name to the Institution. This Court expressed its view that under Article 235 of the Constitution of India, the High Courts exercise complete administrative control over the Subordinate Courts including the control over all functionaries such as Ministerial Staffs and Servants in the establishment of Subordinate Civil Courts. Remedial measures were suggested therein and the attention of the Hon'ble the Chief Justice has been invited for taking appropriate steps in this regard.

63. The present case is again a glaring example of the same species of malfunctioning in Subordinate Civil Courts which also requires serious consideration by the High Court. To our mind, in order to prevent any such efforts being attempted in future, appropriate Rules be framed and the 1947 Rules be

subjected to further amendment in order to include such powers to be made available to the High Court and Hon'ble the Chief Justice to weed out and check illegal and dubious methods of recruitment and appointment of Ministerial Staffs in the Subordinate Civil Courts. We would suggest that this matter be brought to the notice of Hon'ble the Chief Justice for deliberating upon this issue and for his kind consideration to bring about suitable amendments in the Rules empowering the Hon'ble Chief Justice and the High Court with powers suitable enough to meet such situations.

64. The aforesaid menace of illegal and unauthorised modes of recruitment have almost continued unabated for the past several years in other Districts also as well. To rectify the said malady, we strongly recommend and humbly suggest that Rules should be framed to provide for such appointments to be made subject to the approval of the Hon'ble Chief Justice/High Court and the same may also further provide for holding a combined examination for all Class-III and Ministerial posts through an examination to be conducted by the High Court or some other Agency like U.P. Public Service Commission. This would ensure better standards of recruitment and eliminate possibilities of nepotism and favouritsm. This form of supervisory and administrative control by the High Court would ensure the availability of efficient hands and would also infuse confidence in the public at large in the matters of appointments in the Subordinate Civil Courts. We have no reason to doubt that in case such measures are taken, the same would not only enhance the prestige of the Institution but would also considerably reduce this form of litigation on which we have to frequently pronounce on the judicial side. It would further establish a new era of confidence in the minds of public at large and would also encourage honest and deserving people to offer themselves for appointments. We also feel that such measures deserve to be taken up immediately and are also long awaited, looking to the situation prevailing in the State. We have made this humble suggestions on the basis of our past experience and we hope and trust that the same would also find favour from all those who are concerned with the upliftment and standard of our judicial institutions.

65. In such circumstances, having quashed the termination orders in respect of the respondent-petitioners, the learned District Judge is further commanded to

proceed in the following manner:-

(a) The decision in respect of the respondent-petitioners shall be taken by a speaking and reasoned order as per directions contained hereinabove by the District Judge, Baghpat.

(b) This District Judge shall withdraw all such similar termination orders in respect of such Class-III employees whose appointments were pursuant to the selections dated 05.04.2000, including those which are under challenge in various writ petitions before the High Court, and thereafter shall proceed to take a decision in the matter afresh after giving opportunity to the concerned employees in the same way as in the case of the respondents herein. This exercise shall be completed within one month and compliance report shall be submitted immediately thereafter.

66. The appeal as well as the writ petition giving rise to this appeal are allowed and stand disposed off finally in accordance with directions contained hereinabove. No order as to costs.