

**Dalpat Singh and ors. Vs. the State and ors.**

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**Court :** Rajasthan

**Decided On :** Apr-26-1991

**Reported in :** 1991(2)WLC397; 1991(2)WLN178

**Judge :** R.S. Verma, J.

**Appeal No. :** S.B. Civil Writ Petition Nos. 965, 1209, 1304, 1310, 1311 and 1312 of 1991

**Appellant :** Dalpat Singh and ors.

**Respondent :** The State and ors.

**Judgement :**

**R.S. Verma, J.**

1. These six writ petitions have been heard together by consent of all concerned. Since a very short point is involved in them, they are being disposed of at the admission stage, itself. Since the questions of facts and law involved in each one of them are identical, I am disposing them by a common order.

2. Reply to show cause notice was filed in S.B. Civil Writ Petition No. 1209/1991-Ishwar Singh and Ors. v. State and Ors. Replies in other cases have not been filed. Reply filed in S.B. Civil writ Petition No. 1209/1991 has been adopted by the learned Government Advocate in all the cases and learned Counsel for petitioners

in all these writ petitions agree that reply filed in Ishwar Singh's case may be taken as reply in the other writ petitions too. Hence, the reply in Ishwar Singh's case has been taken as representative reply to all the writ petitions. For this very reason, I need not state the pleas raised in all the writ petitions, and a brief delineation of the averments of the petitioners in S.B. Civil Writ Petition No. 1209/1991 may be taken as representative pleadings in all other cases.

3. The case of the petitioners is that the District Establishment Committee, Jalore, hereinafter the D.E.C., issued advertisement for filling up vacancies of teachers Grade III, existing in the Upper Primary Schools under its jurisdiction. The petitioners, who were eligible to be appointed and possessed requisite qualifications, duly applied and were selected at an interview held between 13.2.1991 and 21.2.1991. The Collector of Jalore, who is an ex-officio member of the D.E.C. was duly invited to attend the interview, but he could not participate in the selections. The Collector, Jalore was not happy with these selections and he issued a letter restraining Zila Parishad, Jalore after obtaining legal advice ignored the aforesaid letter of the Collector and proceeded to make appointments to the posts of 3rd grade teachers under the various schools under its jurisdiction. Various appointment letters were issued by the Chief Executive Officer cum Secretary, Zila Parishad, Jalore to the selected candidates on 5.3.1991. Annexures 1 and 2 are some of the appointment letters so issued by the Chief Executive Officer cum Secretary, Zila Parishad, Jalore. The case of the petitioners is that they joined duties in pursuance of such appointment letters but subsequently under direction of the Collector, the services of various appointees were terminated and they were relieved of their respective charges Annexures 6, 7 and 8 were some such directions. Annexure 5 is the letter by which services of one of the petitioners were terminated. The case of the petitioners is that termination of their services in an arbitrary manner, without notice to them, was bad in law and such termination may be quashed and petitioners be allowed to continue in service.

4. The case of the contesting respondents is that the D.E.C. committed grave and serious illegalities and irregularities in making the impugned selections. The Collector brought the various irregularities and illegalities to the notice of the State

Government and there upon the Government stayed the appointments made in pursuance of such selections. Yet, the Zila Parishad proceeded to make impugned appointments. It was in these circumstances that appointments were stayed and the incumbents were ordered to be relieved. It pleaded that the Collector and the State Government acted within their powers in the matter. It is alleged that the entire selection was malafide and suffered from nepotism and favouritism. Various contentions have been raised in this regard. It has been alleged that due to illegalities and irregularities committed during the selection, meritorious and deserving candidates had been left out and favoured candidates were given undue advantage. It was inter alia pleaded 'It seems that the petitioners are in league(sic) with the respondent No. 2 and its functionaries, maneuvered farce show of interview'. Hence, they were not entitled to any relief under Article 226 of the Constitution, which was an equitable remedy.

5. With regard to the various irregularities and illegalities, it was pointed out that the Collector, Jalore or his nominee could not attend the interview and the Collector sought postponement of the interviews. But the D.E.C. proceeded to hold interviews and this has affected the selection process.

6. It was alleged that interview letters issued by the D.E.C. were not entered in the despatch register and hence it could not be said if all the applicants had been called for interview or not. The advertisement and the call letters issued for interview specified that interviews were to be held for the purposes of verification of the documents filed by the candidates. 40 marks were allotted for such an interview, which was a futile exercise. Prior to interview, a computerized merit list was prepared, yet persons standing at Nos. 3, 6, 7, 9 to 16 were ignored and candidates as low as at Nos. 668, 673, 696 and 699 were selected and this shows that the interview was a farce.

7. The other allegation is that the Chief Executive Officer Shri Navrang Rai belonged to Jhunjhunu. The appointment letter Annex. R/1 dated 5.3.1991 shows that out of total 70 candidates, as many as 35 belonged to Jhunjhunu and 10 belonged to the adjoining district Sikar, which fact speaks for itself. Likewise out of 53 applications received for Physical Training Instructors (P.T.I.), 42 belonged to

Jhunjhunu. Out of total 27 selected lady candidates, more than 50% belonged to Jhunjhunu. It was alleged that the advertisement issued by the D.E.C. did not specify that posts of crafts teachers and physical training instructors were to be filled, yet appointments were made to such posts. Reliance was placed upon Annex. R/2 and Annex. R/3 in this regard. It was further pointed out that though selections were made on 23.2.91, yet the appointment letters were prepared on 22.2.1991. Reliance is placed upon Ex. R/4 in this regard. It was alleged that in fact on 22.3.91, Shri Navrang Rai was out of station and could not have signed Ex. R. 4 on the said date. Reliance has been placed on the log book dated 22.2.91 Ex. R/5. It was also pleaded that in all 1149 applicants are said to have been interviewed between 12.2.1991 and 21.2.91 and such a task was beyond human efforts. The suggestion appears to be that so many candidates could not have been interviewed within such short period. Another allegation is that marks for scouting, social service and games had already been allotted while preparing the merit list but during interview such marks were again awarded and thus deserving candidates were excluded. It was further alleged that in cases of certain candidates, degrees/certificates were accepted without obtaining any confirmation from the Director of Education. It is further alleged that without exhausting the merit list, appointments were given from the waiting list. It was pointed out that there was a ban on recruitment of craft teachers, yet the D.E.C. ignored the ban. It was pleaded that in view of all these facts, the Government was entitled to act Under Section 85 of the Rajasthan Panchayat Samiti & Zila Parishad Act, 1959, (hereinafter the Act.). It is pleaded that for the various irregularities and illegalities, Shri Navrang Rai Chief Executive Officer has already been suspended. The State having supervisory powers over Zila Parishads, was entitled to act in the manner it has done and this Court, in the particular facts of this case, should not intervene.

8. I have heard the learned Counsel for the petitioners viz. Shri M. Mridul in S.B. Civil Writ Petition No. 965/91, Shri K.N. Joshi for petitioners in S.B. Civil Writ Petition Nos. 1209/91 and 1304/91 and Shri Vinod Purohit in S.B. Civil Writ Petition Nos. 1310/91, 1311/91 and 1312/91. I have also heard Shri K.L. Jasmatiya, Government Advocate for the contesting respondents and Shri S.L. Jain for Zila Parishad, Jalore.

9. Now, so far as basic facts are concerned, they are not in dispute. Petitioners in pursuance of an advertisement for filling up vacancies of teachers in 3rd grade applied to the D.E.C. They were selected. The Collector intervened and issued directions that the selected candidates be not appointed. D.E.C. ignored these directions and appointed the petitioners. Petitioners joined their duties but the services were terminated and they were relieved in pursuance of the directions of the Collector, ratified or adopted by the State Government. Prior to the termination of their services, the petitioners were not heard at all.

10. This is true that the stand of the State is that the petitioners were in league with functionaries of D.E.C. in getting themselves selected, but suffice it to say that the allegation is bereft of any particulars, is too vague to be answered and no proper foundation of facts has been laid in making this general and bald averment. Learned Counsel for petitioners urge that in view of this nature of the averment, they need not reply to the same. I am in entire agreement with them. In my opinion, the averment is too general, too vague and lacks sufficient particulars on the basis of which this Court may draw any inference that the petitioners were in league with functionaries of D.E.C. or for that matter with Shri Navrang Rai. Hence, their contention deserves to be noticed only for sake of rejection.

11. Now, as far as other allegations are concerned, the petitioner contend that they cannot be faulted for any lapses committed by the functionaries of the D.E.C. It is contended that of the Act did not entitle the Collector or the State to terminate their services. Government had no supervisory powers over the D.E.C. At any rate, no action could have been taken against the petitioners without giving notice to them. It was contended that absence of Collector from the meetings of D.E.C. did not in any way affect the result of selection. The alleged ban on recruitment of teachers had been lifted by the Government. Under the relevant rules, teachers grade III constituted one category. There were no separate categories as craft teachers or as P.T.Is. This nomenclature was merely given to denote the nature of training these candidates had received. Hence termination of their services was bad and they should be re-instated forthwith continuity of service and consequential benefits.

12. I have bestowed my earnest consideration to the contentions raised before me. I may state that the contesting respondents have levelled serious allegations of irregularities and nepotism and favouritism against the functionaries of the D.E.C. and in particular against Shri Navrang Rai, the Chief Executive Officer. I need not decide if these allegations are true or not. However, for the sake of argument, I may assume the allegations to be true. But, still the question would be if the services of the petitioners could have been terminated in the manner it was done, without affording any opportunity to them.

13. Before, I proceed to deal with the question, I would like to point out that a high powered committee like D.E.C. is expected to act with utmost fairness. Zila Parishads constitute a very important unit of self government. Appointment to services under Zila Parishads deserve all care and circumspection. Selection to such services must be fair and impartial. Meritorious candidates must get their due. Only then such services can be an effective instrument of rural development. Nepotism, favouritism and the like are bound to demoralise the meritorious and the deserving and if D.E.Cs. act in an arbitrary manner, then the very purpose of establishment of D.E.Cs. would be frustrated. It would be proper to recall that D.E.Cs. are constituted under Section 88 of the Act which reads as under:

88 Constitution and Functions of the District Establishment Committee (1) For each district, there shall be a District Establishment Committee consisting of the following:

(i) Zila Pramukh, as the Chairman; (ii) Collector;

(iii) Additional/Deputy District Development Officer; and

(iv) Senior Deputy District Education Officer( where the matter before the said Committee related to the appointment of, or disciplinary proceedings against, a teacher of a primary school.)

(2) The District Establishment Committee shall:

(a) make selection for the posts in different grades and categories existing in service in the Panchayat samitis and the Zila Parishad in the district in accordance

with the rules made by the State Government in this behalf;

(b) regulate the mode of temporary appointment and recommend the names of person for extending such appointment beyond six months;

(c) prepare list of persons for promotion in the prescribed manner; and

(d) advice the Panchayat Samitis and the Zila Parishad of the district on all disciplinary matters affecting the officers and other employees thereof, other than those referred to in Sections 26 and 55, which may arise under Section 89.

The very composition of the D.E.C. would show that highest functionaries in the district have been given berth in it. In cases where teachers are to be selected, a Senior Deputy Distt. Education Officer has to sit on the committee, presumably as an expert in the field of education. Section 88 of the Act charges the D.E.C. with very vital and important functions. Hence, if D.E.C. fails or falters in any manner, it is bound to erode the confidence of the aspirants to public services under the Zila Parishads. Therefore, a very high standard of rectitude and impartiality is expected of the members of the D.E.C. The allegations which have been made in his case are indeed serious and grave and merit a proper and comprehensive enquiry at the hands of the Government. Unfortunately, the Act does not make any provision of any statutory enquiry into the alleged misdeeds of D.E.C., even though it has made a provision in Section 67 of the Act for enquiry into the affairs a Panchayat Samiti or Zila Parishad for abusing their powers. No similar provision exists in the Act so far as D.E.C. is concerned and hence such an enquiry has to be performe an executive administrative one. What shall be the modalities for such an enquiry is not for me to suggest. I need not hazard a guess if as a consequence of such an enquiry, the Government shall be able to punish the erring officials of the D.E.C. or not. Hence, I leave this matter at that.

14. Now, I have to see if the State Government or the Collector have any powers to revise or review the selections made by the D.E.C. Section 85 of the Act under which this power is claimed reads as under:

85. Power of revision and review by Government:

(1) The State Government may, either of its own motion or on an application from any person interested, call for and examine the record a Panchayat Samiti or a Zila Parishads or of a standing committee or sub-committee there of in respect of any proceedings to satisfy itself as to the correctness, legality or propriety of any decision or order passed therein or as to the regularity of such proceedings and, if in any case, it appears to the State Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly:

Provided that the State Government shall not pass any order prejudicial to any party unless such party has had a reasonable opportunity of being heard in the matter.

(2) The State Government may stay the execution of any such decision or order prejudicial to any party, pending the exercise of its powers under Sub-section (1) in respect thereof.

(3) The State Government may of its own motion at any or on an application received from any person interested, within ninety days of the passing of an order under Sub-section (1) review any such order if it was passed by it under any mistake, whether of fact or of law, or in ignorance of any material fact. The provisions contained in the proviso to Sub-section (1) and in Sub-section (2) shall apply to a proceeding under this Sub-section (3-A). The State Government may of its own motion at any time or on an application received from any person affected within ninety days of the passing of an order Under Section 40 Sub-section (1) or Sub-section (4) or of the making of a declaration under sub-section-(2) of Section 16, review any such mistake, whether of fact or of law, or in ignorance of any material fact and in the case of an order for failure to pursue the prescribed course of study, despite being nominated thrice for the purpose, if there was sufficient clause for such failure.

(4) Every application preferred under Sub-section (1) or Sub-section (3) or Sub-section (3-A) of this section shall bear a court fee of five rupees.

A bare reading of the section goes to show that under this provision the State Government may revise or review any decision or order passed during any proceedings by a Panchayat Samiti, Zila Parishad or a Standing Committee or Sub-committee thereof. Now, by no stretch of imagination a D.E.C. can be called a Panchayat Samiti or a Zila Parishad. It cannot be called a Standing Committee or Sub-Committee of Panchayat Samiti or Zila Parishad either. Standing Committees or Sub-Committees of Panchayat Samiti are constituted under Section 20 of the Act and Standing Committee or Sub-Committees of Zila Parishad are constituted under Section 50 of the Act. The D.E.C. is neither constituted under Section 20 nor under Section 50 of the Act. It is an independent body, neither controlled by a Panchayat Samiti nor controlled by a Zila Parishad. It is a creature of Section 88 of the Act and is obviously a statutory committee. Section 85 of the Act has obviously no application to the selections made by D.E.C. No other provision of law has been pointed out to me under which the State Government may set aside the selections made by the D.E.C.

15. Learned Counsel for the contesting respondents urged that the State Government has a wholly controlling and supervisory power over D.E.C. and in that capacity the State Government may act. I am afraid that this contention has no legs to stand. There is no provision under the Act, which may make selections made by D.E.C. amenable to the control or supervision of the State Government. I may here observe that in Rajasthan Panchayat Act, 1953 there is a section viz. 69 which provides as follows:

69. Government to be Chief Controlling authority:

The State Government shall be the Chief Controlling authority in respect of all matters relating to the administration of Panchayats and Nyaya up-samitis.

There is no similar plenary provision in the Act vesting control in the Government over a Zila Parishad, a Panchayat Samiti or a D.E.C. of course, Panchayat Samiti and Zila Parishads are under limited statutory control of the Government by virtue of Sections 66 and 66 A, 67 and 67 A of the Act. This statutory control is circumscribed by the provisions of these sections and again it does not extend to a D.E.C. which is neither creature of a Panchayat Samiti or of a Zila Parishad. The

mere fact that Chairman of Zila Parishad is also its Chairman, does not make it a part of Zila Parishad. Hence, I find that under the law as it exists today, the Government has no supervisory powers over a D.E.C. My view finds support from a decision of this Court in *Rajvendra and Ors. v. State of Rajasthan and Ors.* [S.B.C.W. No. 3663/90] decided on 20.11.90 with certain other connected writ petitions.

16. Now, once it is held that Government had no powers to interfere with the selections made by D.E.C., the necessary corollary is that appointments made in consequence of such a selection could not have been terminated by the Government or by the Collector, either acting on his own or in pursuance of instructions given by the Government, and the action of the Government or the Collector in directing termination of the services lacks legal sanction.

17. However, still this Court shall have to see if it should interfere with termination orders of the services of the petitioners on behalf of the petitioners. It is vehemently urged that the termination of the services of the petitioners was wholly illegal, arbitrary and against the principles of natural justice. Petitioners are low paid employees. Once they were appointed to posts under Zila Parishads, they acquired a valuable right to continue in service. Termination of their services was made without hearing them. This court should not permit the Government or its mighty agent the Collector to act in such a high handed manner. As against this, learned Counsel for the contesting respondents urges that by interfering with the orders of termination, this Court would be putting its seal on wholly illegal arbitrary selections. It is urged that relief under Article 226 of the Constitution of India is an equitable and discretionary relief and this Court should decline to interfere.

18. I have deeply cogitated over the matter and have given my anxious consideration to the same. This is true that appointment to a public service gives a valuable right to an incumbent and normally his services cannot be terminated except in accordance with settled principles of law governing such terminations. Minor flaws in the process of selection, over which persons selected have no control do not invalidate appointment made pursuant to such selection. Likewise some deficiency in quorum of the selection committee or disregard of some

directory provisions by the selection committee may not invalidate, appointments otherwise legally and validly made. This principle was accepted by a division bench of this Court in *Shivlal v. The Jalore Central Co-operative Bank Ltd., Jalore and Anr.* [D.B.Spl. Appeal No. 303/85 decided on 8.9.1987] The dictum in Shivlal's case was followed in *Ramu Ram v. The Banner Central Co-operative Bank Ltd. and Ors.* bunch writ petitions [D.B.C.W.Pet. No. 87/88 and 10 other writ petitions] decided by a subsequent bench of this Court. Shivlal's case was followed by another bench decision of this Court *Bhopal Singh v. State of Rajasthan* [1988(2) RLW 428] to which I was myself a party. I have no hesitation in accepting this principle.

19. The question is if this principle can be applied to the facts of this Case. As already stated, serious allegations have been made in this case regarding the conduct of Shri Navrang Rai, the Chief Executive Officer and Secretary of Zila Parishad, Jalore. Irregularities galore have been attributed to the D.E.C. I shall not encumber this judgment with fresh reference to them because in my opinion imputations do not travel beyond the realm of allegations. However, I would like to allude to certain undisputed facts which go to show that the entire process of selection suffers from illegalities going to the root of the selection process itself, vitiating the same.

20. Rajasthan Panchayat Samitis and Zila Parishad Rules, 1959 govern the selections made by the D.E.C. It is an admitted position on all sides that Rule 17 of the said Rules empowers the D.E.C. to call for interview as many candidates as seem to them desirable to appear for interview. For this purpose, a computerized merit list was prepared, showing the respective merit of the applicants on the basis of their academic attainments. It does not appear that the D.E.C. devised for itself any guidelines to regulate interviews of the candidates called by it. It appears that the Government issued some guide lines in this regard, whereby 25 marks were to be allotted for academic attainments, 20 marks were to be allotted for training, depending upon the course training undertaken, 6 marks were to be allotted for post teaching experience, 3 marks were to be allotted for those who had participated in scouting or N.C.C. activities, 3 marks were allotted for participation in sports while 3 marks were allotted for social activities, 40 marks were allotted for

viva voce interview. Now there are two aspect of this matter. Government could not have laid down any such criteria for the D.E.C., the D.E.C. being a statutory body. Reservation of 40% marks for interview was wholly arbitrary. I would allude to this aspect a little later.

21. It appears that the D.E.C. devised a wholly novel proposition qua the interviews, which goes to make the entire process of interview a farce. The advertisement which invited candidates to apply for the posts, appears at Ex. 1 in S.B. Civil Writ Petition No. 1310/91-Gajendra Nath v. State of Rajasthan and Ors. It interalia stated:

vkosnu i= fd layXu fd;s tkus okys izek.k i=ks dk ewy ls IR;kiu ds fy, lk{kkRdkj j{kk x;k gS ftlds fy, dksbZ fdjk;k HkRrk vkfn bl dk;kZy; ls ns; ugh gksxk A

In plain and simple language, it means that the interview shall be held for the purpose of verification of the certificates from their originals. This was reiterated by issuing interview call letters, a specimen of which was brought to my notice during the course of arguments. It interalia reads:

vkus v;/kid in gsrq vkosnu i= izLrqr fd;k gS A vki izLrqr izek.k i=ks ds IR;kiu iz;kstukFkZ ewy izek.k i=@ vadrkfydk @ i= lfgr fn0-----dks 10 cts izkr% ftyk ifj'kn dk;Zky; tkySkj es ftyk LFkkiUu lfefr ds le{k lk{kRdkj gsrq mifLFkr gksos A

From a bare reading of the call letter, it becomes evident that interviews were to be held for the purposes of verification of the certificates. When such was the ostensible object of the interview, it reduced the selection process to a mockery and in my considered opinion this has vitiated the entire selection process. I do not think that such a basis infirmity going to the very root of selection process, could be ignored by this Court while judging the equities in the case. A selection process which is wholly farcical in character would altogether vitiate the appointments consequent to such selection. Shivalal's case, nor for that matter Bhopal Singh's case involved such a serious infirmity in the selections, going to the root of selection and vitiating the appointments. Interviews envisaged by the advertisement issued by the D.E.C. as also by the call letters were wholly arbitrary, fraudulent and were prima facie a device to exclude the brilliant

candidates having superior academic attainments as pointed out by the contesting respondents in para 5 of their reply. This has shocked the conscience of the Court and it cannot put its seal of approval on appointments made consequent to such a selection process.

22. I am not sure if the D.E.C. used the instructions issued by the State Government for allocation of marks as detailed above. I have already pointed out that the Government had no business to issue such instructions at all. D.E.C. as a statutory authority should have been left to devise its own guidelines. In the alternative, suitable guidelines could have been laid in Rajasthan Panchayat Samitis and Zila Parishad Service Rules, 1959 by inserting an appropriate rule. But the Government chose to issue a circular laying down the guidelines. I am told at the bar that provision for certain allocation of marks in the Government circular has already been struck down by this Court. If that be so, the guidelines laid in such circular could not have been used at all by the D.E.C. and on that ground alone the impugned selections would be bad, in case the D.E.C. used those guidelines. However, as I have already pointed out, I am not sure if such guidelines were at all used by the D.E.C. in making selections.

23. At this juncture, I would like to point out that Apex Court in *Ajay Hasia v. Khalid Mujib* : (1981)ILLJ103SC has categorically expressed itself with regard to oral interviews as follows:

The oral interview test is undoubtedly not a very satisfactory test for assessing and evaluating the capacity and calibre of candidates.

It further said:

We would however, like to point out that in the matter of admission of colleges or even in the matter of public employment, the oral interview test as presently held should not be relied upon as an exclusive test, but it may be resorted to only as an additional or supplementary test and moreover great care must be taken to see that persons who are appointed to conduct the oral interview test are men of high integrity, calibre and qualification.

After reproducing the locus classicus in *Ajay Hasia's case* (4), I would like to repeat, what their Lordships said with regard to allocation of 33 1/3% marks for viva voce test. They observed:

We must, therefore, regard the allocation of as high percentage as 33 1/3% of the total marks for oral interview as infecting the admission with the vice of arbitrariness and selection of candidates made on the basis of such admission procedure cannot be sustained.

The Apex Court applied a similar test selections for public employment in *Ashok Kumar Yadav v. State of Harayana* : AIR 1987 SC454 and stated:

We must therefore regard the allocation of 22-2% of the total marks for the viva voce test as infecting the selection procedure.

The Apex Court gave a direction for future that marks allocated for the viva voce test shall not exceed 12.2% in case of candidates belonging to general category.

24. *Ashok Yadav's dictum* has been followed by the Apex Court in as recent a case as reported in *Vikram Singh and Anr. v. The Subordinate Service Selection Board, Haryana and Ors.* : AIR 1991 SC1011 . It was reiterated that marks for viva voce test should not exceed 12.2% in case of general category officers and 25% in case of ex-service officers. This very view was taken in *Mohinder Sain Garg v. State of Punjab* : (1991)1SCC662 .

25. The present case is on a worse footing than all the aforesaid cases. In this case, the interview held for the ostensible purpose of verification of the certified copies of the documents filed by the candidates with a comparison with the originals, To my mind, no interview could have been held for such a purpose at all, I therefore, find that the entire selection process was, to adopt the language of the Apex Court, infected with the vice of arbitrariness, vitiating the entire selection process. At cost of repetition, I would observe that appointments pursuant to such a selection are bad in law and were not sustainable in law.

26. Learned Counsel for petitioners relief upon *Montreal Street Railway Company v. Normandin* AIR 1917 PC 142 in support of the proposition that the petitioners

had no control over the proceedings of the D.E.C. and if D.E.C. is to be faulted on any score, the validity of appointments already made should not be allowed to be questioned. I have carefully gone through the ruling. It applies only to cases where directory provisions are ignored in discharge of public duty and acts done in neglect of such duty, if invalidated, would cause serious general inconvenience or injustice to persons who have no control over those who are entrusted with discharge of such duty. In the present case, the D.E.C. acted in an altogether arbitrary manner and not merely in disregard of some directory provisions, Hence., I find that this decision is of no avail to the petitioners.

27. Learned Counsel for the petitioners further urged that the order of the Collector must be judged on the ground alone on which it proceeded and not on other grounds. Reliance was placed upon *Mohindra Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors.* . This decision is an authority for the proposition that when a statutory functionary takes an order based on certain grounds, its validity must be judged by the reasons so mentioned and such reasons cannot be supplemented by fresh reasons. The proposition is wholly unexceptionable. But in the present case, the question is not of validating any order of the Collector or of the Government. The question is whether this Court should at all intervene in a matter where appointments were given on the basis of an arbitrary and wholly illegal process of selection and the Government intervened to set right the wrong, though not in a legal manner. This is the dilemma that stares the Court in its face. The issue is no longer *res integra*. In *Mohammad Swalleh and Ors. v. III Addl. District Judge, Meerut and Anr.* : [1988]1SCR840 the prescribed authority passed an order, which was wholly unsustainable in law. No appeal lay against such an order. However, the District Judge erroneously assuming jurisdiction in the matter set aside the order of the prescribed authority. The tenant appealed to High Court against the said order of the District Judge. Having lost the appeal, the tenant took the matter to the Apex Court by filing a Special Leave Petition. The Apex Court agreed with the tenant that no appeal could lie to the District Judge and the order of the District Judge illegal. Yet, it refused to interfere on the ground that justice had been done because the order of the prescribed authority was bad. The Apex Court observed:

Therefore in the facts and circumstances of the case justice has been done, though as mentioned hereinbefore technically the appellant had a point that the order of the District Judge was illegal.

In the present writ petitions also, the petitioners have a point that the order of the Collector directing termination of their services was bad. But, the order was just and proper and had the effect of setting at naught the mischief created by a wholly illegal selection process.

28. Jagan Singh v. State Transport Appellate Tribunal and Anr. also supports my view. Where allowing a writ petition would result in restoring an illegal act, this Court would decline to interfere is the ratio of this authority. In the present case, if the writ petitions were to be allowed, it would result in putting a seal of approval on appointments, made on the basis of a selection which was wholly arbitrary and void. To be more precise, the selections were a fraudulent and colourable exercise of powers by the D.E.C.

29. Hence, in the facts and circumstances of the case, I do not deem it just and proper to interfere with the orders of the Collector by which services of the petitioners were terminated.

30. Now, one aspect of the matter deserves to be touched. In case of Gajendra Nath Vyas (S.B. Civil Writ Petition No. 1310/1991), it is urged that when the petitioner applied to the D.E.C., he was eligible for appointment but now he is overage for fresh selection and appointment. Shri Vinod Purohit urged that the interests of this petitioner deserve to be safeguarded. For aught I know, there may be other candidates also facing this very predicament. It would be proper to safeguard their rights and interests. Hence, it is directed that as and when the D.E.C. make fresh selections for the posts of teachers, all such candidates who were eligible at the time they applied for appointment in pursuance of advertisement Ex. 1, and have become overage in the meanwhile, shall be deemed to be eligible for selection and appointment, irrespective of the fact that they have now become overage. I am sure that this direction would settle the equities of the case. With these directions, these writ petitions are dismissed. In the facts and circumstances of the case, the parties will bear their own costs.

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