

(1999) 10 PAT CK 0106
In the Patna High Court
Case No : C.W.J.C. No. 8814 of 1997

Amrendra Singh and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 08-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 14, 142, 16, 187, 226

Citation : (1999) 3 PLJR 984

Hon'ble Judges : B.N. Agrawal, Acting C.J.; Shiva Kirti Singh, J

Bench : Division Bench

Advocate : Abhay Kumar Singh in 8814, Mr. R.P. Singh in 8897 and 460, Dr. Sadanand Jha in 8931 and Mr. Sunil Kumar Singh in 2159, for the Appellant; Mihir Kumar Jha and Mr. Ganga Prasad Roy for the State, for the Respondent

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—These five writ applications have been heard together and are being disposed of by this common judgment because the petitioners in all these five cases are similarly situated Class III and Class IV employees of Bihar Legislative Assembly appointed by the erstwhile Speaker of the Assembly after 1.11.90 in similar fashion, who have been removed from service by a common order dated 15.9.97 and in all the cases common points of law and facts are involved. Keeping in view the facts of the case and the stand of the parties it is deemed necessary that before going into facts involved in these cases a bird's eye view be cast upon the admitted background materials that have culminated into termination of altogether 183 employees of Bihar Legislative Assembly by impugned order dated 15.9.97 including the services of all the petitioners in these five writ applications. Coinciding with convening of a new Bihar Legislative Assembly, one Mr. Gulam Sarwar became the speaker of the Assembly sometime in April, 1990 and continued as such till March 1995. After him the present speaker came to occupy that post in April, 1995. The erstwhile speaker made about 185 appointments to various Class-III and Class IV posts in the Bihar

Legislative Assembly between the period 15.6.90 to 1.11.1990. Earlier there was some confusion regarding the aforesaid number of appointments but subsequently the aforesaid number has been ascertained and confirmed to be 185. The said appointments made between 15.6.90 to 1.11.90 were challenged by some persons through a writ petition being C.W.J.C. No. 7995/90 (Harendra Pandey vs. State of Bihar & others) on various grounds including the ground that the appointments made were without any advertisement and without holding any test as required under the Rules and therefore violative of Articles 14 and 16 of the Constitution of India.

2. A learned single Judge of this Court allowed the said writ application on 23.12.94 and quashed all the impugned appointments declaring them to be in violation of Articles 14 and 16 of the Constitution of India and void ab initio. The said judgment in the case of Harendra Kumar Pandey and Others Vs. State of Bihar and Others . Against the aforesaid judgment Bihar Legislative Assembly as well as the affected appointees preferred Letters Patent Appeals before a Division Bench of this Court. The aforesaid Letters Patent Appeals as well as one writ application bearing no. C.W.J.C. 10142/92 (Vijay Kumar Jha and others vs. The State of Bihar and others) were initially heard by a Division Bench of this Court but in their judgments dated 3rd. April, 1996 the two Hon''ble Judges failed to agree with regard to the fate of letters patent appeals although they were in agreement that C.W.J.C. No. 10142/92 filed by some temporary employees of the Secretariat of Bihar Legislative Assembly after three years of their removal had to be dismissed on the ground of unexplained delay as well as on the ground that they were temporary employees hence their termination which was not by way of punishment required no enquiry or assigning of any reason. In accordance with Patna High Court Rules the Letters Patent Appeals were finally heard by a 3rd. Hon''ble Judge who by his judgment dated 4.11.1996 reported in S. Vinod Kumar and Another Vs. Union of India (UOI) and Others, , agreed with the judgment given by Mr. Shashank Kumar Singh, J. and accordingly dismissed the Letters Patent Appeals and affirmed the judgment of learned single Judge dated 23.12.94. Against the aforesaid judgment of learned 3rd. Judge some of the appellants preferred special leave petitions being SLP (Civil) Nos. 22747/96, 22869/96 and 23379/96 which were dismissed by the Apex Court on 2.12.1996.

3. Admittedly on immediate challenge being made to the mode of appointments adopted by the erstwhile speaker, the appointments made by him between 15.6.90 to 1.11.90 were finally terminated in December, 1996 after those appointments had been found and declared illegal by this Court and affirmed by the Supreme Court in December, 1996. The controversy in the present five writ applications relates to appointments made by the erswhile Speaker after 1.11.90. The impugned order dated 15.9.97 contains a categorical assertion that these appointments are exactly of the same type as those terminated in December, 1996 pursuant to judgments of this Court and of the Apex Court. The writ petitioners have, no doubt, controverted such a stand of the respondents and hence besides other points which have been raised by the parties, one of the

major and primary issues falling for determination in these cases would be the question whether there is any material differences in the manner of selection and appointment of those 185 employees who had to be removed as a consequences of judgment of this Court affirmed by the Apex Court and mode of selection and appointment adopted in the case of the petitioners. This issue assumes primacy because if it is decided against the petitioners and in favour of the respondents then admittedly nothing much will be left to be decided except the issues raised on behalf of the petitioners on the grounds of alleged delay in taking the impugned action and on the ground of equity which has allegedly arisen in their favour on account of such delay, if any.

4. Before considering the aforesaid primary issue as well as other relevant issues arising on the submissions made by the rival parties, it is deemed necessary to now revert back to the basic and relevant facts that are necessary to be noticed in brief for deciding the material controversy between the parties.

5. In C.W.J.C. No. 8814/97 all the five petitioners were Class-III employees in the Secretariat of Bihar Legislative Assembly. While petitioner nos. 1 to 4 claimed to have been appointed as Assistant on 19.6.91, petitioner no. 5 claims to have been promoted from the post of routine clerk to that of assistant on 4.8.94. Petitioner nos. 1 to 4 were confirmed in the service on 22.3.95 and petitioner no. 1 was also granted Junior Selection Grade. Their further case is that by notices contained in annexures 9 series dated 28.8.97 they were asked to show cause as to why their services be not terminated on the ground that during scrutiny of their appointment it was found that during the tenure of erstwhile speaker Mr. Gulam Sarwar the appointments have been made without advertising the vacancies in the daily newspapers and without following any process of selection which rendered the appointment prima facie irregular, illegal and against Articles 14 and 16 of the Constitution of India. The petitioners have annexed their reply dated 10.9.97 as annexure-10 to show that in fact they had made a demand for supply of several papers such as report of the Committee which scrutinised the appointments, papers to show method of appointments in the Bihar Legislative Assembly since its inception in 1950, papers concerning interview of petitioners and papers to show if any objection had been made by any officials at the time of issuance of their appointment letters and acceptance of their joining reports. The petitioners claim that their request should have been accepted and the papers or information asked for by them should have been furnished but instead the impugned order dated 15.9.1997 contained in annexure 11 was issued whereby services of the petitioners as well as altogether 183 such employees were terminated on the specific ground that these appointments had been made without publication of any advertisement, without following the prescribed process of selection and wholly against Articles 14 and 16 of the Constitution of India and it was further asserted that these appointments were exactly of same nature as the appointments in the case of 185 officials employees whose services had been terminated on 10.12.96 in the light of judgment of this Court and the Apex Court. All the aforesaid judgments of learned Single Judge, Division Bench,

3rd. Judge and of the Apex Court have been annexed to the Writ application as annexures 3, 6, 7 and 8 respectively. The petitioners have also pleaded that immediately after the termination of their services, through a newspaper advertisement published on 17.9.97 the posts in question have been advertised and applications for appointment against said posts have been invited from eligible persons among the general public.

6. It is relevant to note that this Court at the time of hearing of these applications on previous occasion on 1.7.98 accepted the plea of the respondent that the petitioners had rushed to this Court without availing an alternative remedy available to them by way of review before the Speaker under rule 16 of the Bihar Vidhan Sabha Secretariat (Recruitment and Conditions of Services) Rules, 1964 (hereinafter referred to as "the Rules"), but instead of non-suiting the petitioners, gave them opportunity to prefer review before the Speaker. The review filed by some of the petitioners was rejected by order dated 27.5.98 as contained in annexure J/6 to an interlocutory application which was allowed on 28.7.98 permitting the petitioners to challenge the said order on review dated 27.5.98.

7. In paragraph-5 of the writ applications the petitioners pleaded that before their appointment the vacancies were notified in the notice board and the petitioners when learnt about the vacancy submitted their applications along with others and after interview and selections they were appointed against the respective vacant post. In paragraph-9 of the writ applications it was pleaded that the petitioners had learnt that the relevant decision/order was issued by the then Speaker in the file bearing nos. 1 East/274/90 and 1/East/214/92 wherein vide orders dated 8.1.91 and 29.12.92 the then Speaker directed the Assembly Secretariat to notify the vacancy in the notice board and following that order vacancy was notified in the notice board. Thereafter in paragraph-10 it has been further pleaded that though the vacancy was notified on the notice board but as usually happens the notice was removed and therefore many of the petitioners could not see the notice board personally but came to know about the vacancy from the employees of Bihar Vidhan Sabha Secretariat and they submitted their applications. In the light of such pleadings initially no copies of alleged notice board advertisements were annexed with the writ applications although the appointment letters of petitioners 1 to 4 dated 29.6.91 have been annexed as annexures 2 series. The pleadings as mentioned above have been noticed in particular because according to the counter affidavit of the respondents as well as their stand in the court during the course of arguments, no such advertisement on notice board was ever issued. Subsequently through first supplementary affidavit the petitioners annexed annexures 16 and 16/1 as true photostat copies of the aforesaid notice board advertisement dated 8.1.91 and 29.12.92 respectively. Subsequently through second supplementary affidavit another photo-stat copy of notice dated 8.1.91 was again brought on record as part of annexure-20 series. Based on different documents annexed as annexure 20 series to the second supplementary affidavit dated 27.3.98, the case of the

petitioners is that there was a notice board advertisement on 8.1.91 and the interviews were to be held on 7.2.91 but on 6.2.91 itself a decision was taken by the then Speaker to hold the interview from 11.2.91 to 23.2.91 and for this purpose a notice was also issued on 6.2.91 itself. Annexure-20 series purports to be photocopy of notings on file no. 1/East/274/90, copy of notice dated 8.1.91 and notice dated 6.2.91.

8. The case of the respondents is that all the aforesaid documents contained in annexure-20 series including the alleged notifications published on notice board are forged and fabricated documents because as per enquiry no such file was ever opened nor any such decisions were ever taken and notified and that such attempt has been made by the petitioners only with a view to distinguish their case from that of earlier appointees who were appointed upto 1.11.90 and whose appointments were declared by this Court to be invalid and against Articles 14 and 16 of the Constitution of India.

9. Before coming to common case of petitioners and respondents in all these five cases necessary facts in other writ applications may be noted in brief:--

In C.W.J.C. No. 8897/97 there are altogether six petitioners, Petitioner nos. 1, 2 and 3 were typists, petitioner no. 4 was routine clerk and petitioner nos. 5 and 6 were peons in the Bihar Legislative Assembly Secretariat who claim to have been appointed/regularised between 16.9.91 and 27.1.94 allegedly on the basis of notice board advertisement and selection after interview. In C.W.J.C. No. 460/98 there is only one petitioner namely Mala Das who also claims to have applied pursuant to a notice board advertisement dated 8.1.91 and further claims that after an interview she was selected and appointed on the post of Reaserch Assistant on 22.5.93. In C.W.J.C. No. 8931/97 there are two petitioners who claim to have been appointed as Assistant account on 19.6.91 on the basis of application and formalities pursuant to a notice board advertisement dated 8.1.91. In C.W.J.C. No. 2159/98 there are 86 petitioners who also claim to have been appointed between 1.9.91 and 1.9.94 on the basis of a notice board advertisement dated 8.1.91 and on being declared successful in an interview.

10. Thus, out of 183 employees of Bihar Legislative Assembly whose services were terminated by the impugned order dated 15.9.97, altogether 100 persons who are petitioners in these five writ applications have challenged the termination of their services on facts and grounds which are practically common to all and the case and stand of the respondents in opposition to all the writ applications is also common.

11. The arguments advanced on behalf of petitioners in these cases may be summarised as points under the following heads:--

(1) In the case of present petitioners the process of recruitment began pursuant to an advertisement on the notice board dated 8.1.91 followed by a proper selection process through interview and hence their cases are different from those persons whose appointments were quashed by this Court in C.W.J.C. No.

7995/90 inasmuch as in that case it was found that there was no advertisement and no competitive examination as required by rules were held.

(2) The Gazette notification dated 22.11.67 containing directives issued by the Speaker of Bihar Legislative Assembly under rule 9 of the Bihar Vidhan Sabha Secretariat (Recruitments and Conditions of Service) Rules, 1964 are invalid as beyond the scope of Rule 9 and in any case they were inapplicable on account of implied repeal due to long and complete disuse.

(3) The impugned order is in violation of principles of natural justice because of lack of any proper inquiry in presence of petitioners, non-application of mind to the request made in the show cause and for non-supply of documents asked for by the petitioners;

(4) The respondents had no authority to treat the appointments of petitioners as illegal because of similar issue having been decided in their favour in C.W.J.C. No. 10142/92.

(5) impugned order is a result of malafide on the part of present Speaker.

(6) Removal of petitioners is arbitrary and against Article 14 of the Constitution of India because some similarly appointed persons continued in service.

(7) The impugned order is bad in law on account of delay in taking action in the case of petitioners; and

(8) On equitable principles the respondents should not be permitted to terminate the services of petitioners even if those appointments had been made contrary to Articles 14 and 16 of the Constitution of India.

12. Point No. (1) :--It is an admitted position that appointments of 185 persons to various Class-III and Class-IV posts under the Bihar Legislative Assembly between the period 15.6.90 to 1.11.90 as made by the erstwhile Speaker were quashed by this Court holding those appointments to have been made without any advertisement and without following any process of selection and therefore violative of Articles 14 and 16 of the Constitution of India and hence void ab initio. When action against the later appointees was taken pursuant to an internal enquiry which showed that these appointments had also been made exactly in the same fashion that is without any advertisement and without following any process of selection, the petitioners, as noticed earlier have chosen to plead that their appointments were made pursuant to a notice board advertisement dated 8.1.91 and after holding of interview, which two facts, according to the petitioners make their cases different from those appointees whose appointments have been quashed by this Court.

13. In this regard it is relevant to notice the case and stand of the respondents that no such advertisement on the notice board was ever issued and no selection process was followed muchless a competitive examination as required by the provisions of Bihar Vidhan Sabha Secretariat (Recruitment and Conditions of

Service) Rules, 1964 (hereinafter referred to as "1964 Rules") read with the gazetted notification dated 22.11.67 containing directives of Speaker under Rule 9 of the Rules (hereinafter referred to as a notification of 1967) as contained in annexure z/4 to the supplementary counter affidavit of respondent nos. 2, 3, 4 and 5 in C.W.J.C. No. 8931/97. On behalf of respondents it was submitted that on 24.1.97 a copy of the writ petition bearing C.W.J.C. No. 8971/97 was served on Learned Counsel appearing for the Speaker and in that writ application a typed copy of alleged notice dated 8.1.91 was annexed as annexure-1. On the basis of instructions received a preliminary counter affidavit was filed in the 2nd week of January, 1998 in paragraph-10 whereof the concerned respondents denied the existence of any such notice. On 21.1.98 on behalf of the petitioners a reply was filed to the aforesaid counter affidavit in which a true photocopy of notice dated 8.1.91 was annexed as part of annexure-16 series. In paragraph-19 of the aforesaid reply a reference was made to file number 1/Establishment/274/90 and it was stated that the said file if produced will clinch all issues. The statements made in paragraph-19, as appears from the affidavit portions were not sworn as true to knowledge or based upon informations derived from record of the case but were only by way of submissions. Allegedly the notice dated 8.1.1991 was issued pursuant to orders passed in aforesaid file bearing no. 1/Eastablishment/274/90. It has further been submitted that on being served with a photo copy of alleged notice dated 8.1.1991 it was deemed necessary by the Speaker to hold an inquiry before giving any further reply in the matter and accordingly the Speaker ordered for an inquiry on 22.3.1998 and the report of the enquiry dated 31.3.98 was enclosed as annexure-z/1 to the supplementary counter affidavit of respondent nos. 2, 3, 4 and 5 in C.W.J.C. No. 8931/97. As per the said report of enquiry and the supplementary counter affidavit no file bearing 1/East/274/90 was available in the Bihar Legislative Assembly Secretariat and there was absolutely no material to show that such a file was ever opened or that any notice dated 8.1.91 or 29.12.92 was ever issued to invite applications for recruitments to various Class-III and Class-IV posts in the Bihar Legislative Assembly. The report refers to log-books and movement registers of several employees and officials that could be located and scrutinized and none of those logbooks/movement registers contained any reference to the file in question.

14. It appears that after filing of the detailed supplementary counter affidavit containing the report of enquiry dated 31.3.98, the petitioners made a prayer for a direction to the respondents to produce several documents, registers and files for their inspection. In this regard, Learned Counsel for the respondents has taken a stand that since several files and registers etc. were in the custody of petitioners and similar other employees whose services have been terminated, many of the documents and registers appear to have been removed by such employees and hence whatever documents, registers and files could be traced out were made available for the inspection of Learned Counsel appearing for the petitioners and they did inspect the same. On the other hand, the petitioners

have assailed the enquiry report dated 31.3.98 as incorrect and motivated and they have also alleged that some documents have purposely not been traced and produced for inspection in order to harm the case of the petitioners.

15. Normally a writ court does not go into and decide the disputed question of facts but in the peculiar facts and circumstances of the case and keeping in mind the over-all interest of the parties, we were taken through various logbooks/ movements registers as well as files containing applications of the petitioners for their appointments as well as the orders passed for their appointments by the erstwhile Speaker. This was done on the request of the parties and without objection by anyone of them. A perusal of three movement registers relating to offices of (1) Deputy Secretary (E & H) (2) Joint Secretary and (3) the Secretary of the Bihar Legislative Assembly it was found that on the relevant dates which appear on the copy of note-sheets annexed by the petitioners, there was no movement of concerned file number 1/Est/274/90. All the files made available with regard to these petitioners which contained their applications for appointment and also the orders of the erstwhile Speaker for their appointments clearly show that none of the applications were addressed to the Joint Secretary who is shown to be the authority who issued the disputed advertisement dated 8.1.91. The applications generally do not contain any dates and in some cases where the dates are available they do not appear to be the contemporaneous with the notice dated 8.1.91. The applications do not refer to any notice nor disclose any source of information pursuant to which the applications had been filed. All the applications have been addressed to the Speaker of the Assembly. Some of the applications are with regard to posts of clerk which is not mentioned in the notice. The files further show that they have been initiated and opened for appointments of individual appointees or a set of few appointees who all were ordered to be appointed by the Speaker who allegedly interviewed those persons alone who were given appointment. The files do not contain applications of any other person to show that there was consideration of case of others also for the purposes of appointment. The files do not show any comparative evaluation of merit of the applicants or creation of any panel of successful candidates as against others who could not succeed on account of comparative evaluation of merit. The aforesaid facts lead to a conclusion that the finding contained in the enquiry report dated 31.3.98 (Annexure-z/1) in C.W.J.C. No. 8931/97 are correct and accordingly it has to be held that there was no advertisement on the notice board as claimed by the petitioners and further no selection process was followed by the erstwhile Speaker while issuing orders for appointments of petitioners. No doubt at places in the file Speaker has mentioned about interview by him but it is clear that such interview if at all held, does not meet the requirement of a proper interview where comparative merits of persons legitimately competing with each other for appointment to public posts is assessed in a fair and objective manner and a record thereof is maintained for further action. No such record of interview is available in the files nor the dates or time of interview are mentioned anywhere.

16. From the materials on record as well as from the records produced before us it is apparent that although advertisement on the notice board was allegedly issued under the signature of Joint Secretary but the applications of none of the petitioners was addressed to the Joint Secretary or filed before him or in the Secretariat of Bihar Legislative Assembly. The applications did not disclose that they were in response to any advertisement nor they were processed as such in the Secretariat. All the applications appear to have been received by the then Speaker at different times spread over a period of 2 to 3 years from time to time and were placed in the files dealing with the vacancies or seeking directions as to how to fill-up those vacancies.

17. On the basis of aforesaid facts it has to be held that the petitioners in these writ applications were also appointed in the same manner as those appointees whose appointments were quashed by this Court in C.W.J.C. No. 7995/90. In the case of present petitioners also there does not appear to be any advertisement even on the notice board nor any process of selection was followed before awarding employment to them by the erstwhile Speaker. Hence their appointments are also clearly violative of Articles 14 and 16 of the Constitution of India and void ab initio. This Court was conscious of its limitation in arriving at a finding over a disputed question of fact in exercise of its writ jurisdiction but still in the larger interest of justice and on the request of the parties it had to be done in order to shorten the litigation and also in larger public interest because the vacancies and appointments in question relate to State Legislature in Bihar and it will not be in the interest of the institution or the public to keep this litigation pending and thereby create difficulties in filling up the vacancies in a regular manner for which advertisement has already been issued. For arriving at the aforesaid finding of fact we also derived assistance from the order of the Speaker passed in most of these cases by which he has rejected the review applications which, as noticed earlier, were filed pursuant to order of this Court during the pendency of the writ petitions. A perusal of the Speaker's order such as one contained in annexure J/6 in C.W.J.C. 8814/97 shows that on consideration of relevant materials the Speaker came to an opinion that the petitioners applications were not pursuant to any notice board advertisement and no process of selection was at all followed by the erstwhile Speaker before granting appointments to the petitioners as per settled principles of law. This Court in writ jurisdiction cannot ignore findings of fact by the authority unless it is shown that such findings are based upon no material or are perverse and no prudent man can arrive at such findings on the basis of available materials. The petitioners have failed to allege and prove that the finding of the Speaker referred to above are either based upon no material or are perverse. On the other hand, appraisal of the available materials on record has led this Court also to come to similar findings. No doubt a challenge was made to order of the Speaker passed on review applications filed by the petitioners on a ground that in law no such review is provided by Rule 16 of the rules.

18. For appreciation of the aforesaid submission with regard to Rule 16, it is

relevant to notice that under Rule-14 which prescribes punishing authority, the Speaker has been vested with the power to impose any of the penalties in rule 13 on any officer in respect of whom the Speaker is the appointing authority. Under this rule the Speaker can delegate his power to the Secretary or other specified officers. Rule 13 inter alia, contains punishments of removal from service as well as dismissal.

Sub-rule (1) of Rule 16 deals with right of every officer to prefer appeal against an order imposing or confirming any penalty specified in the rule 13. Admittedly in the present cases the impugned order for removal from service has not been passed by way of imposing penalties under Rule 13 and hence Rule 16(1) cannot have strict applications in the facts of these cases. Sub-rule (2) of Rule 16 provides finality to all orders of the Speaker passed originally or on appeal but the proviso to sub-rule (2) provides that the Speaker may revise or rescind any orders passed by him under this rule. The argument on behalf of the petitioners was that the term "this rule" cannot be construed as "these rules" and hence the impugned order in these cases which has been passed by the Speaker as the controlling and disciplinary authority under the rules cannot be treated to be an order under rule 16 and hence the Speaker cannot have power of revision or review with regard to the impugned orders of removal from service.

19. The aforesaid contention on behalf of the petitioners prima facie appears to have some substance but on a closer scrutiny of sub-rule (2) of Rule 16 it is apparent that sub-rule (2) provides finality to the orders of Speaker whether appellate or original and there is nothing in this sub-rule to limit the original orders of the Speaker to an order passed as punishing authority for the penalties specified in rule 13. Such finality under rule 16(2) is attached to all orders of the Speaker under the rules including one as a controlling and disciplinary authority as provided by rule 12 of the rules. Any of such orders attain finality under the rules by virtue of rule 16(2) and therefore, it would be just and proper to construe that the proviso granting power to the speaker to revise or rescind any orders passed by him under this rule will include orders passed by him as controlling and disciplinary authority under the rules that attain finality by virtue of Rule 16(2) of the rules.

20. Even if the aforesaid question is considered from a different angle, the contention of the petitioners with regard to order of the Speaker passed on their review applications shall have no substance inasmuch as if it is presumed that the impugned orders in these writ applications are not orders governed by rule 16 even then since the petitioners themselves filed their review applications before the Speaker in pursuance of observations/directions of this Court, now having availed of such opportunity they cannot be permitted to turn back and assail his orders on ground of lack of jurisdiction under the rules. There is yet another aspect of this matter. Even if it is presumed that the order of the Speaker passed by him on the applications for review filed by the petitioners themselves is not an order under the rules, but still it will not be rendered void

because at worst it shall remain as an administrative order. Hence for the aforesaid reasons, the contentions on behalf of the petitioners against the orders of the Speaker passed on review applications have no substance and such orders of the Speaker cannot be ignored or quashed on the grounds urged on behalf of the petitioners.

21. While still on point no. 1, it is relevant to consider another submission on behalf of the petitioners on the basis of which they have urged that now their cases must be treated as different from those appointees whose appointments were quashed by this Court in C.W.J.C. No. 7995/90. As per this submission, in the case of petitioners their appointments have to be accepted by this Court as legal and valid and this Court cannot take a different view in the matter on account of principles of res judicata, due to decision of this Court rendered in C.W.J.C. No. 10142/92 (Vijay Kumar Jha and others vs. The State of Bihar & others). As noted earlier the aforesaid writ petition was filed by some temporary employees of the Secretariat of Bihar Legislative Assembly after three years of their removal. This writ petition was heard along with Letters Patent Appeals filed against the judgment in C.W.J.C. No. 7995/90 (Harendra Pandey vs. State of Bihar & others). The two Hon'ble Judges of the Division Bench hearing those matters differed in their judgment with regard to Letters Patent Appeals but they were in agreement in dismissing C.W.J.C. No. 10142/92 on the ground of delay of more than three years in filing the writ application as well as on the ground that the petitioners in that case were temporary employees and hence their termination which was not by way of punishment required no enquiry or assigning of reasons. The submissions on this question as made on behalf of the petitioners on the basis of records of C.W.J.C. No. 8931/97 (Smt. Anjani Singh's case) is that the judgment contained in annexure-5 shall constitute a res judicata against Bihar Legislative Assembly because the petitioners of C.W.J.C. No. 10142/92 had, besides challenging their removal from service questioned the continuations of similarly situated employees such as petitioners of these cases and on the basis of order sheet in that case (annexure 15) it was argued that this Court had allowed on 18.3.94 an application under Order 1 Rule 8 of the CPC by which six employees similarly situated as these petitioners were added as respondents in representative capacity and notices were issued to them. From order dated 24.1.95 contained in annexure 15 of C.W.J.C. No. 8931/97 it further transpires that the learned single Judge before whom the matter was then placed, observed that the issues involved in that writ petition were the same as those involved in Letters Patent Appeal which was pending before this Court and in fact private respondents were parties in the aforesaid Letters Patent Appeal and on such facts learned Single Judge desired for listing of that writ application before the same Bench which was to hear the Letters Patent Appeals.

22. On behalf of the respondents the aforesaid submissions were strongly contested on the ground that in fact a perusal of the judgment (annexure-5) would show that the issue of validity or otherwise of the appointments of private respondents was not decided in C.W.J.C. No. 10142/92 and further this issue was

not necessary to be decided amongst the co-respondents, the Bihar Legislative Assembly and the private respondents of that case. It was further submitted that it would be traversity of justice to hold that by dismissing C.W.J.C. No. 10142/92 only on two grounds of delay and non-requirement of any proceeding or notice for termination simplicitor of temporary employees, this Court subsilention approved the appointment of a large number of other employees of Bihar State Legislative Assembly including such employees of whose appointments were directly under challenge in C.W.J.C. No. 7995/90 and was quashed by this Court in that case, which judgment was subsequently affirmed by a larger Bench of this Court and also by the Hon"ble Supreme Court

23. After going through the judgment contained in annexure-5 it is clear that by dismissing C.W.J.C. No. 10142/92 this Court did not decide the validity or otherwise of the appointments of private respondents in that case. It is a settled law that the provisions of CPC are strictly not applicable in a proceeding under writ jurisdiction but it is equally well settled that principle of res judicata represents a principle of public policy and as such, by virtue of a catena of binding precedents of this Court as well as of the Apex Court, is applicable to writ proceedings under Articles 226 and 227 of the Constitution of India. As noticed above from the judgment as contained in annexure-5 it is clear that the relevant issue in this case was not considered an issue in C.W.J.C. No. 10142/92 and was not decided by this Court, hence the main provision of section 11 of the CPC is not attracted. However, Explanation IV to section 11 provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. This Explanation (IV) to section 11 incorporates a principle which is commonly described as principle of constructive res judicata. It is again settled that principles of constructive res judicata are also applicable to a writ proceeding. However, as has been the defence on behalf of the respondents, the question with regard to this issue is whether the principles of res judicata between the two contesting parties, the plaintiffs and the defendants will be same or different when it is raised vis-a-vis two parties who were co-defendants in the earlier proceeding. There is no dispute that under given situation res judicata is applicable even amongst parties who were co-defendants in an earlier proceedings. However, before going into finer issue of constructive res judicata or res judicata amongst co-defendants it is to be noted that as held by the Supreme Court in the case of Syed Mohd. Salie Labbai (Dead) by L.Rs. and Others Vs. Mohd. Hanifa (Dead) by L. Rs. and Others, , before a plea of res judicata can be given effect the following conditions must be proved;

- (1) that the litigating parties must be the same;
- (2) that the subject matter of the suit also must be identical;
- (3) that the matter must be finally decided between the parties; and
- (4) that the suit must be decided by a court of competent jurisdiction.

In paragraph-8 of the aforesaid report it was further observed that the best method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out what had been decided by the judgment. In this case the pleadings of the parties in the earlier writ petition are not before this Court and the judgment of the Division Bench in annexure-5 is no doubt a lengthy one but major part of the same is devoted to the Letters Patent Appeal and very little of the pleadings in C.W.J.C. No. 10142/92 can be gathered from the said judgment except that in paragraphs 46 and 47 of the said judgment one of the learned Judges dismissed the said writ petition as barred by laches and in paragraph 63 of the said judgment the other single Judge also agreed with the decision to dismiss the writ petition on the ground of delay as well as by holding that such temporary employees could have been terminated without assigning any reason.

24. In view of aforesaid limited material it is difficult for this Court to hold that the subject matter of the earlier proceeding was identical. As a fact it appears from the materials on record that the subject matter of C.W.J.C. No. 10142 of 1992 was different to the subject matter of the present writ application. It further appears that the matter directly and substantially in issue in C.W.J.C. No. 10142/92 was not the same as the matter in these writ applications and further the matter which is directly and substantially in issue in these writ petitions was not decided by this Court in the former judgment contained in annexure-5. Explanation IV to section 11 cannot be of much help to the petitioners' case on the question of res judicata because the subject matter of the two proceedings are different and there is no earlier decision of this Court over the matters arising for decision in the present writ petitions. Explanation IV mentions only of ground of defence or attack so that a party to a former suit may not escape from the rigors of res judicata only on the plea that some grounds are now available in support or defence which were not raised earlier. In such eventuality only Explanation (IV) would come into play by raising a presumption that all possible and proper grounds of defence or attack shall be deemed to have been a matter directly and substantially in issue in former suit.

25. Further it has been rightly submitted on behalf of the respondents, on the basis of a recent judgment of the Supreme Court in the case of Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, that before a bar of res judicata can be invoked inter se respondents, it must be shown that such a plea was required to be raised by the contesting respondents to meet the claim of the appellant in such proceedings. It was further held in that case that if such a plea is not required to be raised by the contesting respondents with a view to successfully meet the case of the appellant, then such a plea inter se contesting respondents would remain in the domain of an independent proceeding giving an entirely different cause of action inter se the contesting respondents; such pleas based on independent causes of action inter se respondents cannot be said to be barred by constructive res judicata on account of the earlier proceedings where the lis was between the appellant on the one hand and all the contesting

respondents on the other. In the facts of these cases the cause of action for the present petitioner has arisen much later and for meeting the case of the petitioners in C.W.J.C. No. 10142/92, the respondent Bihar Legislative Assembly was not required to raise the present pleas as a contesting respondent. In that writ application the respondent, Bihar Legislative Assembly could and did successfully meet the case of the petitioners in that case by raising the plea of laches and that they had no further rights as temporary employees for challenging the orders of termination impugned in that writ application. Hence, the plea of the petitioners that their cases are different from those employees whose appointments were quashed by this Court in C.W.J.C. No. 7995/90 because of bar of res judicata against the respondents herein has no merit and is accordingly rejected.

26. Point No. 4

The aforesaid discussion and finding also disposes of point no. 4. Accordingly, it is found and held that the judgment in C.W.J.C. No. 10142/92, in the facts of the case does not constitute res judicata and does not affect the authority of the respondent, Bihar Legislative Assembly, to hold and treat the appointments of petitioners illegal. It was also argued on behalf of the petitioners that in C.W.J.C. No. 10142/92 a counter affidavit was filed on behalf of the Bihar Legislative Assembly in which, at that time the stand of the Speaker was that the appointments of subsequent appointees made by the then Speaker was valid and in accordance with law. On that basis it was submitted that the Bihar Legislative Assembly and the present Speaker are estopped in law from changing their stand. The aforesaid argument deserves to be noticed only for rejection. The facts of the present cases as well as the case of Harendra Pandey vs. State of Bihar (C.W.J.C. No. 7995/90) clearly reveal that the appointments made by the earlier Speaker Mr. Gulam Sarwar have come under challenge because of wholly illegal and impermissible method of appointment adopted by the then Speaker so long as the earlier Speaker was in office i.e. till March, 1995 and therefore, the stand of the Bihar Legislative Assembly at that time was in support of such appointees but by the judgment dated 23.12.94 this Court quashed the appointments made by Mr. Gulam Sarwar during the initial period of his tenure and it is the later appointments by him which are the subject matter of the present writ applications. In the back ground of such factual position the principle of estoppel will not apply against the present Speaker and also the Bihar Legislative Assembly and they cannot be estopped from taking a stand in these cases that the appointments in question had been made against the law and in violation of Articles 14 and 16 of the Constitution of India. Public authorities and State Functionaries cannot and should not be restrained on principle of estoppel from taking a stand that their predecessor in office or other officials in control of matters earlier had in fact acted contrary to law and had taken a wrong stand in a court of law to support their actions which were contrary to law or the Constitution of India. A contrary view on this issue will perpetuate injustice and may have serious repercussions and adverse effect upon

public interest. A similar conclusion should flow from a well established principle that there is no estoppel against law.

27. Point Nos. 5 and 6 :-

The petitioners have alleged mala fide on the part of the present Speaker and it had been asserted on their behalf that the present Speaker has passed orders to terminate their appointments only because they were appointed by the former Speaker Mr. Gulam Sarwar against whom the present Speaker is said to have personal and political differences

28. The aforesaid allegations of mala fide have been refuted by the present Speaker by stating on oath that such allegations are baseless and that he had no option in the matter once the High Court had quashed the appointments made by Mr. Gulam Sarwar between 15.6.90 to 1.11.90 through its judgment in the case of Harendra Pandey which was ultimately approved by the Supreme Court on 2.12.96 by way of dismissal of the concerned Special Leave Petitions. It has further been submitted on behalf of the Speaker and on the basis of his counter affidavit in C.W.J.C. No. 8931/97 that till judgment by the Supreme Court there was an interim order of stay in favour of the employees whose appointments had been quashed by this Court but thereafter, as appears from various annexures to the aforesaid counter affidavit of the Speaker, a question was raised before him by the Bihar Vidhan Sabha Secretariat whether extension of service should be granted to several later appointees of Mr. Gulam Sarwar whose appointments appeared to have been made in similar fashion as the appointments quashed by this Court. It was, thereafter, that the present Speaker, professing to act bona fide constituted a three members committee on 3.5.1997 for scrutinising and reporting regarding mode and method of such later recruitment made by Mr. Gulam Sarwar after 1.11.90. The said Committee submitted its report dated 19.8.97 before the Speaker and after being satisfied regarding the factual position, order was passed by the Speaker for issuing show cause notices dated 28.8.97 by which, as noticed earlier the petitioners were required to show cause as to why their services be not terminated, thereafter the impugned order of termination was passed because it was found that appointments have been made without advertisement and without any selection.

29. In paragraph 14 of his counter affidavit in C.W.J.C. No. 8931/97 the Speaker has further mentioned that a writ petition bearing C.W.J.C. No. 1129/97 was filed by one Shams Tabrej Khan whose appointment had been terminated by order dated 10.12.96 pursuant to judgment of this Court and of the Supreme Court in the case of Harendra Pandey and he had made a grievance that although services of 185 persons have been terminated on the ground that their appointment was without advertisement and without following the prescribed procedure of selection but still a large number of similarly situated persons who were appointed in similar fashion were being retained in service by the Bihar Vidhan Sabha. In that case by order dated 4.8.97 this Court had asked the Bihar Vidhan Sabha to give detail informations with regard to such persons appointed

after 15.6.90 and how many of such persons were still being retained in service. Such a situation clearly left no option for the Speaker but to have the facts regarding such appointments enquired into and thereafter the logical steps had to follow, as it did, because the matter was already under judicial gaze.

30. On the basis of aforesaid facts and discussions it must be held that the present Speaker took the impugned action without any mala fide and the petitioners have failed to establish any mala fide as alleged by them against the present Speaker.

31. So far as point no. 6 is concerned, it has been submitted on behalf of the petitioners that the impugned action against them is arbitrary and therefore violative of Article 14 of the Constitution of India because according to them a large number of appointees in the Bihar Legislative Assembly Secretariat appointed prior to 10th Bihar Legislative Assembly's constitution of which Mr. Gulam Sarwar was the Speaker, have been retained in service although if a scrutiny is held many of them may be found to have been similarly appointed. Elaborating this argument it has been submitted that the respondents have acted arbitrarily in accepting 1.11.90 as a sort of cut off date and action has been taken only against the appointees of later period whereas if the mode and method of appointment in the case of the petitioners was found illegal all such persons who may have been appointed in similar method since the inception of Bihar Legislative Assembly came into existence in 1950 should have been proceeded against and their appointments, if found similar, should also have been cancelled. It was further alleged on behalf of the petitioners that a set of 27 employees who were admittedly appointed after 1.11.90 only on the basis of notice board advertisement were allowed by the respondents to continue in service whereas if their plea that all such appointments must be after proper newspapers advertisement is accepted then the cases of said 27 employees must be treated as similar to the petitioners and therefore, petitioners termination order must also be quashed.

32. With regard to the aforesaid 27 employees, in course of hearing of these cases the court was informed that their services have also been terminated, hence now the argument on behalf of the petitioners on the aforesaid point has to be considered only on the basis that the respondents have not held any enquiry with regard to appointments made prior to formation of the 10th Bihar Legislative Assembly. While on this issue it must be noticed that it is an admitted position that the respondents have not held any inquiry with regard to appointment made prior to 15.6.90 or in fact prior to 1.11.90 because so far as appointments between the period 15.6.90 to 1.11.90 are concerned, they were challenged by some persons in this Court and have been quashed as per judgment in the case of Harendra Pandey. Learned Counsels appearing for the petitioners have cited some judgments in support of the proposition that it is impermissible for the State and its authorities to fix an arbitrary cut off date. No doubt in several cases it has been held that by resorting to arbitrary cut off dates

similarly situated persons cannot be placed into different categories so as to deny to one the benefits that may have been lawfully given to other.

33. It has rightly been submitted on behalf of the respondents that Article 14 cannot be used in a negative manner so as to perpetuate an illegality. Put in other words, one wrong committed earlier cannot justifiedly be made the basis of another wrong more so under the orders of a court of law and that too in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. In its judgment in the case of Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, the Supreme Court has emphasised that equality before law is a positive concept and it cannot be enforced in a negative manner or to perpetuate an illegal order. Similar proposition finds support from judgment of Supreme Court reported in the case of Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, .

34. From the facts and circumstances of these writ petitions it is clear that the initiative in the matter of enquiry into the appointments of petitioners was not taken by the respondents, as such an enquiry became a logical necessity on account of judgment of this Court in the case of Harendra Pandey by which similar earlier appointment made between 15.6.90 to 1.11.90 were quashed upon a challenge made to such appointments in a writ proceeding. Hence, in the facts of the case, it cannot be said that the respondents have selected a cut off date for the purpose of inflicting discrimination upon the petitioners. So far as the grievance of the petitioners with regard to earlier appointees is concerned, it is for the respondents to take a decision in that matter by way of policy and if they feel justified by the facts it will always be open to them to take a policy decision and hold an enquiry even with regard to appointment made prior to 15.6.90. It is not for this Court to advise the respondents in such a matter but it is expected that if they decide to take such a policy decision they will keep in mind all the relevant facts including the length of service of such appointees.

35. Point Nos. 7 & 8 : It has been argued on behalf of the petitioners that a challenge to such appointments by the erstwhile Speaker came into open through C.W.J.C. No. 10142/92 in the year 1992 itself but thereafter the petitioners have been allowed to continue for different periods and in some cases beyond five years. Some of the petitioners have also been confirmed in their service and hence it has been submitted that impugned action of termination of their services should be held to be delayed and beyond a reasonable time. Elaborating this argument it has been submitted that such action in order to be reasonable and therefore within the extent permissible under Article 14 of the Constitution of India must be taken within a reasonable time. Some decisions of the Supreme Court and of this Court were cited on behalf of the petitioners such as (1993) Suppl. 3 S.C.C. 168 (Rekha Chaturvedi vs. University of Rajasthan & ors., (1988) 8 S.C.C. 59 (Roshni Devi vs. State of Haryana and Pradeep Kumar Mehta and others Vs. State of Bihar and Others, , in support of the plea that considering service period of 8 years, 9 years and 6 years as long service, the

courts have intervened and protected against termination of service of the affected persons in those cases.

36. No doubt in particular facts of those cases it was held that even irregular appointments may not be terminated after concerned employee had put in long years of service. However, no such proposition of law can be said to have been declared in such judgments that even where Articles 14 and 16 have been violated in gross-manner by making large number of appointments without advertisement and without following any fair and acceptable procedure of selection, such appointments cannot be terminated only because for some reason or the other such employees continued in services for a particular period of time. On the contrary in such gross cases the courts always insist on due observance of Articles 14 and 16 of the Constitution of India so that public employment may not be squandered on the whim of an appointing authority leading to filling up of public posts by persons whose competence and merit, to say the least, has not been tested through the prescribed or acceptable and fair means. In so far as the facts of present cases are concerned from an earlier discussion with regard to point no. 4 it was noted that till December, 1996 the judgment of this Court quashing similar appointments made by the erstwhile Speaker prior to the appointments of the petitioners was pending before Supreme Court and soon thereafter the present Speaker who alone could take a different view of the matter because the earlier Speaker was in support of such appointments, constituted a three men enquiry committee for screening of facts relating to later appointments made by the erstwhile Speaker. The report of the committee was followed by a show cause notice to the petitioners and similar other employees and soon thereafter came the impugned order dated 15.9.97 and hence on such facts it cannot be said that there was any unreasonable or inordinate delay on the part of the respondents in terminating the services of the petitioners. Hence, even on facts the submission on behalf of the petitioners that the impugned action should be declared unreasonable on account of unusual and unreasonable delay cannot be accepted.

37. It was also argued on behalf of the petitioners that this Court has similar powers as the Supreme Court has under Article 142 of the Constitution of India to pass necessary, orders for doing complete justice in any cause or matter pending before it and hence in the ends of justice, particularly keeping in view the years of service rendered by the petitioners in impugned order deserves to be quashed. The Constitution does not vest this Court with the power that is vested in the Supreme Court under Article 142 of the Constitution of India. However, even if it be accepted that in exercise of its writ jurisdiction this Court can pass all necessary orders in the ends of justice, the facts of the case don't require any intervention with the impugned order by which petitioners services have been terminated. Ends of Justice cannot be viewed from a narrow perspective only with a view to remove hardship to individual petitioners. Such a vision must take into consideration larger issues as due observance of the provision of Constitution and of law and also the larger interest of the society and

the State. On such consideration no relief can be granted to the petitioners for the sake of justice to them or on the grounds of equity. In the facts of the case it is clear that the petitioners did not enter into service in a fair manner and even in this Court their conduct in raising a false pleading that there was a notice board advertisement and they applied pursuant to the same and were selected after a proper interview/test leaves much to be desired. It is well settled that equity begets equity and therefore, in the facts of the case the petitioners cannot be held entitled to any relief on the ground of equity.

38. Point No. 2 : The recruitment of employees of Bihar Legislative Assembly Secretariat is governed by duly notified rules framed in exercise of powers conferred by clause (3) of Article 187 of the Constitution of India which is entitled as "Bihar Vidhan Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1964" (hereinafter referred to as "The Rules"). Rules 4, 5, 9 and 20 are of special relevance.

39. A perusal of Rule 4(2) shows that subject to the provisions of Sub-rule (a) of rule 6 which deals with the appointment to the post of Secretary or Joint Secretary to be made by the Governor in consultation with the Speaker from amongst persons serving in the Bihar Superior Judicial Service, the Speaker has the power to specify the method or methods by which a post or class of posts may be filled. Similarly under Rule-5 the Speaker may specify the qualification for recruitments. Under rule 9 which bears the heading "other conditions for services", it has been provided that in respect of other matters regulating the conditions of service of officers for which no specific provision has been made in these rules, officers shall be governed by such rules etc. as are applicable to the officers of the corresponding rank in the Civil Secretariat of the State Government, subject to such modifications, variations or exceptions, in such rules as the Speaker may, after consultation with the Finance Department, by order, from time to time specify. Rule 20 provides that subject to the provision of rule 9, all matters not specifically provided for in these rules shall be regulated in accordance with such orders as the Speaker may, from time to time, make.

40. It is an admitted fact that a notification was published in the Bihar Gazette dated 22.11.67 (annexure-z/4 to the supplementary counter affidavit in C.W.J.C. No. 3931/97) which contains directives of the Speaker under the Rules with regard to appointment and promotion of gazetted officials and Assistants of the Bihar Legislative Assembly Secretariat and which is hereinafter described as notification of 1967. Clause (5) of the 1967 notification provides that for entry into post of Lower Division Assistant the age limit of candidates shall be between 18 to 25 years and such appointment shall be through competitive examination conducted by the Secretary. Since there was no competitive examination conducted by the Secretary of Bihar Legislative Assembly for the appointments which have been termination (sic--terminated?) by the impugned order, hence on behalf of the petitioners the notification of 1967 was attacked on two lines. The first line of attack was that the directives contained in the 1967 notification

became inoperative due to merger of Lower Division Assistant and Upper Division Assistant that took place on 1.5.80 and further it has been strongly urged on the strength of principle settled by the Supreme Court in its judgment reported in the case of Municipal Corporation for City of Pune vs. Bharat Forge Company Ltd., (1995) 3 S.C.C. 434) that the doctrine of implied repeal or quasi repeal was applicable to the 1967 notification and therefore, it should not be held that the petitioners appointments were bad in law on account of violation of the provisions of the 1967 notification requiring competitive examination to be held by the Secretary of the Bihar Legislative Assembly.

41. So far as the ground of merger of L.D.C. & U.D.C. is concerned, that cannot in my view, make the 1967 notification unworkable because earlier the first point of entry into service as Assistant was on the post of L.D. Assistant and the only effect of merger of two cadres is to make the point of entry the post of assistant and not L.D. Assistant. Such a change cannot make the 1967 notification unworkable because there will be absolutely no difficulty in applying either the minimum age or the procedure of competitive examination prescribed by clause (5) of the 1967 notification to appointment to the post of assistant after the merger of the two cadres of L.D. and U.D. assistants on 1.5.1980. Such words and expressions used in such notification can always be understood and applied to changed nomenclature of posts that may subsequently take place in accordance with law. Unless the subsequent developments and changes are of such a nature that they make the earlier rules, notification or policy decision unworkable, such rules or notification cannot be treated as impliedly repealed.

42. So far as reliance of the petitioners upon judgment of the Supreme Court in the case of Municipal Corporation for City of Pune is concerned, no doubt in that judgment the Apex Court has applied has doctrine of desuetude to the statute in this country as well. From paragraph 31 of the said judgment it is clear that the doctrine of desuetude does not consist merely of obsolescence or disuse, there must also be a contrary practice, which must be of some duration and general application. Further, the facts of the case were entirely different, in that case, on fact it was found that the 1918 notification had not been implemented till date in fact what had been done as contrary and that too for such long period and hence to advance the cause of justice it was held that the 1918 notification stood repealed "quasily" by the time new rules were framed in 1963. In these cases the facts are different. There is no specific and categorical pleadings of long disuse of 1967 notification or a consistent contrary practice since then. In fact the materials on record show that in the year 1971 posts of L.D.C. and the posts of reporter were advertised in newspaper and were followed by a written competitive test as well as interview for the purpose of selection. There are materials in C.W.J.C. No. 8931/97 that the same Speaker had got 25 vacancies advertised in newspapers in the year 1992 and against those 25 posts appointments were made after holding of a competitive test. Thus on facts it has rightly been submitted on behalf of the respondents that no case of long disuser and adoption of a contrary practice have been made (sic) to hold that the 1967

notification (sic) quasily repealed by application of (sic) doctrine of desuetude. Accordingly (sic) contention on behalf of the petitioners (sic) this regard is rejected and it is held (sic) at in the facts of the case the doctrine (sic) desuetude as enunciated in the judgment of the Apex Court in the case of Municipal Corporation for the City of Pune (supra) is not of any help to the petitioners.

43. Another line of attack on 1967 notification was that such a notification, in order to be valid must be issued by the authority of the Speaker only after consultation of the Finance Department of the Government of Bihar, as required by rule-9 of the Rules. Although there was no specific averments in this regard in the writ petitions but it was asserted during arguments that there is no material to show that the 1967 notification was issued after consultation with the Finance Department and hence it must be deemed to be invalid in law.

44. On behalf of respondents it has been submitted that the attack on behalf of the petitioners on 1967 notification is without any substance and further it is of no help to the petitioners because requirement if advertising the posts while making large number of appointments as well as the requirement of some reasonable and fair method of selecting the meritorious candidates flow within Articles 14 and 16 of the constitution and are not dependent merely upon the 1967 notification. It has further been submitted on behalf of the respondents that parts of 1967 notification such as clause (5) deal with method of recruitment and qualifications etc. which shall be governed by rules 4 and 5 of the rules under which the Speaker alone has the authority to specify the method or the qualifications and hence such provision as contained in clause (5) of the 1967 notification cannot be invalidated on the ground of lack of prior consultation with the Finance Department. It has further been submitted that rule 9 deals only with conditions of service like probation and pay etc. covered by rules 7 and 8 and such conditions of service come into play only after a candidate enters the service after valid appointment in accordance with method of recruitment decided by the Speaker under rule 4 and after meeting the qualifications specified by the Speaker under rule 5. Thus, the submission on behalf of the respondents is that in the context of the rules, other conditions of service for which no specific provisions has been made in this rules will not include the method of recruitment or qualifications for recruitment and hence for these matters no prior consultation with the Finance Department was necessary. It has further been submitted by way of alternative argument that if the 1967 notification is deemed to be bad in law for want of prior consultation with the Finance Department, the rules, orders or directions applicable to the recruitment of assistants in the civil secretariat of the State Government also required advertising of vacancies in newspapers and selection through a competitive examination and therefore the petitioners will derive no gain or advantage by asking this Court to hold that the 1967 notification is bad for lack of prior consultation with the Finance Department.

45. So far as the fact is concerned, whether there was a prior consultation with the Finance Department for issuance of 1967 notification or not, the respondents argued that they have been taken by surprise due to lack of any pleading on this issue. It was further submitted on their behalf that inspite of search they have not been able to find out any file or document containing such prior consultation but by inference on the basis of later consultation with the finance department over modification of rules etc., it has been submitted that the finance department even coming to know of the 1967 notification has never objected to the same.

46. On the basis of provisions in rules 4 and 5 and looking at the content of clause (5) of the notification of 1967, the latter *prima facie* appears to be validly issued by the authority of the Speaker, even if it is held that there was no prior consultation in the matter before issuance of 1967 notification. However, keeping in view the larger issue in this case there appears to be sufficient merit in the contention advanced on behalf of the respondents that twin requirements of advertisement in newspapers as well as the necessity of reasonable and fair method of selection arise out of mandate of Articles 14 and 16 which prohibit denial of equality and equal opportunity in the matter of public appointment and also require fairness in all state action. Hence in the facts of the case there is no necessity to, decide the validity or otherwise of 1967 notification because the drawbacks or shortcoming in the appointment of the petitioners does not violate only the provisions of 1967 notification but also the mandate of Articles 14 and 16 of the Constitution of India and it has further been rightly submitted on behalf of the respondents that in this case even if 1967 notification will be treated as invalid, the requirement of advertising posts in newspaper and of holding competitive examination shall still be applicable by virtue of rule 9 of the Rules and the rules, orders and directions applicable in the case of recruitment of Class-III employees in the civil secretariat of the State Government which are shown to have contained such requirements and shall become applicable to appointment in the Bihar Legislative Assembly Secretariat if the arguments advanced on behalf of the petitioners with regard to invalidity of 1967 notification is accepted.

47. Point No. 3 : So far as the principles of natural justice are concerned a large number of judgments of the Supreme Court have been cited on petitioner's behalf in support of well established principle that rules of *audi alteram partem* shall apply whenever a person is to be deprived of any right. There is no quarrel with the aforesaid principle and hence the numerous judgments cited on behalf of the petitioners on this point need no deliberation. But on behalf of the respondents a number of judgments of the Apex Court and also of this Court have been cited in support of the proposition that whenever and wherever this Court or the Apex Court has found that a large number of appointments have been made without following the mandate of Articles 14 and 16 of the Constitution of India and on such findings such appointments have been cancelled or terminated then the court would be required to satisfy itself that the appointments in question were actually made in breach of Articles 14 and 16 of the Constitution of India or not and once the Court comes to form its own opinion

that such appointments had been made contrary to Articles 14 and 16 of the Constitution then the Court will not interfere with the orders cancelling or terminating such appointments.

48. For the proposition that the appointments made in violation of Articles 14 and 16 of the Constitution of India are void ab initio and therefore confer no legal rights, the respondents have placed reliance upon a Full Bench Judgment of this Court in the case of Binay Kumar Bharti vs. State of Bihar (1983 P.L.J.R. 667) followed by a large number of decisions such as in the case of Meena Rani Singh vs. State of Bihar (1986 P.L.J.R. 460), 1989 P.L.J.R. 799 (Sajjan Kumar Didwania vs. The State of Bihar), Satish Kumar and Others Vs. State of Bihar, Teja Prasad and Others Vs. The State of Bihar and Others and Bimal Kishore Rai Vs. The State of Bihar and Others . In the aforesaid judgments different Benches of this Court have taken a consistent view that where the initial appointment is itself void ab initio then such appointees have no right in them so as to seek the issuance of a writ for protecting such void appointments. The facts of this case do not warrant taking of any different view in the matter more so when this Court has come to its own satisfaction that appointments of the petitioners were in violation of Articles 14 and 16 of the Constitution of India. While on this issue, it is relevant to notice the judgment of this Court reported in Lalan Kumar Singh and Others Vs. The State of Bihar and Others . In that case also a large number of illegal appointments made by one Dr. Mallik were involved and this Court after examining various judgments of the Apex Court and also of this Court held that principles of natural justice cannot be put in a straight jacket formula and may vary from case to case and further held in para-21 that in such a case where the appointment is a nullity, the principles of natural justice are not required to be complied with. The aforesaid judgment came for consideration before the Supreme Court and as per judgment reported in the case of Ashwani Kumar and others Vs. State of Bihar and others, etc. etc., , there was a difference of opinion between the two Hon"ble Judges but by the Judgement in the same case by a larger Bench reported in the case of Ashwani Kumar vs. State of Bihar (AIR 1997 S.C. 1928) the Division Bench Judgment of this Court was affirmed and it was held that by giving show cause notices to the concerned employees the requirement of natural justice stood complied. In these cases it has been submitted on behalf of the respondents that not only an opportunity to show cause was given to the petitioners before passing the impugned order but subsequently on asking of this Court review petitions were also filed by many of the petitioners in which they had the opportunity to place all the materials which the petitioners claim to have and thereafter order was passed on review holding that the petitioners appointments were even without any notice board advertisement and without following any method of selection. Hence, it has rightly been submitted on behalf of the respondents that the petitioners cannot be granted any relief in this case on the ground of alleged violation of principles of natural justice.

49. There is yet another aspect of the matter so far as points number 2 and 3

are concerned. Since in these cases it has been found earlier in this judgment that the petitioners have failed to prove that there was even any notice board advertisement and it has further been found that no process of selection was followed in making these appointments, hence on these vital aspects the case of the petitioners practically stand on the same footing as that of the appointees between 15.6.90 and 1.11.1990 whose appointments have already been quashed by this Court as per judgment in Harendrig Pandey case and the said judgment was confirmed in Latters Patent Appeal and the Supreme Court dismissed the Special Leave Petitions filed by those appointees. In such a situation there is no justifiable ground to hold that the petitioners in these cases have any extra or better rights although they are later appointees whose appointments were done by the same authority and in the same manner as the earlier appointees mentioned above.

50. In view of aforesaid discussions and findings, I find no ground to interfere with the impugned order by which services of the petitioners have been terminated. From averments in the writ petitions, it appears that the Speaker has already initiated a fresh process of selection by advertising the posts in Newspapers. In the judgment given by Brother Ganguly, J. in letters Patent Appeal No. 20 of 1995 and other analogous appeals, it was mentioned at the end of the judgment that it is now open to the Speaker to initiate appropriate selection proceedings in accordance with the law and in accordance with provisions of Articles 14 and 16 of the Constitution of India for selection and appointment of class III and class IV staff of the Assembly Secretariat. In the facts of this case, I find it appropriate to reiterate the aforesaid observations and it is further observed that in such a selection proceeding all the appointees whose appointments have been set aside by the order impugned in these cases will be entitled to participate if they choose to apply and their candidature may be considered on merit in the said selection process, if necessary by condoning their age bar in a justified and suitable manner. For all the aforesaid reasons, I find no merit in these writ applications and they are accordingly dismissed, but in the facts and circumstances without any costs.

B.N. Agarwal, A.C.J.

I agree.