
(1987) 07 PAT CK 0034
In the Patna High Court
Case No : C.W.J.C. No. 747 of 1985

Awadesh Kumar Choudhry and Others	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 23-07-1987

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226, 311
Penal Code, 1860 (IPC) — Section 120B, 420, 465, 468, 49

Citation : (1987) 35 BLJR 907 : (1987) PLJR 1074

Hon'ble Judges : S.S. Sandhawalia, C.J; R.N. Prasad, J; L.M. Sharma, J

Bench : Full Bench

Final Decision : Allowed

Judgement

Ramnandan Prasad, J.—The substantial question which arises for determination in this case is:

Whether the termination of the services of the petitioners is bad for being violative of the principle of natural justice on the ground that they were not given an opportunity to show cause against termination before the termination orders were issued ?

2. The case of the petitioners is that in response to an for the posts of Assistant Teachers in different Elementary Schools in the erstwhile district of Santhal Parganas published in the newspaper on 7-4-1981 under the signature of District Superintendent of education Santhal Parganas, these petitioners and Ors. submitted their applications They were eventually interviewed by the District Establishment Committee of the Santhal Parganas in between 17th and 19th September, 1] the Committee prepared a panel for appointment known as "Waiting Soon thereafter the erstwhile district of Santhal Parganas was split into four districts, namely, Dumka, Sahebganj, Gudda and Deoghar. Alter the creation of these districts some candidates whose names figured in the said panel were appointed for the various Elementary Schools of me District of Dumka and a list of some of the candidates of that panel was forwarded to respondent No. 5 Bhol

Ram, who was then the district Superintendent of Education, Sahebganj. In due course respondent No. 5 issued appointment letters (Annexure I series) to the petitioners and posted them to different elementary schools within the district Sahebganj. The petitioners joined their respective posts and were getting their salary till October, 1983, after which the payment was suddenly stopped for the reason not disclosed to them. There was an agitation against this stoppage and eventually the Finance Department of the Government of Bihar issued wireless message on 22-2-1984 directing the authorities to make payment of salaries to them, whereupon a direction was issued by the Deputy Commissioner, Sahebganj to make payment but still no payment was made to them. Being aggrieved, some of the teachers moved this Court and a direction was issued by this Court to pay the salary until they were legally terminated. In the meantime, a letter No. 2836, dated 13th September, 1984 (Annexure-4) was issued by the State (respondent No. 10 for cancelling the appointment made to respondent No. 5) excepting these teachers who were appointed by the State in the reserved quota of handicapped and those appointed on compassionate grounds. In continuation of this letter the State Government issued another letter No. 3103, dated 13-1-1984 (Annexure 4/1) directing the District Superintendents of Education to terminate the services of the teachers whose names appeared in the list enclosed thereto. In pursuance of this direction the District Superintendent of Education issued letters, dated 18-1-1985 (Annexure 2 series) to different teachers separately terminating their services after giving them one month's notice. It is these letters of termination of services of the petitioners that is under challenge in this writ application. It has been alleged by the petitioners that the termination of their services is illegal, inasmuch as no notice to show cause was issued to them nor any enquiry regarding legality or illegality of their appointments was made in their presence. It has also been alleged that the termination of their services is discriminatory inasmuch as the teachers similarly appointed in the district of Dumka have been allowed to continue, whereas the services of the teachers appointed in the district of Sahebganj have been terminated, although both sets of teachers were appointed from the same panel prepared for the erstwhile district of Santhal Parganas.

3. The State has filed a counter-affidavit in which it has been stated that the appointments of the petitioners were purely temporary and their services could be terminated without any notice, but even then they were given one month's notice. The course adopted by the State is quite legal as the termination of the services of the petitioners is "termination simpliciter and no stigma of any kind is attached thereto. Nothing has been said against the conduct of petitioners in the termination letters and hence there was no necessity of issuing a separate notice to them for showing cause against their termination and as such they cannot call in law the violation of the principles of natural justice. It has been averred that plea of the violation of the principle of natural justice cannot be available to the petitioners in such a situation. Regarding the facts stated in the writ petition about the appointment of the petitioners it has been stated on behalf of the

State that no record is available in the office which could show that the petitioners were interviewed and a waiting list was prepared by the Establishment Committee excepting with regard to the science Candidates in respect of whom a panel was prepared but this panel was also not approved by the Regional Deputy Director of Education Sahebganj who returned the panel to the District Superintendent of Education (for meeting certain objections. It has been asserted that the names of the petitioners did not find place in any panel, much less in any approved panel. It has further been averred that none of the petitioners possesses the minimum qualification for appointment, as none of them was trained which was the minimum requirement for the appointment as a teacher. It is also the stand of the State that no panel was sent to the regional Deputy Director of Education for scrutiny and the Commissioner of the division approval as required by the Government Notification, dated 15-12-1981, according to which the panel prepared by the District Establishment Committee has to be sent to the Regional Deputy Director of Education, who, after scrutiny, has to send the same to the Divisional Commissioner for approval and it is only after the latter's approval that an appointment can be made by District Superintendent of Education from the approved list in order of seniority in the list. In this background it has been contended that the alleged appointment of the petitioners are wholly illegal and there was no appointment at all. In the eye of law it has been asserted that their alleged appointment letters are forged and fabricated documents. In this connection it has further been pointed out that respondent No. 5, who is said to have issued these appointment letters was put under suspension for his various acts of omissions and commissions. In the matter of appointment of teachers while he was posted 222 so being Prosecuted for offences Under Sections 465, 468, 49, 420, 567 and 120-B of the Indian Penal Code. Regarding the allegation of discrimination it has been stated that no teacher appointed in the district of Dumka by aforesaid Bhola Ram, Hari Karain Thakur and Narain Jha have been allowed to continue in the district of Dumka and only those teachers have been allowed to continue in respect of whom an injunction order has been passed by this Court against their termination.

4. It is the undisputed position that the petitioners were appointed on purely temporary basis and had no right to any post. This is also borne out by Annexure-1 series which are appointment letters of the petitioners. It is also the undisputed position that services of such purely temporary teachers were liable to be terminated without any notice. The legal position in this regard has been clearly laid down in the following terms in the Full Bench decision of this Court in the case of Bijoy Kumar Bharti and Others Vs. State of Bihar and Others, .

It can now be said to be firmly established that in case of a temporary appointee, who has no right to the post, his termination can take place without giving him any opportunity of being heard before taking the decision. The reason is that he has no right to the post and in most cases termination is in conformity with the terms of the appointment itself.

5. In the present case it is obvious that the petitioners were given one month's notice by Annexure-2 series even though they were purely temporary appointees having no right to a particular post. This would indicate that the Government took extra precaution in this regard to make sure that there was no violation of any rule or principle at natural justice while terminating the services of the petitioners. This circumstance further indicates that the Government had shown some consideration to the petitioners by giving one month's notice to which they were not entitled to under the Rules.

6. It is also apparent from Annexure 2 series that no reason has been assigned for the termination. So, prima facie, these termination letters fulfil the requirements of the rules, and, in any event, they do not seem to violate any rule.

A close reading of the termination letters (Annexure 1 series) would make it abundantly clear that nothing has been said against the conduct of the petitioners nor any stigma has been attached to them. So these termination orders are per se "termination simpliciter". It is evident that no stigma has been cast upon the conduct of the petitioners and indeed nothing has been said against that in these letters. So, evidently, these termination letters are "termination simpliciter" since no reason has been assigned in these letters for the termination of the petitioners. N. P. Singh, J, in a concurring judgment in the aforesaid Full Bench decision of Bijay Kumar Bharti has observed that "It is settled on all counts that neither Article 311 is attracted nor the principle of natural justice required that the Government to give any show cause notice in case of such termination order. So, there appears no infirmity in these termination orders.

7. Mr. B.P. Pandey, learned Counsel for the petitioners has, however, contended that the termination letters have to be read with the two letters issued by the State Government (Annexures 4 and 4/1). It was pointed out that it was on the basis of Annexure 4/1 that the termination orders were actually issued to the petitioners, as stated in the termination orders themselves. Nothing, however, has been said against the petitioners in this letter, but it was submitted by the learned Counsel that this letter has to be read along with Annexure 4, as there is a reference of Annexure-4 in this letter. In this letter (Annexure-4) it has been stated that the former District Superintendent of Education of Sahebganj and Godda and the District Superintendents of Dumka and Deoghar had made many irregular temporary appointments against the unsanctioned posts and hence the Government had taken a decision to terminate the services of such illegally appointed teachers. It was contended by the learned Counsel that the statement in the letter that these appointments were irregular and illegal is not correct and, in any case, before issuing the termination order the Government should have held enquiry in this regard in presence of the petitioners after giving them due notice to show cause an opportunity of being heard. The firm stand of the learned Counsel is that the failure of the Government to hold enquiry into the

illegal character of the appointments after giving notice to the petitioners to show cause and an opportunity of being heard violates the principle of natural justice and the duty to act fairly, as this principle is applicable in case of administrative orders also.

8. learned Counsel appearing for the State did not dispute the legal position that the principle of natural justice or the duty of the Government to act fairly in administrative matters is applicable in the case of administrative orders also, but his submission was that the principle of natural justice is not at all attracted in the present case, inasmuch as nothing has been said against the petitioners in the impugned termination orders. His stand is that even if it is assumed that these termination orders were passed on the ground of invalidity of the appointment of the petitioners, there was no necessity of giving notice to the petitioners to show cause and an opportunity to be heard before the termination orders were passed. There appears substance in this submission, as it is now the settled law that where the very original appointment to the service is invalid in the eye of law, there is no appointment at all and the declaration by the State that the alleged appointments are invalid and, therefore, non est, the principle of natural justice is not at all attracted. Applying this principle to the present case, it can be said that the termination orders of the petitioners are merely a declaration that there has been no valid appointment of the petitioners and the effect of the termination orders is simply to declare that their appointments are void ab initio. In effect the impugned orders simply provide for termination of appointments which are invalid ab initio. This legal position has been made clear in the Full Bench decision in the case of *Bijay Kumar Bharti (supra)*, S. Sarwar Ali, Acting Chief Justice, summarized the legal position in this regard in the following terms:

17. I now come to the more difficult cases where reason has been given for the termination of temporary service. For the present purposes, I would sub divide this into two categories—one category consisting of cases where the person effected has not acquired any right in relation to future appointments by virtue of the impugned temporary appointment. The other class would constitute cases of persons who have by virtue of temporary appointment for a certain period of time acquired some further right.

8. Now, if the appointment of persons in the first category is termination, I am of the view that it would not be unfair to terminate such appointments without hearing the persons affected. The illegality or irregularity is at the level of the administrator/appointing authority. No one has a right to be appointed irregularly. His position is that of a person who has no right to the post. There is no stigma attached in the removal. Of course, if the authorities proceed on some wrong factual basis or are actuated by animosity, or guided by irrelevant considerations and the like, the order of termination may be open to challenge in a court of law....

In a concurring judgment N. P. Singh, J. observed in paragraph No. 59 as follows:

59. It cannot be disputed that whenever the service of a person appointed in question had been made in an irregular or illegal manner, it does not amount to any stigma or penalty. In my view, such orders cannot be held to be invalid because before passing such orders opportunity to show cause was not given to the person concerned. Such employees know very well that their services could be terminated at any time even without notice. Merely because in the order there is reference to the nature of their appointment will not change the legal position. The position, however, will be different where the authority concerned is purporting to terminate the service with effect from the date of appointment. In that event, the employee has to refund the salary and allowances received by him, and in that event, an opportunity has to be given before passing such order, but where order purports to terminate the service from the date of the issuance of the order, it for all practical purposes amounts to an order of termination simpliciter.

9. In the present case the termination of the services of the petitioners was not with effect from any retrospective date, rather their termination was to be effective from a future date after giving them one month's notice and no direction was given to them to refund anything and, so, it cannot be said that the petitioners have been visited with civil consequences by the termination orders. The question of violation of natural justice cannot arise in a case like this where the petitioners are not visited with any civil consequence. The rule of *audi alterem partem* is intended to inject justice into law and it cannot be applied to defeat the ends of justice.

10. The Full Bench decision in the case of *Bijay Kumar Bharti (supra)* was followed by a Division Bench of this Court in the case of *Diwakar Pd. Yadav v. State of Bihar* 1980 115 B.L.J.R. 873. In this decision B.P. Sinha, J. speaking for the Bench observed that where the termination was on the ground of illegality or irregularity in the initial appointment it was only to declare that from the beginning there was no valid appointment and in such a situation, the petitioners were not entitled to any show cause and no question of violation of natural justice could arise. The judgment was concluded with the observation that the petitioners of the writ application having not been validly appointed, they could not challenge the impugned orders of termination on the ground of alleged violation of the principle of natural justice. I find myself in full agreement with the views expressed in these two decisions on this point.

11. This view also finds support from the decision of the Supreme Court in the case of *University of Kashmir and Others Vs. Dr. Mohd. Yasin and Others*, in which the appointment which was made contrary to the statutory provision, even though being the authority as high as the Vice-Chancellor of an University, was held to be non-est and no theory of *factum vale*: was allowed to be countenanced. It was observed by his Lordship that:

8. The ground urged successfully, as it were, before the High Court, of an implied engagement cannot, in our view, be sustained. When a statute creates a body

and vests it with authority and circumstances its powers by specifying limitations, the doctrine of implied engagement de hors the provisions and powers under the Act would be subversive of the statutory scheme regarding appointments of officers and cannot be countenanced by the Court. Power in this case has been vested in the University Council only and the manner of its exercise has been carefully regulated. Therefore, the appointment of the respondent could be made only by the Council and only in the mode prescribed by the statute. If a Vice-Chancellor by administrative drift allows such employment it cannot be validated on any theory of factum valet. We cannot countenance the alleged continuance of the respondent in the University campus as tantamount to regular service under the University with the sanction of law. In short, the respondent has no presentable case against the direction to quit.

It was further observed that

....No case of statutory termination of service is called for, the basis of statutory employment being absence. The ad hoc arrangement by which he remained to teach did not acquire legal validity merely because the Vice-Chancellor went through the irregular exercises of extending his probation etc. We have to hand that the curtain fell on the office held by the respondent when, at the end on 60 days after the Act, the sands of time ran out.

In this case although their Lordships declared the termination order as void, but still they declared that the petitioner had no right to continue in service and the order of the High Court of reinstatement in his favour was quashed.

12. Evidently, this decision supports the view that if the appointment itself is invalid, there can be no necessity of following the statutory rule for termination of service by giving notice and an opportunity of being heard to the person affected, as he had no right to continue on the post at all. In the present case also the services of the petitioners were terminated as their appointments were invalid. As said above, nothing has been said in the termination orders against the petitioners and the termination orders are prospective in effect. Whatever has been said therein has been said against the officers who had issued the appointment letters and nothing against the petitioners. It has been stated in the counter-affidavit that Bhola Ram, who had issued the appointment letters of the petitioners, has been prosecuted on various charges of forgery, cheating etc The ratio of the Full Bench case in Bijay Kumar Bharti, (supra) is, therefore, fully applicable to the present case and the termination orders cannot be challenged on the ground that they were not given notice to show cause and an opportunity of being heard, as the principle of natural justice cannot be involved when no stigma has been attached and no allegation whatsoever has been made against the petitioners and they have not been visited by any civil consequence.

13. Being faced with the aforesaid decisions, the learned Counsel for the petitioners tried to wriggle out of the situation by submitting that these decisions are not good laws after the decision of the Supreme Court in the case of Olga

Tellis and Others Vs. Bombay Municipal Corporation and Others, It was contended that since the right to livelihood has been included in the right to life under Article 21 of the Constitution of India the services of the petitioners could not be terminated as that would deprive them of their right of livelihood. I am really surprised at this curious line of argument. In my opinion, the learned Counsel has stretched the right of livelihood too much and if this interpretation is accepted the services of nobody can be terminated even if he is guilty of criminal offence. Indeed, Article 21 of the Constitution simply lays down that no person shall be deprived of his life, which now includes the right to livelihood or personal liberty except according to the procedure established by law. Undisputedly, the right of life also can be taken away in accordance with the procedure of law and indeed the death sentence is an illustration of this deprivation. What this Article requires is that the right of life or livelihood can be taken away only in accordance with the procedure established by law. The learned Counsel for the petitioner has not been able to show that any procedure established by law has been violated in the present case. His only submission was that the principle of natural justice was violated which submission has been rejected above after considerable discussions. Article 21 cannot be interpreted to mean that nobody's right of livelihood can be taken away under any circumstance as this interpretation would lead us in a very deep well as in that case the employees will be free to commit any offence and the authorities would remain helpless spectators. The decision in the case of Olga Tellis and Ors. (supra) cannot be pressed into service to support such an absurd stance. In that case Sections 312, 313 and 314 of the Bombay Municipal Corporation Act were examined by the Court and the main question involved was as to whether it was appropriate for the Municipal Corporation to remove the encroachment without any notice to the encroachers and it was held that in the circumstances of the case where the question of livelihood of the encroachers was involved it was only fit and proper that the encroachments should have been removed only after giving them notice and an opportunity of being heard. The operative part of the order itself shows that the direction of the court was that the encroachment shall not be removed until 31st October, 1985 and thereafter in accordance with the judgment. This judgment was evidently given in a different context, where the very profession and consequently the source of livelihood of encroachers was at stake. The present case stands on a quite different footing. Here the petitioners, who are untrained graduates, and are not at all eligible for the post of teachers. Besides, they are quite young persons and can still choose their own profession/vocation and no question of deprivation of their livelihood can arise in their case. Indeed, the question of deprivation of livelihood of the petitioners cannot be considered, when their very appointment was ab initio void and illegal. If a right of livelihood is so wide as submitted by the learned Counsel for the petitioners, then nobody can be removed from employment even if his appointment is non est or is tainted with fraud or even if he is guilty of gross criminality. I am, therefore, of the definite opinion that the decision in the case of Olga Tellis (supra) does not in any way affect the Full Bench decision in the case of Bijay Kumar Bharti (supra)

and University of Kashmir and Ors. (supra).

14. Reliance was placed by Mr. Pandey on the decision of the Supreme Court in the case of Anoop Jaiswal Vs. Government of India and Another, , for the proposition that the form of the order is not decisive as to whether the order is by way of punishment and that even an innocuously worded order terminating the service may in the fact and circumstances of the case establish that an enquiry into allegations of serious and grave character of misconduct involving stigma has been made in infraction of the provision of Article 311(2). This principle of law is well established and there can be no difference of view in this regard. But in the present case this principle has no application at all and is simply inapt, inasmuch as it is not the case of the petitioners that any enquiry regarding the misconduct of the petitioners was made or that there is any allegation of grave misconduct on their part as was the position in the case before the Supreme Court. Whatever allegation is there it is against the appointing authority and not against the appointees and, indeed, the appointing authority is being prosecuted in a court of law for his acts of omissions and commissions.

15. Similarly the reliance of the learned Counsel for the petitioners on the cases of Roshan Lal and Others Vs. International Airport Authority of India and Others, and I.T.C. Ltd. and Ors. v. State of Karataka and Ors. 1985 S.C.C. 476, is equally misplaced as the ratio of these cases is wholly inapplicable to the facts of the present case.

16. Reliance was also placed by the learned Counsel on the case of Nepal Singh Vs. State of U.P. and Others, ., but the facts of the case were quite distinguishable as in that case the termination of service of the petitioner was made in a different background. There was allegation about his unsuitability. Then, there was also a charge of contracting a second marriage in violation of the Conduct Rules. It was found that earlier also a charge for contracting a second marriage was framed against the petitioner which was, however, dropped. In this background it was held that with the dropping of the enquiry, the allegation remained unverified. It was found by the court as a fact that the services of the petitioner were terminated on the ground that his reputation of corruption made him unsuitable for retention in service. It was in this background that the court held that the provision of Article 311(2) of the Constitution was attracted as the court felt that the State must take care when proceeding to terminate the career on the ground of unsuitability is initiated.

17. To sum up, it is categorically held that no notice is required to be given in a case of termination simpliciter. It is further held that no notice is required to be given even if the termination is on the ground that the appointment itself was invalid and the principle of natural justice or Article 311 is not attracted in such a case. The substantial question posed at the outset is, therefore, answered in negative, and it is held that no notice was required to be given to the petitioners before terminating their services since termination of their services was

termination simpliciter and no stigma was attached to it. It is further held that no notice was required to be given to the petitioners even if their termination was on the ground that their appointment itself was invalid.

18. As a last ditch it was contended by the learned Counsel for the petitioners that if the Court makes an enquiry about the allegation of the invalidity of the appointment of the petitioners, it would be convinced that their appointment did not suffer from any infirmity. It is, however, difficult for this Court in exercise of its power under Article 226 of the Constitution to embark upon such an enquiry specially when the facts are so disputed and tangled. Indeed, the stand of the State is that no panel was prepared at all and no appointment was made at all. An enquiry about all these complicated questions of fact is obviously beyond the scope of Article 226 of the Constitution. This view is supported by the following observations of the Supreme Court in the case of Union of India (UOI) Vs. T.R. Varma,

That is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence. It is not the practice of courts to decide questions of that character in a writ petition, and it would have been a proper exercise of discretion in the present case if the learned Judges had referred the respondents to a suit.

19. Indeed, in an identical case the Supreme Court relegated the petitioners to the remedy of suit by an order passed in Annexure C. This order was passed in the Special Leave of Appeal (Civil) No. 5041 of 1986 which was filed against the decision of the Division Bench of this Court in the case of Diwakar Prasad Yadav (supra), in which one of the questions raised was as to whether the teachers whose services were terminated in the identical circumstances were entitled to any show cause. Indeed, facts of that case were identical and the teachers who figured as the petitioners were similarly appointed and removed from service by identical termination orders. A Division Bench of this Court had dismissed the writ petitions of the teachers which was filed for identical relief besides the relief for payment of salary. Against this order some of the teachers moved the Supreme Court for special Leave of Appeal. Their Lordships of the Supreme Court dismissed the Special Leave Application with the observation that the petitioners may avail of the alternative remedy of a suit, if available. Since the facts of the case are almost identical, the present petitioners may also be relegated to the same remedy, if available, as it would not be proper for this Court to adjudicate on such a tangled disputed question of fact.

20. Indeed, there appears no necessity at all for making an enquiry about the allegation of the invalidity of the appointment of the petitioners as it is apparent that Rules regarding appointment as contained in Annexure A which were framed u/s 8 of the Bihar Non-Government Schools (Taking Over Control) Act, 1976 have not been followed at all. According to these Rules, the District Establishment Committee was required to send the panel prepared by it to the Regional Deputy Director of Education for scrutiny and the latter was obliged to

send the panel after scrutiny to the Divisional Commissioner. It was only after the approval of the Divisional Commissioner that the District Superintendent of Education, could make appointment of teachers strictly in accordance with panel approved by the Divisional Commissioner. The petitioners, no doubt, alleged that a panel was prepared by the Establishment Committee but they nowhere aver that the panel was scrutinized by the Regional Deputy Director of Education or that it was approved by the Divisional Commissioner. Undisputedly, Annexure A came into force from the date of its issue i.e. from 13th September, 1981 and the alleged appointments of the petitioners were made long after that date, evidently, without complying with the requirements of the Rule in this regard. So, the appointments made in the teeth of the rules regulating the appointment of teachers and without coming with the same, must be held to be invalid on this ground alone.

20-A. Then, none of the petitioners was eligible for appointment as the basic qualification for appointment as teacher was trained Matric/1-A/ Graduate but none of the petitioners is trained. So, evidently the petitioners were ineligible for appointment for not possessing the basic qualification for the post. Their appointments, therefore, must be held to be invalid on this ground also.

21. In view of these two major infirmities, the alleged appointment of the petitioners must be held to be illegal and non-est and further enquiry about the stand of the State that no panel was prepared and no appointment was made at all appears redundant.

22. In an attempt to clutch the last straw the learned Counsel for the petitioners took the stand that the impugned action of the State in terminating the services of the petitioners was discriminatory and violative of Article 14 of the Constitution. It has been stated by him that a number of teachers were appointed for the district of Dumka as well as for the district of Sahebganj from the same panel prepared for the erstwhile district of Santhal Parganas but the two sets of teachers have not been treated alike. It has been said that the services of the teachers appointed for the district of Sahebganj were terminated without any notice to show cause whereas those appointed for the district of Dumka were given notice to show cause and they are still continuing in service. The petitioners have, however, themselves explained the cause of this discrimination in paragraph No. 20 of their petition. It is evident therefrom that the teachers of Dumka district had filed various writ petitions as detailed therein against the termination of their services without giving them an opportunity of showing cause and it was on the basis of the direction of this Court in those writ petitions that the teachers of Dumka were given notice to show cause and were allowed to continue in the meantime. This averment is hardly sufficient to make out a case of discrimination which can be said to be violative of Article 14. Evidently, the State wanted to treat both the sets of teachers equally by terminating the services of all of them without any notice to show cause but the State had to issue notice of show cause to the teachers of Dumka District, not

voluntarily, but on the directions of this Court in various writ petitions. Had the State made this difference voluntarily, it might have been accused of discrimination but if it had to treat the teachers of Dumka differently under the orders of the Court, I wonder, how it can be held guilty of discrimination in such circumstances. Obviously, the question of discrimination cannot arise on the basis of involuntary action of the State. The action of the State cannot be challenged as discriminatory if it is forced to take that action under the orders of the Court. There was no legal or moral duty cast on the State to give notice of show cause to the teachers of Sahebganj when the law did not cast such duty on it nor there was any direction of the Court to do so. Simply because it had to issue notice of show cause to the teachers of Dumka under the orders of the Court which it was obliged to comply with, the petitioners cannot complain of discrimination on that account. Thus, no case of discrimination is established even on the basis of the averments made in the writ petition. Indeed, it has been asserted on behalf of the State in its counter-affidavit that the Government has not allowed anyone appointed by either Bhola Ram at Sahebganj or by Had Narain Thakur and Narain Jha at Dumka to continue as teachers. It has also been asserted that the Director of Primary Education has not decided any case declaring the appointment made for the district of Dumka from the said panel as valid. All the assertions made on behalf of the petitioners in this behalf have been emphatically denied on behalf of the State. In these circumstances, the stand of the learned Counsel on the plea of discrimination has to be rejected outright.

23. For the reasons given above, the writ application is dismissed, but without costs.

Lalit Mohan Sharma, J.—I need not repeat the facts relevant to C.W.J.C. Nos. 747/85, 4813/85 and 6061/85 which have been stated in the judgments delivered just now by Hon"ble Chief Justice and Hon"ble R. N Prasad. The other eleven cases, that is, C.W.J.C. Nos. 5711/85, 747/86, 748/86, 749/86, 752/86, 753/86, 754/86, 884/86, 1161/86, 1266/86 and 1308/86 were not pressed and are, therefore, dismissed as such.

2. The petitioners 1, 2 and 3 of C.W.J.C. 6061/85 are petitioners 27, 28 and 32 in C.W.J.C. 747/85. The nature and validity of the same appointments are involved in the two cases and it is manifest that this Court will not be justified in giving two interpretations to them and in deciding the rights of the parties differently. In C.W.J.C. 747/85, the petitioners have challenged the letters of termination of their services while in C.W.J.C. 6061/85 the petitioners have merely claimed their salary for the period they actually rendered service. Similarly, the petitioner No. 5 in C.W.J.C. 6061/85 (along with other petitioners) has challenged the order of termination of service in C.W.J.C. 4787/85. Thus, as in C.W.J.C. 747/85 and C.W.J.C. 4787/85 the very right of the petitioners to continue in service has to be determined, they assume greater importance than C. W. J.C. 6061/85. When C.W.J.C. 6061/85 and C.W.J.C. 4813/85 were being

heard during the summer months of 1986, I repeatedly pointed out during the course of arguments that all the four cases should be disposed of together. The learned Counsel for all the parties including the Advocate General indicated their agreement and the judgment in C.W.J.C. 6061/85 and C.W.J.C. 4813/85 was, therefore, reserved and not delivered.

3. Recently the office pointed out that the cases have remained pending and then C.W.J.C. 747/85 was placed on the list. The hearing was concluded on 10-7-1987. C.W.J.C. 4787/85 was not listed as it was not ready for hearing. Now if these cases are disposed of at this stage, as we are proposing to do, the main case, i. E.C.W.J.C. 4787/85 of Subhadra Mishra (petitioner No. 5 of C.W.J.C. 6061/85 and petitioner No. 1 of C.W.J.C. 4787/85) will be, in substance, disposed of without hearing her 920 Awadhesh Kumar Choudhary v. State of Bihar (H.C, F.B.) B.L.J.R. on the main issue. However, Hon'ble Chief Justice and my Brother Mr. Justice R.N. Prasad have proceeded to decide the other three cases by two separate judgments and so I have also to express my opinion which I am doing briefly by this judgment. Besides, as she (Subhadra Mishra) is, in my view, entitled to succeed, it is immaterial for the purpose of my judgment that she has not been heard.

4. Although in the counter-affidavit of the State in C.W.J.C. 747/85, irregularities and illegalities in the appointment of the petitioners have been mentioned, Mr. J. N. Pandey, learned Government Pleader No. 2 made only one argument in support of the impugned termination letters to the effect that they purported to terminate the services of the petitioners "simpliciter" and they, therefore, were not entitled to be heard. Reliance was placed on the observations in Bijoy Kumar Bharti v. State of Bihar (supra). During his argument, the learned Government Pleader emphasised the fact that the State has taken a liberal attitude towards the petitioners inasmuch as they were given one month's notice expiring on 18-2-1985. I have understood the argument to mean that the petitioners would be paid their salary for the period till 17-2-1985 ; otherwise I do not see any purpose of serving one month's notice or any meaning in the claim of the State to have taken a "liberal attitude" towards the petitioners. On this plea alone, the reliefs asked for by the petitioners of C.W.J.C. 6061/85 or atleast the petitioners 1, 2 and 3 thereof have to be allowed and they have to be paid their salary for the entire period till 17-2-1985.

5. So far as petitioner No. 5 of C.W.J.C. 6061/85 is concerned, she cannot be put in a disadvantageous position merely because the High Court has not been able to hear her writ case, C.W.J.C. 4787/85. If it be assumed that the stand of the State with respect to her case is the same as the other petitioners, she should also get her salary for the period till 17-2-1985 and on the same basis the petitioner No. 4 also should be entitled to similar relief.

6. It was argued on behalf of the State in C.W.J.C. 6061/85 that the allegations of the petitioners about their actually working in the schools and receiving their salaries for some period are incorrect. The petitioners have emphatically denied

the State's case and have asserted that they actually received their salary for a short period before the payments were stopped. The question whether payments were made to the petitioners at any point of the or not can be conclusively determined by examining the relevant records of the schools and the Education Department of the State of Bihar. The learned Advocates for the petitioners had suggested in their arguments that if this Court be so desirous, it might call for the necessary documents and might allow an opportunity to the petitioners to lead evidence in support of their case. I have been of the view since the time C.W.J.C. 6061/85 was being argued and I still hold the same opinion that an enquiry should have been made by the State authorities in presence of the petitioners so that they could have produced their evidence. As this was not done, this Court should remit the matter to the State authorities for a proper legal enquiry in which the petitioners should be given a chance to prove their case. At such an enquiry, the petitioners should further be allowed to prove the facts on which they rely in support of their case that their appointments were made regularly and validly, I do not find it practicable for me to reject the case of the petitioners on the basis of mere denial by the respondents.

7. Since the Hon'ble Chief Justice and Mr. Justice R.N. Prasad are of the view that the matter need not be remitted back any further since I am not in a position to reject the case of the petitioners, I assume for the purpose of C.W.J.C. 6061/85 in their favour that they actually joined their respective schools as claimed by them and were paid their salary atleast for a month, and further that they continued to work till their services were terminated by Annexures 2 series. In these circumstances, to deny the petitioners of C.W.J.C. 6061/85 their wages for the period they worked, even on the assumption that their services were bad from the very beginning, would be illegal as being contrary to the decision in the Full Bench case of Bijoy Kumar Bharti, (supra). The Acting Chief Justice Mr. S.S. Sarwar Ali (as he then was) observed in paragraph 20 of his judgment as follows with which I agreed:

Of course, so far as acts done by these appointees are concerned, they would be valid so far as third parties are concerned. Further the appointees cannot be deprived of the right to receive salary etc. provided they have worked on the posts on which they were appointed.

8. The case of the State is that it served me month's notice on the -petitioners on 18-1-1985 terminating their services with effect from 18-2-1985. Can it be suggested that the petitioners did not act rightly, if they rendered their services between 18-1-1985 and 18-2-1985? Why, then, should they not be paid for this period? As a necessary corollary what should be the decision with respect to the claim for the earlier period ? In my view, they are entitled to their salaries.

9. Alternatively, let me assume that the petitioners were actually not allowed to work between 17-1-1985 and 18-2-1985. It has never been suggested on behalf of the State that the petitioners non-cooperated on receipt of the notices, Annexures 2 series. In this background, the further question is as to what is the

effect of these notices. Did the State authorities convey through these notices that the petitioners would be paid their salaries for the period 18-1-1985 to 17-2-1985 ? In my view, the answer is in the affirmative. I therefore, reject the argument addressed on behalf of the respondents in C.W.J.C. 606/85.

10. The State was represented by other counsel in C.W.J.C. 6061/85 and C.W.J.C. 4813/85 which were heard in 1986 and it was contended that the initial appointments of the petitioners were illegal from the very beginning. That is clearly at variance with the stand taken by the learned Government Pleader No. 2 in C.W.J.C. 747/85 as mentioned above. On his argument, the services were terminated with effect from 18-2-1985. In other words, the petitioners were in State service earlier, but the services were so vulnerable in nature that they could be put to an end by merely passing an order to that effect. If the petitioners had not been appointed at all or, in other words, they were not in service at all, there could not be anything in the eye of law which could be terminated and that also with effect from a future date. I, therefore, held that in view of the stand of the State in C, W. J. C. 747/85, the argument addressed on its behalf in the other two cases to the effect that the petitioners were not appointed or, in any event, not validly appointed as claimed by them must be rejected.

11. Let me examine this question from another angle. The petitioners have been accused by the State of being parties to acts of fraud and forgery. According to the State's case, as presented by Mr. Advocate General in C.W.J.C. 6061/85, an enquiry was departmental made which led to this conclusion. It was further stated that a Criminal case had also been started and in this background a decision to terminate the services of the petitioners and other teachers was taken, and the District Education Superintendent was directed to act accordingly, as a result whereof, the termination letters, Annexures 2 series, were issued. It is significant to note that although these letters state that the services of the petitioners were not required, they have also mentioned that they were being issued in pursuance of the Government's decision, as contained in the letter, dated 1311-1984. Mr. B. P. Pandey, counsel for the petitioners, argued that since the aforesaid letter, Annexure 4, in its turn, refers to the decision of the State in this regard on the basis of the departmental enquiry, Annexures 2 series cannot be treated to be terminating the services of the petitioners simpliciter. He appears to be right. It follows that stigma is attached to the impugned termination of the petitioners' services.

12. Even assuming that the letters, Annexures 2 series on their face be treated to be terminating the services simpliciter, the circumstances are such that the petitioners must be allowed to refer to the reasons therefor, as detailed in the State's counter affidavits and the annexures, which condemn the petitioners as parties to fraud and forgery. In this connection, the following observations of the Supreme Court in *Anoop Jaiswal v. Government of India* and *Anr.* (supra) relied upon by Mr. B, P. Pandey are relevant:

Even though the order of discharge may be non-committal, it cannot stand alone. Though the noting in the file of the Government may be irrelevant, the cause of the order cannot be ignored, "the recommendation of the Director which is the basis or foundation for the order should be read along with the order for the purpose of determining its true character. If on reading the two together the Court reaches the conclusion that the alleged act of misconduct was the cause of the order and that but for that incident it would not have been passed, then it is inevitable that the order of discharge should fall to the ground as the appellant has not been afforded a reasonable opportunity to defend himself as provided in Article 311(2) of Constitution of India.

The even in the present case is so thin to be almost transparent and cannot conceal the reality underneath, in my view, it is fully established that stigma attaches to the termination orders. The case is, therefore, directly governed by the following observations in paragraph 16 of the judgment in *Bijay Kumar Bharti's case* (supra):

Even in the case of a temporary appointment if the action taken is by way of punishment or casts a stigma the provisions of Article 311 of the Constitution are attracted. Again, where on the face of the order, it is a termination simpliciter, yet if the foundation of the order, as distinguished from the motive of the order, is infliction of punishment or casting of stigma, Article 311 would be attracted. That is the extent to which the veil can be permitted to be pierced.

Since the petitioners were not given an opportunity to place and prove their case before their services were terminated with stigma attached, the impugned orders are fit to be quashed. It would, however, be open to the authorities concerned to make a fresh enquiry in which the petitioners should be given a hearing.

13. Elaborate arguments were addressed by the learned Counsel for the parties on the general principle discussed in the judgment of Hon'ble Chief Justice, but in view of the facts of the present case, I do not consider it necessary to express my opinion thereon. Besides, the time available to me for preparing this judgment (after (had received the draft judgments of Hon'ble Chief Justice and Brother Mr. Justice R.N. Prasad) is limited, I do not propose to go into those questions. I would now close, but before do so, I would briefly refer to the question dealt with by Mr. Justice R.N. Prasad in paragraphs 19 and 22 of his judgment.

16. The advertisement in pursuance of which the petitioners claimed to have applied was published in April, 1981 under the signature of District Superintendent of Santhal Parganas before it was bifurcated in several districts. According to their case, the petitioners and Ors. were interviewed in September and November, 1981 by the Establishment Committee which took a decision to issue letters of appointment. The districts, however, were bifurcated in the meantime and separate sets of appointment letters were issued by respective District Superintendents of Education. It has been argued that as the same

Establishment Committee interviewed two sets of candidates and took a decision in regard to their appointments, the teachers in the two districts should not be treated differently. The respondents have denied have retained the services of any teacher appointed by three State officers Messrs Bhola Ram, Hari Narain Jha and Hari Narain Thakur, as they are supposed to have acted illegally in making the appointments. It has further been said that a Division Bench of the Court in *Diwakar Prasad Yadav v. State of Bihar*, (supra) while considering the case of some teachers appointed by these officers rejected their writ petitions and the Supreme Court dismissed an application for Special Leave against the judgment by the following order as contained in Annexure-C to the counter-affidavit:

Special Leave petition is dismissed with the observation that the petitioners may avail of the alternative remedy of a suit, if available.

In reply to the petitioners' argument of discrimination by the State with reference to several teachers of Dumka District, it was contended by the State Counsel that whatever benefit was bestowed on such teachers was on accounts of specific directions by this Court in other writ petitions.

15. It has not been shown before us by the respondents that the writ petitioners whose applications were dismissed by the reported judgments in *Diwakar Prasad Yadav v. State*, (supra) were similarly situated as the present petitioners, except for the fact that all these teachers were appointed by aforementioned three State Officers Messrs Bhola Ram, Hari Narain Jha and Hari Narain Thakur. The fact that their appointing authorities were same cannot by itself prove that the merits of their individual cases were also same or similar. The decision in *Diwakar Prasad Yadav's* case therefore, is of no help to the respondents. Further the Supreme Court cannot on the basis of the order in Annexure-C be deemed to have considered the merits of the case of the petitioners before them. The Supreme Court merely refused to exercise its discretion in granting special leave and no inference can be drawn therefrom. So far the High Court's judgment as a precedent is concerned, it is not binding on the present Full Bench which has been constituted for examining its correctness.

16. The reply of the State Counsel with respect to the teachers of Dumka District, as mentioned earlier, is that differential treatment which *924 Awadhesh Kumar Choudhary v. State of Bihar* (H.C., F.B) B.L J.R. they received was as a result of the judgment of this Court in other writ petitions. I do not think, the grievance of discrimination can be brushed aside on this explanation. If the case of Dumka teachers is exactly identical as the present petitioners, as has been asserted by the petitioners, the petitioners are entitled to equal treatment not only from the State authorities but from this Court also and that may be an additional reason for allowing the present writ petitions

17. It was stated by the learned Counsel for the parties that the position of the petitioners in C.W.J.C. 4813/85 is the same as the petitioners in C.W.J.C. 6061/85.

In the result, the decision to terminate the services of the petitioners in C.W.J.C. 747/85 and the letters, Annexure 2 series are quashed. The petitioners shall be treated to be in service and shall be entitled to their salaries throughout, but it will be open to the respondents to institute a fresh enquiry in presence of and with opportunity to the petitioners. The three applications in C.W.J.C. 747/85, 6061/85 and 4813/85 are accordingly allowed, but in the circumstances without costs.