(2005) 09 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : SWF No. 205 Of 2003, Service Writ Petition (SWP) No. 206 Of 2003, Service Writ Petition (SWP) No. 217 Of 2003, SWF No. 220 Of 2003, SWF No.221 Of 2003, SWF No. 238 Of 2003, SWF No. 244 Of 2003, SWF No. 250 Of 2003, SWF No. 254 Of 2003,SWP No

Gh.Mohi-ud-Din Bhat & Ors. APPELLANT

Vs

State of J&K and Ors. RESPONDENT

Date of Decision : 20-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Jammu and Kashmir Cooperative Societies Act, 1960 — Section 30

Citation : (2005) JKJ 26 Supp

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Advocate : Z.A.Shah, Shabir A.Vakil, R.A.Khan, Omkar Singh, N.A.Tabasum, N.A.Ronga, M.H.Attar, M.A.Wani, M.Abdul Qayoom, K.A.Lone, G.A.Lone, B.A.Tak, A.Chesti, A.H.Naik, Advocates appearing for the Parties

Judgement

1. A batch of 24 service writ petitions, figuring from sr. No. 1 to 24 in title cause, came to be filed by the petitioners for quashing of the orders

bearing Nos. 1587174/HO, 1587578/HO dated 11.02.2003, 1551720/HO, 1553740/HO, 1539396/HO, 1537780/HO, 1562932/HO, dated

10.02.2003, 1583538/HO, 1585558/HO, 1585154/HO 1586770/HO, 1584346/HO, 1583942/HO, 1585962/HO dated 11.02.2003,

1550508/HO, dated 10.02.2003, 1538992/HO dated 10.02.2003, 1552528/HO, 1580104/HO, 1546972/HO, 1554952/HO, 1574952/HO,

1548588/HO, 1549396/HO, 1568588/HO, 1553336/HO, 1556164/HO, 1581316/HO, 1560912/HO, 1560508/HO, 1559396/HO,

1561316/HO, 1564144/HO, 1560104/HO, 1562124/HO, 1571724/HO, 1541316/HO, 1534952/HO, 1571316/HO, 1545356/HO, 1580104/HO, 1570104/HO, 1563740/HO, 1546164/HO, 1575356/HO dated 10.02.2003, 1552154/HO, 1579396/HO, 1578990/HO,

1544144/HO, 1568184/HO, 1555356/HO, 1561720/HO, 15797800/HO, 1544952/HO, 1536972/HO, 1567780/HO, 1534545/HO,

1542124/HO, 1558184/HO, 1543336/HO, 1542528/HO, 1536568/HO, 1558992/HO, 1537376/HO, 1538184/HO, 1557780/HO,

1542932/HO, 1565356/HO, 1574548/HO, 1572528/HO, 1566972/HO, 1562932/HO, 1572932/HO, 15645~48/HO,1543740/HO,

1558588/HO, 1535760/HO, 1548992/HO, 1540912/HO, 1568992/HO, 1566568/HO, 15697700/HO, 1566164/HO, 1544548/HO dated

10.02.2003, one order dated nil No. nil issued in favour of Ms. Gulshan Daughter of Ghulam MohiudDin R/O Magam Hand wara, 1578588/HO

dated 10.2.2003, 1570912/HO, 1570508/HO dated 10.02.2003, 1550912/HO, dated 10.02.2003, 1564952/HO, 1556972/HO dated

10.02.2003, 1586366 dated 11.02.2003, 1567376/HO dated 10.02.2003, 1575760/HO, 1535356/HO, dated 10,02.2003, 1557376/HO,

15597600/HO, 1576976HO, 1576568HO, 1536164/HO, 1573740/HO, 1534144/HO, 1541720/HO, 1544144/HO, 1554548/HO,

1546568/HO dated 10.02.2003, 1547780/HO, 15470104/HO, 1545760/HO, 1565760/HO, 1554952/HO, 1538588/HO, 1563740/HO,

1551316/HO, 1563336/HO, 1576164/HO, 1563538/HO, 1552932/HO dated 10.02.2003, 1578184/HO, 15497500/HO, 1580712/HO dated

10.02.2003, 1547376/HO, 1557376/HO, 1573336/HO dated 10.02.2003,1582730/HO, 1582326/HO, 1583134/HO, dated 11.02.2003,

1603437/HO, 1556568/HO dated 10.02.2003, 1587982/HO dated 11.02.2003 whereby and whereunder the engagement of the petitioners

came to be cancelled and for command ing the respondents to, allow the petitioners to continue on the posts held by them and, release salary in

their favour with all consequential benefits.

2. In the batch of 11 writ petitions figuring from Sr. No. 25 to 35 in title cause, some of the petitioners have prayed for command ing the

respondents to allow them to continue on the posts and for quashing of the communication No. BK79/iii/269192 dated 27.12.2002 and order No.

1496295/HC dated 31.01.2003 with a further command not to release the pay dues to the newly appointed persons and to release proper grade in favour of the petitioners.

3. And, in other batch of 6 writ petition figuring from Sr. No. 36 to 41 in the title cause, the petitioners have prayed that respondents be command

ed, to place the petitioners in the pay scale of Rs.45001507500 with effect from date of joining in the service and for payment of wages and, not

to dielodge the petitioners from services and give them the same treatment, as has been given to other employees.

4. I deem it proper to decide all these writ petitions by this common judgment. Firstly, it will be proper to decide the 24 writ petitions by the

medium of which disengagement orders have been assailed by the petitioners on various grounds, which can be aptly and precisely summarized as

under;

5. The Registrar Cooperative has superseded the Board of Directors on political consideration and has appointed new Board of Directors

comprising of Deputy Commissioner, Baramulla, Deputy Registrar Cooperative Baramulla, Deputy Registrar NABARD, Srinagar.

6. The Registrar, with malafide considerations and for extraneous reasons, directed the Board of Directors of the Bank and the Chief Manager not

to issue salary to the petitioners and also directed the Secretary of the Bank to disengage the appointees. Accordingly, salary of the petitioners was

stopped and petitioners approached this Court. This Court issued an interim direction contained in annexureD dated 10th Feb. 2003. It is alleged

that the said order was served on the respondents on 11.02.2003 by the medium of FAX message. But despite of that, the Board of

Administrators, headed by Deputy Commissioner, Baramulla, disengaged the petitioners in terms of the orders challenged by the medium of these

writ petitions.

7. The Board of Directors issued advertisement notice. The petitioners applied and were appointed on consolidated basis. The said orders were

confirmed by the Board of Directors vide order dated 3rd of May 2002. Some of the petitioners were placed in regular grade of Rs.

45001507500 in terms of order dated 1st October 2002. The said appointments were made against vacant posts and in the interests of the Bank.

8. The disengagement orders have been issued without notice. Thus, are violative of principles of natural justice. The petitioners have been axed at

their back.

9. In terms of Article 25 of the By Laws of the Bank, the method of recruitment, the conditions of services and pay and allowances of the

employees of the bank shall be governed by the Service Rules to be framed by the Board of Directors of the Bank with the approval of the

Registrar. The Bank has not so far framed the Service Rules.

10. The respondents resisted the writ petitions on the following grounds:

That the Central Cooperative Bank does not fall within the purview of ""State"", hence writ petitions are not maintainable.

That the petitioners were engaged on consolidated basis which engagement does not confer any right upon the petitioners.

That the engagement orders were issued by the Secretary without seeking prior approval from the Board of Directors, thus the engagement orders

are bad in law. The Society is governed by its own By Laws and it is to be run and manned as per the provisions of the Cooperative Societies Act.

The Registrar of the Cooperative Societies has to perform certain functions and duties in terms of said Act. The Secretary has only to convey the

decisions taken by the Board of Directors. Every Bank has to abide by the regulations and guidelines issued by the Government and National

Bank for Agriculture and Rural Development for short NABARD.

That the NABARD has to monitor the functions of the Cooperative Banks and Agriculture Sector because the financial assistance to such banks is

being made and manned by the NABARD.

The authorities of the Bank have to approach the State Government and NABARD, for creation of posts and after obtaining approval, selection is

to be made by the Selection Committee.

That the Bank authorities had approached the NABARD and Government of Jammu & Kashmir for creation of 50 posts in the year 2001 and the

said request has been acceded to and proposal was agreed to. The bank also made a request to State Government as well as the NABARD for

creation of further 30 posts which was not acceded to and was turned down. The Secretary without taking into consideration the above said facts

and without authority and power has appointed petitioners and issued engagement orders against the posts which were not existing. An FIR stand s already lodged with police Station Crime Branch and Secretary was arrested. The investigating agency is conducting the investigation.

11. The engagement of the petitioners was made on consolidated basis on malafide and extraneous considerations in derogation of rules, norms

and procedure.

12. The petitioners have filed rejoinder and have taken following grounds:

The engagements were made after approval of Board of Directors and Secretary had only issued the orders on the basis of the said approval. The

appointments were made against the vacant posts.

Heard. Considered.

13. Mr. Naik, Learned Advocate General, at the very outset stated at bar that the Cooperative Bank falls within the definition of 'State' and also

stated that writ is maintainable. His statement is taken on record.

14. The entire controversy revolves round the issue that whether the rules contained in Jammu & Kashmir Cooperative Societies Rules i.e. SRO

233, for short, the ""Rules"", are applicable or otherwise?

15. These Rules have been made by the Government of Jammu & Kashmir in terms of mand ate of Section 124 of the Jammu & Kashmir

Cooperative Societies Act, 1960. Rule 2(i) defines member of the services, which reads as under;

2(i) 'Member of the Service' means a person appointed to a post in the service under the provision of these rules."" Rule 2(n) defines Selection

Board, which reads as under;

2(n) 'Selection Board' means the concerned District Selection Board Constitution under Rules 6.

And Rule 6 defines District Selection Board, which reads as under;

6. District Selection Board:

(1) For recruitment to different posts of the service failing within the territorial jurisdiction of every Revenu District and for performing other duties

prescribed under these rules, there shall be a selection board for each District comprising of the:

(i) Deputy Registrar Cooperative Societies Chairman

(Supervision) of the District:

(ii) District Audit Officer: Member

(iii) Chief Executive of the Society to which the Member

vacancy to be filledup pertains.

(iv) Representative of the Cooperative Member

Employees Union.

(v) Assistant Registrar (nominated by the (MemberRegistrar) Secy.

16. While going through these rules, the recruitment to the different posts of the service is to be made by the District Selection Board. But the meat

of the matter is that whether the Cooperative Bank falls within the definition of Societies. It is profitable to reproduce 'Note' appended to Rule 24

of the Rules herein, which reads as under:

Note: The term other Societies mean cooperative Socs, Cooperative Industrial Societies, Cooperative Bank and the like.

17. In terms of this note, the term ""Society"" includes the Cooperative Bank and the bank of like nature. Thus, it can be safely held that these Rules

are also applicable to the Cooperative Bank as well.

18. This question has arisen in so many cases and this Court has held in the case titled as Kuldip Raj v. Citizen Cooperative Bank Ltd., reported in

1998 SLJ 377, as under;

5. After considering the respective contentions of the learned counsel for the parties, it has to be seen at the threshold as to what is legal

significance of the rules made under SRO 233 as well as the Citizens Cooperative Bank Ltd. Employees Services Rules of 1981, Rules under

SRO 233 are the outcome of delegated legislation and were framed on July 8, 1998 whereas the rules which are called ""Citizens Cooperative

Bank Ltd. Employees Services Rules of 1981"" do not have their source in any delegated legislation. In this view of the matter, rules framed under

SRO 233 of 1998, which are later in time, have preference over the former.

6. Now the question which remains is whether a Cooperative Bank is a Cooperative Society or not and in support of the contention that it is a

creature of Cooperative Bank Ltd. Employees Services Rules of 1981 incorporate that those rules were to be registered with the Registrar of

Cooperative Societies, J&K. It has been vehemently contended by the counsel for respondents that the bank is a Cooperative Society and registered with the Registrar of Cooperative Societies. This contentions finds support from Rule24 and the note appended there under which

shows that its employees are transferable to other cooperative bank societies and viceversa. The explanation to the terms ""other societies"" have

been given in the note which includes Cooperative Society, Cooperative Bank and the like. Under Section 2 subclause (e) of the J&K Act, the

Cooperative society has been defined which means a society registered under the Act, so it is a Cooperative Society. In the definition part of rule2

of the said rules (made under SRO 233) under clause (o), the word ""Society"" has been defined which does not include Cooperative Bank, but this

omission has not to be read in isolation, but in conjunction to the import of other rules framed under the said SRORules1 envisages that the rules

apply to all the societies and Cooperative bank is also admittedly a society. Rules24 alongwith note appended there under lends support to this

view that it is society. While interpreting the provisions of laws it has to be borne in mind that provisions are in harmony and supplement each

other. They are not deemed to be contradicting each other and creating confusing and chaos.

19. This question also came up for consideration in the case titled as Bachan Dass and Ors. v. State and Others reported in KLJ 2003 page 26. It

is profitable to reproduce 17 and 19 of the said Judgement herein;

17. An argument has been put across that SRO 233 is not applicable to the Banking Cooperative Societies. So far as this aspect of the matter is

concerned, this is nolonger resintegra. The fact that SRO 233 is applicable to the Banking Cooperative Societies is supported by the view

expressed by a Division Bench of this Court in the case of Ved Paul Sharma v. Citizen's Cooperative Bank and ors, 2000 Srinagar Law Journal

117. In the above case, reference was made to another decision of this Court reported as 1998 KLJ 83, Kuldip Raj v. Citizen Coop. Bank Ltd.

Against this decision, an appeal was preferred before the Supreme Court of India. That appeal was dismissed...

19. As indicated above, against the above decision, an appeal was preferred before the Supreme Court of India and this fact was noticed by the

Division Bench in Ved Paul's case in para 16 of the judgment. Ultimately in para 17 of the judgment in Ved Paul's Case, it was observed that services of Ved Paul Sharma i.e. the appellant in the aforesaid case who was an employee of the Citizen Cooperative Bank would be governed by

the service conditions as enumerated in SRO 233. Para 17 insofaras relevant is also being reproduced below:

17. In view of the above factual and legal position, it can safely be concluded that the appellant's case is to be dealt with in term of SRO 233,

therefore, it is held:

a. That the appellant is governed by the service conditions as enumerated in SRO 233 i.e. the Rules of 1988;

20. This question also came up for consideration before the Division Bench of this Court in the case titled as Ved Paul v. Citizen Coop. Bank,

reported in 2000 SLJ 117 and their lordships have held that SRO 233 is also applicable to the Cooperative Banks.

21. Thus, this controversy stand s settled and it is now beaten law of the land that these Rules are applicable to Cooperative Banks also.

22. In terms of these rules, the selection was to be made by the Selection Board. The Secretary is not the member of Selection Board. The

Secretary of the Bank cannot make any kind of appointment.

23. While going through the By Laws, it becomes clear that the Secretary has only to convey the instructions, orders and command s of the Board

of Directors.

24. It is profitable to reproduce one of the engagement order herein;

Sanction is hereby accorded to the engagement of Mr. Nissar Ahmad Mir S/o Mohd. Akbar Mir R/o Goom Ahmad Pora in the BCCB against a

consolidated amount of Rs.1500/ P.M. as peon.

Sdl Secretary the Baramulla CCB Ltd. Bla.

25. While going through the engagement order, it is crystal clear that engagement order has been made by the Secretary without the approval of

the Board of Administrators.

26. During the course of arguments, the petitioners have produced copy of minutes of the meeting dated 21st October 2002, which is made part of

the record. It is profitable to reproduce relevant portion of the said minutes herein:

1.Confirmation of appointees

The Secretary informed the Board that 158 including 14 already confirmed persons have been till date engaged in the Bank against the

consolidated amount of Rs.1500/, 2000/ and Rs.2500/ per month for Matriculates, Under graduates and graduates respectively. The Bank has

projected appointment of 50 persons for the year 20012002 and appointment of 30 persons for the year 20022003 in MOU of the said years. As

such appointment of 80 persons is need based. 14 appointments have already been confirmed by the Board of Directors in its meeting held on

03.05.2002 as per the list appended hereto as annexure A. it was resolved to designate these 14 appointees as clerks and provide them grades

and allow them the pay scale of 4500150750. The Secretary further informed that eight Branches and Extension counter have been opened during

the period by the Bank in District Baramulla and Kupwara. Therefore, resolved that the remaining 144 appointments are confirmed on the same

consolidated pay of Rs.1500/, Rs.2000/ and Rs.2500/ per month. The list is appended herewith as annexure 'B'. Further, resolved to confirm the

opening of Branch of BCCB at Kralgund, Fruit Mand i Sopore and Extension counter at Baba Reshi and request the Registrar Coop. Societies

J&K to accord permission.

27. The respondents have pleaded that the bank has projected creation of 50 posts for the year 200102 which was approved while as the

proposal for creation of 30 posts for the year 200203 was not accepted which is also borne out by the minutes of the meeting held on

21.10.2002, the relevant portion of which is reproduced hereinabove.

28. The learned counsel for the respondents produced 71 Photostat copies of the record including copy of the inspection report. It is profitable to

reproduce relevant paras of the said inspection report herein;

3. BRANCHES AND OFFICES

The bank had opened 7 branches and one extension counter since the date of previous inspection. The bank had also opened two branches from

1.4.2002 to 1.11.2002. The total number of offices/branches including Head Office stood at 34 as on the date of conclusion of inspection on

1.11.2002. Of these, five branches viz., Baramulla Main, Sopore, Hajjan, Fruit Mand i (Sopore) and Magam were visited during the course of

inspection. The total number of staff in the bank stood at 157 and 313 as on date of inspection and date of close of inspection respectively. 169

societies were affiliated to the bank as on the date of inspection.

OtherInoneamingassets

Further a sum of Rs.3.27 lakhs involved in frauds and embezzlements etc, remained unrecovered as on 31.03.2002. However, recovery of the

said amount was made by the bank on 8.8.2002; hence not taken for the purpose of erosion. An amount of Rs.0.17 lakh and Rs.0.02 lakh

recoverable from the ExDirector and Manager of the Hand wara branch respectively since long have been treated as not recoverable. There were

two cases of robbery and dacoity involving an amount of Rs.2.63 which were also not considered as realizable. Further two iron safes were stolen

from Trehgam and Sogam branches costing Rs.12, 000/ each and the same have also been considered loss assets. No provision had been made

by the bank for the above items. The bank may provide for the same.

Debt Relief Scheme for the borrowers in the State of Jammu and Kashmir,

(ii) Further, as per the scheme the outstand ing interest beyond 30 June 1996 till date of actual liquidation of the account was to be written off by

the bank itself. However it was observed that the bank had claimed, interest upto March 1997 (instead upto June 96) in its claim. The interest for

three quarters i.e. from July 96 to March 97 had been claimed in excess of the bank's eligibility. The bank may, therefore, workout the details of

interest received in excess of eligibility and refund the same to Govt. immediately.

viii. Recruitment.

(a) In December 1998, the bank had appointed 42 cand idates for clerical and substaff on adhoc basis without following any procedure like

advertising number of vacancies, calling for applications, written test/interviews. The decision was subject to confirmation by the new Board

because term of tbe earlier board was expiring. However, the new board directors agree to it and decided not to confirm the decision of the earlier

board and the kept the orders of said appointments in abeyance. The cand idates who had been issued appointment letters filed suit in the court of

law against the bank. The bank may indicate the latest position.

(b) Further in its meeting held on 3 May 2002, the Board of Directors were informed by the Secretary that 14 appointments were made in the bank for running branches opened during 200202 at various places due to paucity of staff on consolidated wages of Rs.1500/ to Rs.2500/ per

month.

(c)Late on, the bank engaged 142 cand idates in various cadres on consolidated wages of Rs.1500/ to 2500/ per month without approval of the

board. In this connection following observations have been noticed.

(i) The bank had not made any exercise for staff requirement before making recruitment in various cadres and obtaining prior board approval

therefore.

(ii) The appointments of 14 employees as indicated above were made by the bank without board approval. However the Board was informed

later on about these appointments in a routine manner.

(iii) The appointments of 142 cand idates engaged on consolidated wages were also made by the Secretary without Board approval.

(iv) No procedure was followed for making aforesaid appointments in the bank. The service records of the above cand idates was not made

available to the NABARD inspection team.

(v) In view of the above discrepancies, the appointments made by the bank were not in order. Therefore, the bank may consider terminating their

services forthwith. Meanwhile the bank may consider to:

(a) Computerise its operations to overcome staff shortage.

(b) Assess the staffing pattern in all the cadres in consultation with RCS and apex bank.

(viii) Appointments, if any may be made after obtaining prior approval of Board and RCS. As already pointed out in the previous inspection

report, the bank should frame a suitable recruitment policy.

29. It appears that the Chief General Manager asked the Secretary to take steps in terms of the inspection report. In response to the said letter the

Secretary has addressed a communication to the General Manager Baramulla Cooperative Central Bank Limited which is annexureI to the writ

petition. It is profitable to reproduce the said letter herein;

I am in receipt of your letter No. 119095/HO dated 31.01.2003, wherein you have referred the communication of RCS addressed to you vide

his No. BK89/111/2691/29 dated 27.12.2002. I would like a inform you that appointments in the Baramulla Central Cooperative Bank Ltd. have

been made by the Board of Directors which is elected body to run the affairs of the bank and is competent is terms of bylaws of the bank.

Further the Bank has already dearth of staff and in terms of M.O.U. signed between the Govt. NABARD and the Bank and already approved to

appoint 51 persons. The Board of Directors after giving due though to the problem, appointed 158 persons on the basis of assessment. The Board

of Directors opened nine braches which were to be equipped with the required staff in the bank, to recover about Rs.24 crores from the

borrowers of Baramulla and Kupwara Districts, so the appointments made are in the best interests of the bank out of which 26 cand idates have

been appointed in the bank on the directions of Hon'ble High Court on the basis of table negotiations between writ petitioners and the Board of

Directors of the Bank. The engagement will not effect banks financial position because of retirement of five bank officials.

In view of the above facts you are advised not to disengage any of the appointees and also this will be beyond your authority. The Registrar

Cooperative Societies J&K may accordingly be informed.

30. It appears that directions for taking necessary steps have not been taken by the Board of Directors. Accordingly, the Registrar Cooperative

was constrained to act in terms of Sections 30 of Jammu & Kashmir Cooperative Societies Act.

31. Keeping in view the inspection report and the letter addressed to General Manager and reply of the Secretary contained in annexureI, I am of

the considered view that the Registrar has rightly exercised the powers in terms of the J&K Cooperative Societies Act and thereby has rightly

superseded the Board and appointed new Board of Directors.

32. While going through record, it reveals that inspection conducted by NABARD has clearly pin pointed that the engagements were made against

nonexisting posts. In annexureI, the Secretary has categorically accepted that only 50 posts were approved and then how 158 cand idates have

been appointed is best known to the then Secretary.

33. While going through the minutes of the meeting, referred herein above, it appears that engagements have been made on the need basis. The

appointments/engagements cannot be made on need basis without creation of posts. That is why the authorities of NABARD have highlighted that

the appointments have been made illegally, without power and against nonexistent posts.

34. In view of the above discussion, one comes to the inescapable conclusion that the Secretary has made appointments without jurisdiction,

power and competence.

35. The arguments of learned counsel for the petitioners that the Board of Directors have approved the said engagement orders, thus are legal is

devoid of any force for the following reasons.

36. There is nothing on the file suggesting the fact, as discussed hereinabove, that the Secretary had obtained approval for making appointments.

The subsequent ratification will not validate the illegal engagement orders. This view is fortified by Apex Court judgment reported in AIR 1996 SC

2219

37. The petitioners have taken stand that even if it can be said that the appointments have been made without following due process or if the

irregularities have been committed, the petitioners cannot be faulted for the same and they should have been heard.

38. Now, the meat of the matter is whether the petitioners were entitled to notice before passing the impugned order(s) in order to follow the

principles of natural justice?

39. I am of the considered view that this argument is devoid of any force for the reasons that if the notice would have been given to the petitioners

they would not have been be in a position to built up their case. Even otherwise revoking or cancellation of illegal engagement order(s) without

notice cannot be said to be illegal.

40. The Apex Court has held in case AIR 1974 SC 238 that cancellation of illegal appointment orders without serving notice upon the

beneficiaries cannot be said to be illegal.

41. The Apex Court has also held in case State of M. P. v. Shyama Pardhi, reported in AIR 1996 SC 2219, that when appointment order is illegal

or any irregularity has been committed, no notice is required.

42. In a case Subedar Singh v. District Judge, Mirzapur, reported in AIR 2001 SC 201, the question arose before the Apex Court that if an

appointment order is illegal or irregular, can such appointee seek regularization. The Apex Court has held that such orders cannot confer any title

and such an appointee cannot claim regularization.

43. The similar point came up for consideration before the Division Bench of this Court in the case titled as Mohinder Singh v. State of J&K

reported in 2000 SLJ 199 and their lordships have held that if an appointment is made illegally, the appointee cannot claim that he should have

been heard because he cannot built his case. And in case impugned order will be quashed it will amount to putting, seal on illegal appointment

order. It is profitable to reproduce para16 herein;

16. This takes up to the question whether the principle of natural justice has been violated. The writ court negatived the argument against violation

of principles of natural justice holding that if the order canceling the appointments is quashed it would amount to restoration of illegal orders.

44. The Apex Court has also held in case A. Umarani v. Registrar, Coop. Societies, reported in 2004 Vol. VII SCC 112, that when the

appointments are illegal, fraud or invalid, no notice is required and if notice is given that will be a futile exercise. It is profitable to reproduce paraB

and G herein;

B. Cooperative Societies T. N. Cooperative Societies Act, 1983 (30 of 1983) Ss. 170 & 182 Held, do not empower the Govt. to issue order

directing regularization of services of employees of cooperative societies who had been appointed in flagrant violation of the mand atory provisions

of the Act and the Rules Further held, where no order exemption has contemplated by S. 170 was passed in favour of any of the cooperative

societies and where the conditions stipulated in S.182 were not attracted, the impugned order directing regularization of such employees could not

be passed T. N. Cooperative Societies Rules, 1988, R.149.

G. Administrative Law Natural justice Audi alteram partem Applicability When validity or otherwise of the govt. order directing regularization of

services of certain employees was itself in question, held, giving opportunity of hearing to those employees to ascertain whether they fulfilled the

requirements of the govt. order would be futile.

45. I have laid my hand s on a judgment delivered by Full Bench of Patna High Court, reported in AIR 2988 Patna page 26 (Rita Mishra v.

Director, Primary Education, Bihar), wherein their Lordships have discussed the concept of principles of natural justice and their lordships have

held that when appointment is fraud and illegal, such appointment does not create any right and such appointee cannot claim that he should be

heard before passing of the cancellation order he cannot claim that enquiry should have been conducted. It is profitable to reproduce paras 31 and

93 therein;

31. To conclude on the procedural aspect, it appears to me that where the basic and material facts are categorically controverted and traversed,

the exercise of the writ jurisdiction would be inapt and doubly so on mand amus can possibly issue on such a slippery base. Equally where the

petitioners do not come to the portals of the writ Court with clean hand s, they must be relegated to their ordinary remedies by way of civil suits.

93. 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 Art. 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.

46. In view of the above discussion, I am of the considered view that respondents were not under legal obligation to issue notice to the petitioners

before passing of the impugned orders.

47. As discussed above, the appointments have been made against the nonexistent posts and such appointments are not known to the service

jurisprudence and such appointments are illegal, without jurisdiction and without power. This point come up for consideration before this Court in

case Parvez Ahmad v. State reported in 2001 SLJ 377. It is profitable to reproduce para3 of the said judgment herein;

3. A bare perusal of the impugned order, it would clearly appear that there was no post of Junior Assistant and the appellant has been appointed

as Jr. assistant till his post is created but the appellant has been adjusted against the post of Lady Health Visitor (LHV) till the post of Jr. Assistant

becomes available in the Department. In a service jurisprudence, the appointment is always made against the available vacancy. Such an

arrangement is unknown to law and depicts classic example as to how the authority possessing public power abuses their own power. It is sheer

case of abuse of the power. Such practice is to be condemned and deprecated by all concerned and such an order has been passed at the cost of

public exchequer, which is clearly against the public interest. In that view of matter the learned Single Judge has rightly dismissed the writ petition

praying for regularization or continuation on the post.

48. Before concluding, it is worthwhile to mention herein that the petitioners have averred that the impugned orders have been in violation of the

directions passed by this Court in terms of order dated 10th Feb. 2003 and 11th Feb. 2003 it appears that there is no proof on the file suggesting

the fact that the said interim directions were served upon the respondents before passing of the impugned orders.

49. The argument of the learned counsel for the petitioners that the employer is the same only faces have changed, thus newly appointed Board of

Directors cannot say that the appointments made are illegal, is devoid of any force for the following reasons:

50. That if any officer has, made appointments illegally or, committed fraud or, committed irregularity his successor is within its powers to pin point

and draw action. Similarly if any officer abuses his official position and misuses the same, his successor cannot shut his eyes. Viewed thus, the

respondents have rightly drawn the action.

51. In the given circumstances, I am of the considered view that petitioners have not carved out a case. Accordingly, it is hereby held that

impugned orders are valid and legal. Accordingly, this batch of writ petitions merits to be dismissed.

52. Now, coming to batchs of 17 writ petitions (11 + 6). All these writ petitions have become infructuous by lapse of time because the basic

engagement orders have been cancelled.

53. Accordingly, all the writ petitions are dismissed along with all connected CMP(s). Interim direction, if any, shall stand vacated.

