
(1996) 08 GAU CK 0006

In the Gauhati High Court

Case No : C.R. No"s. 394, 570 and 680 of 1995 and 44, 45 and 46 of 1996

Juliate Zimik and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 26-08-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311

Citation : (1997) 3 LLJ 1259

Hon'ble Judges : P.K. Sarkar, J

Bench : Single Bench

Advocate : H.N.K. Singh, P.C. Singh and I. Lalit Kumar, for the Appellant; A. Nilamani Singh, for the Respondent

Judgement

P.K. Sarkar, J.—In all these writ petitions common question of facts and law are involved and as such these writ petitions are disposed of by this common judgment.

2. The petitioners in Civil Rule No. 44 of 1996, 45 of 1996 and 46 of 1996 have filed these writ petitions under Article 226 of the Constitution of India challenging the order of termination. It is stated in the petition that a DPC was constituted for appointment of 6 (six) Supervisors (ICDS) under Social Welfare Department of the Govt. of Manipur under direct recruitment quota on regular basis. Accordingly, a DPC was constituted for selection of 6 (six) candidates and the DPC recommended six candidates for appointment to the post of Supervisors (ICDS) and also prepared a panel of 27 candidates for appointment in the post of Supervisors which are likely to become vacant and kept the panel in a sealed cover. As per recommendation of the DPC 6 (six) persons have been appointed by Government. Subsequently, 3 (three) more candidates were appointed as Supervisor from the panel of wait list candidates. The Government appointed the three petitioners whose names appeared at Sl. Nos. 17, 18 and 19 of the panel by an order of the Director, Department of Social Welfare dated July 24, 1995 at Annexure-A/I(a) of the writ petition. It is further stated that all the 3 petitioners

were appointed on regular basis. Thereafter, on October 5, 1995 the Director, Department of Social Welfare by his order at Annexure- A-2 of the writ petition, terminated the services of the petitioners with immediate effect without assigning any reason therefor. It is, further, averred that the said termination order was in gross violation of the principle of natural justice as well as in violation of Article 311 of the Constitution of India. The petitioners being regular employees should have been given a chance of hearing before issuing the aforesaid termination Order. There was no misconduct on the part of the petitioners for termination of their services. Having felt aggrieved by the order of termination, the petitioners filed the aforesaid three writ petitions.

3. The contention of the respondent Government is that the advertisement was issued for filling up of six posts of Supervisors under direct recruitment quota and six persons recommended by the DPC were appointed by the Government. It is, further, averred that the panel was not acted upon by the Government. It is, however, admitted by the Govt. that these petitioners were erroneously appointed in the posts of Supervisors to fill up the back-log quota of ST candidates but, ultimately Government realised that the petitioners whose names appear at Sl. Nos. 17, 18 and 19 of the panel cannot be appointed on two grounds, namely (i) the Govt. advertised for filling up of six posts of Supervisors under direct recruitment quota and since these posts have already been filled up by the candidates recommended by the DPC, there is no scope to appoint any person from the panel, and (ii) the names of the petitioners appeared at Sl. Nos. 17, 18 and 19 and without making any appointment of the candidates appeared at Sl. Nos. 1 to 16 of the panel, the Government cannot appoint the persons whose names appears in Sl. Nos. 17 to 19. Having realised the mistake the Government has terminated the services of the petitioners.

4. In Civil Rule Nos. 394/95, 575/95 and 680/ 95, 24 (twenty four) petitioners filed the aforesaid three writ petitions under Article 226 of the Constitution. It is alleged in the petition that the Government advertised for filling up of six posts of Supervisors under the Social Welfare Department, Govt. of Manipur. A regular DPC was constituted by the Govt. and the DPC in its meeting dated November 18, 1992 to November 21, 1992 selected six candidates for appointment to the aforesaid six posts of Supervisors. The DPC also prepared a panel of 27 candidates for filling up of the future vacancies in the post of Supervisors. In the panel prepared by the DPC, the names of the petitioners appeared at different serial numbers. The names of the proforma Respondents 5 to 8 appears at Sl. Nos. 23, 24, 25 & 26 of the said panel and names of the proforma Respondents 9 to 11 appears at Sl. Nos. 17, 18 and 19. The Govt. appointed six candidates recommended by the DPC in order of merit in the post of Supervisors under the Social Welfare Department. But, subsequently, the Govt. appointed candidates whose names appears at Sl. Nos. 23, 24, 25 and 26 of the panel in the post of Supervisors to the exclusion of the present petitioners, though the names of the petitioners appeared above the names of the said four candidates in the panel prepared by the DPC in order of merit. On May 20, 1995 the appointment order

of the proforma Respondents-5,6, 7 and 8 have been partially modified by the Director, Social Welfare Department. Thereafter, the Govt. appointed the candidates whose names appeared at Sl. Nos. 17, 18 and 19 of the panel to the post of Supervisors by an order dated July 24, 1995. It is, further, averred that the Government has adopted pick and choose policy while appointing the proforma respondents in the post of Supervisors. The Department of Social Welfare, Govt. of Manipur submitted a requisition to the Director, Employment Exchange for filling up of 37 posts of Supervisors under direct recruitment quota. The filling up of the aforesaid 37 posts of Supervisors has been stayed by an interim order of this Court. It is averred that the petitioners should have been appointed against the aforesaid 37 vacant posts whose name appears in the panel prepared by the DPC in its meeting held from November 18 to 21, 1992. Since the Govt. has appointed the candidates whose names appeared at Sl. Nos. 17, 18 & 19 and from 23 to 26 of the panel the petitioners whose names appeared above the names of the aforesaid appointees should be appointed in the post of Supervisors on regular basis. It is further averred that the Govt. should not have regularised the ad hoc appointment of Respondents 5 to 8 in view of the order passed by the High Court on January 13, 1995 in Civil Rule Nos. 1202/92, 615/94 and 925/94.

5. One Smt. K. Rani, an ad hoc appointee in the post of Supervisor, was selected by the DPC and her name was recommended for appointment to the post of Supervisor. Accordingly, Smt. K. Rani Devi has been appointed on regular basis. Since the Govt. has appointed Respondents 5 to 11 who are much below in the panel, the petitioners have the right to be appointed in the post of Supervisors as their names appear above the names of the aforesaid respondents. Since the Government refused to appoint the petitioners to the posts of Supervisors the petitioners filed the present petitions.

6. It is admitted by the respondents/Govt. that an advertisement was issued for filling up of six posts of Supervisors under direct recruitment quota and six candidates were appointed by the Government as per recommendation of the DPC. It is, further, stated that DPC should not have prepared a panel for filling up the post of Supervisors in future vacancies because for future vacancies the Government is required to issue fresh advertisement so that the persons who became qualified later on may have equal opportunity to apply for the post.

7. It is stated by respondent State that the four persons, Respondents-5 to 8 who were appointed by an order of the Government dated May 4, 1995 (Annexure-A/3) of the writ petition have not been appointed on the basis of their names having been indicated in the panel. These four candidates were appointed on ad hoc basis and their services were regularised by the Govt. as per scheme framed by the Government vide Memo No. 14/1/94 adhoc DP dated August 22, 1994. It is, however, admitted that the order of regularisation of the aforesaid proforma respondents were modified by an order of the Government dated May 20, 1995. It is, further, averred that the aforesaid four persons who are

Respondents 5 to 8 have been appointed not because of their names being in the panel, but because of the aforesaid Govt. policy for regularisation of ad hoc appointment. It is also averred that Smt. Ksh. Banita Devi who was recommended by the DPC and whose name appeared at Sl. No. 2 has expressed her unwillingness to accept the appointment and as such Smt. Th. Sarda Devi who was in waiting list No. 1 has been appointed out of the six posts filled up by the Government. As regards the appointment of candidates whose names appeared at Sl. Nos. 17, 18 and 19 of the panel, it is stated that the aforesaid ST candidates were appointed in consideration of the fact that there were and still a shortfall in the quota reserved for ST candidates in the Grade of Supervisors. However, on realising the illegality in appointing the said 3 candidates from the panel against the vacancies that arose after the DPC of 1992, the Govt. has decided to cancel the appointment of the aforesaid three candidates and accordingly their services were terminated. After cancelling of appointment of the 3(three) ST candidates at present there are 53 vacant posts of Supervisors and the Govt. has decided to fill up 37 posts under direct recruitment quota vide Annexure-A/7 to A/9. It is further averred that the State Govt. did not give its approval to the panel prepared by the DPC for filling up the posts for future vacancies and consequently, the petitioners have no right for being considered for appointment to the posts of Supervisor that arose after the DPC in 1992. The State Government has cancelled the panel of waiting list candidates by its letter No. 29/51/89-SC(SW) dated March 20, 1995 Annexure- B/4. Respondents-5 to 8 who were continuing on ad hoc basis in the post of supervisors have been regularised in their services in pursuance of the Office Memorandum dated August 22, 1994 by condoning 4 days' shortfall and the aforesaid regularisation has been made in pursuance of a common judgment and order passed on January 13, 1995 in Civil Rule No. 1202 of 1992 and other analogous Civil Rules. The services of the aforesaid proforma Respondents 5 to 8 were made as per recommendation of the special DPC constituted by the Government. The appointment of any person from the waiting list beyond the number of posts advertised will be an illegality and therefore Govt. cannot be compelled to appoint the petitioners only because their names appears in the waiting list panel.

8. Mr. H. NK. Singh, the learned counsel appearing on behalf of the petitioners in Civil Rule No. 44/96, C.R. No. 45/96, and C.R. No. 46/96, argued that the petitioners were appointed in the post of Supervisors on regular basis as per recommendation of the DPC and their names appeared at Sl. Nos. 17, 18 and 19. The learned counsel, further, submits that there is shortfall in the quota of ST candidates in the post of Supervisors and therefore the petitioners being ST candidates have the right to be appointed against the quota reserved for ST candidates. Secondly, Mr. H. NK. Singh, learned counsel for the petitioners submits that the petitioners were appointed on regular basis and therefore their services cannot be terminated without holding any departmental inquiry and without giving them an opportunity of showing cause as required under Article 311 of the Constitution of India. Since the appointment of the petitioners have

been terminated without making any inquiry and without giving them an opportunity of being heard, the order of termination is required to be set aside.

9. Mr. A. Nilmani Singh, learned counsel appearing on behalf of the respondent, State submits that the Govt. has issued the notification for filling up of 6 (six) vacant posts of Supervisors under direct recruitment quota, and DPC recommended six candidates in order of merit for appointment in the said post. In addition the DPC has prepared the panel of 27 candidates for filling up of future vacancies. Mr. Nilmani Singh, further, argued that the DPC was not asked to prepare any panel for filling up of the post of Supervisors in future vacancies. Mr. Nilmani Singh, further, submits that the candidate recommended by the DPC at Sl. No. 2, refused to accept the post of Supervisor and therefore the candidate whose name appeared at Sl. No. 1 of the waiting list has been appointed. Since the six posts as advertised have been filled up, the remaining panel cannot be acted upon by the Government for filling up the future vacancies specially in view of the fact that those vacancies arose after the meeting of the DPC in 1992. It is further submitted by the learned counsel that the 3 ST candidates who are the petitioners in the three writ petitions and whose names appeared in Sl. Nos. 17, 18 and 19 were initially appointed by the Govt. to fill up the quota of ST candidates, but subsequently the Govt. realised that such appointment is irregular and illegal and consequently the Govt. has terminated the services of the aforesaid three candidates. Mr. Nilmani Singh further, submits that the appointment of waiting list candidates in the vacancies arising subsequent to the notified vacancies is violative of Article 14 of the Constitution and therefore the Government had to cancel the appointment of the three petitioners. Mr. Nilmani Singh, learned counsel for the respondents/State relied upon the decision of the Supreme Court reported in 1996 LLJ 1103 (Ashok Kr. and Ors. v. Chairman Banking Services Recruitment Board and Ors.). In that case the Apex Court held at P1104 :

"Article 14 read with Article 16(i) of the Constitution enshrines fundamental right to every citizen to claim consideration for appointment to post under the State. Therefore vacant post arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution. The procedure adopted, therefore, in appointing the persons kept in the waiting list by respective Board though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional."

10. In the present case also 6 (six) vacancies were notified and Government has appointed six persons and therefore, as per above decision of the Hon'ble Supreme Court, there is no scope to appoint any further person from the panel without notifying the vacancies afresh. Consequently, the appointment of the 3 ST candidates whose names appeared at Sl. Nos. 17, 18 and 19 the petitioners in the three aforesaid Civil Rules, and been made by the Government illegally and

such appointment is unconstitutional and therefore their appointments are liable to be terminated. Mr. Nilmani Singh also relied on the decision of the Hon''ble Supreme Court reported in State of Bihar and another Vs. Madan Mohan Singh and others, In the aforesaid case advertisement was is-sued for appointment of 32 candidates to be appointed from the panel of 128 recommended by the Selection Committee and future vacancies may be filled up from the said panel. In that case the Apex Court held that the selection process was meant only to fill up the 32 vacancies and not to fill up other vacancies. The merit list prepared on the basis of the written test as well as Viva voice will hold good only for the purpose of filling up of those 32 vacancies and no further, because the said process of selection got exhausted and came to an end with the appointment of 32 candidates. If the same list as published for the subsisting vacancies are acted upon for the purpose of filling up of other vacancies also that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and said selection process. In the instant case also the selection process was meant only to fill up 6 (six) vacancies and therefore after filling up of the six vacancies by the Government, the panel got exhausted and came to an end. Consequently, no candidate can be appointed from the panel of waiting list candidates against the future vacancies. The selection list prepared by the DPC got exhausted on completion of the selection process under advertisement. Consequently, I am of the clear view that the petitioners in the aforesaid 3 writ petitions have no right to be appointed as the Govt. has already appointed 6 (six) candidates recommended by the DPC as per advertisement for filling up of 6 (six) posts of Supervisors under direct recruitment quota.

11. While it is true that when these three petitioners in Civil Rule Nos. 44, 45 and 46 of 1996 were illegally appointed by Government and their appointments are unconstitutional as such Govt. has a right to terminate their services. But the procedure adopted by the Govt. in terminating the services of the petitioners does not appear to be correct as according to Mr. H. NK. Singh learned counsel for the petitioners, no opportunity has been given to the petitioners for showing cause before terminating their services. There is sufficient force in the submission of the learned counsel for the petitioners as from the order of appointment at Annexure-A/1 (a) of the writ petition, it appears that the writ petitioners were appointed on temporary basis in the post of Supervisor (ICDS) and they were asked to be on probation for a period of 2 years. The order of appointment was issued on July 24, 1995 and the services of the petitioners were terminated by an order of the Govt. dated October 5, 1995 (Annexure-A/2). From the order of termination (Annexure-A/2), it does not appear that the petitioners were given one month's notice for terminating their services though they were on temporary basis and their appointment was terminated during the period of their probation. Even if the appointment of any public servant is proved to be illegal and unconstitutional, the public servant cannot be removed from service without following the procedure prescribed by law. In case of public

servant who are holding the post on temporary basis, their services can be terminated after giving one month's notice as per provisions of Temporary Service Rules. Admittedly, in the present case the petitioners have not been declared either permanent or quasi-permanent in their posts and they are holding the posts temporarily. Therefore, I am of the view that termination of services of the petitioners without giving one month's notice as per provisions of Rule 5 of the Temporary Service Rules, cannot be said to be proper and legal.

12. Mr. H. NK. Singh, further, submits that in the case reported in 1996 LLJ 1103 the Apex Court did not interfere with the order of appointment even though the persons were appointed in the service from the reserved panel list. Consequently, the learned counsel submits that in the present case also the Govt. advertised for filling up of 6 (six) vacant posts of Supervisors and as per recommendation of the DPC, six persons were appointed. But, subsequently the petitioners who are as Sl. Nos. 17 to 19 of the waiting list were appointed by the Govt. and therefore following the aforesaid decision of the Apex Court the appointment of the petitioners in the present case may not be disturbed. I cannot agree with the submission of the learned counsel for the petitioners, because in the aforesaid case the Apex Court held:

"The procedure adopted, therefore, in appointing the persons kept in the waiting list by the respective Boards, though the vacancies have arisen subsequently without being notified for recruitment is unconstitutional. However, since the appointments have already been made and none was impleaded we are not inclined to interfere with these matters adversely affecting their appointments."

The present case is not similar to the aforesaid case decided by the Apex Court, because in the present case the appointment of these three petitioners have been challenged in C.R.Nos. 394/95, 570/95 and 680/95. Since the appointment of three petitioners has been challenged in the aforesaid Civil Rules, the Court will have to examine the validity, legality or otherwise of the aforesaid appointment. In the present group of cases the appointment of the three petitioners in C.R. Nos. 394, 395 and 680 of 1995 has been challenged and they are impleaded as respondents. I am of the view that the case law referred to by Mr. H. NK. Singh cannot apply in the present case.

13. I have already discussed the case law reported in 1996 LLJ 1103 and State of Bihar and another Vs. Madan Mohan Singh and others, and according to the decision of the Apex Court, the appointment of the three petitioners from waiting list is illegal and unconstitutional. Following the aforesaid decision of the Apex Court, I am of the opinion that the appointment of the three petitioners of the three petitions namely, C.R.Nos. 44, 45 and 46 of 1996 are illegal and violative of the provisions of Articles 14 and 16(i) of the Constitution and as such their appointments are liable to be terminated.

14. In the present three writ petitions, an interim order was passed by this Court on January 19, 1996. In pursuance of the interim order passed by this Court on

January 19, 1996, the petitioners were reinstated and they are still continuing in service. In the interim order it was further directed that the period between October 5, 1995 i.e. the date of termination order and the date of their reinstatement in service as per the interim order of the Court will be regulated as per decision of the Court. Since the appointment of the three petitioners are illegal and unconstitutional, their appointments are to be cancelled or terminated by the Govt. and since the petitioners did not discharge any duty from October 5, 1995 till the date of reinstatement as per interim order of this Court, the petitioners will not get any salary for the aforesaid period on the principle of no work no pay. The appointment of the three petitioners are found to be illegal and unconstitutional and since their appointments are challenged in Civil Rule Nos. 394/95, 570/95 and 680/95 the Government will have to terminate their services.

15. Mr. I. Lalitkumar Singh, the learned counsel appearing on behalf of the petitioners in Civil Rule Nos. 394/95, 570/95 and 680/95, argued that the Respondents 5 to 8 appeared before the DPC held on November 18, 1992 to November 21, 1992 and their names appeared at Sl. Nos. 23 to 26 of the waiting list panel at Annexure A/1 to the writ petition. The learned counsel consequently submits that the petitioners' names appeared from serial number 2 to 22 (except Sl. No. 17 to 19) of the waiting list panel and therefore the petitioners have a right of appointment in the poster Supervisors. The name of Respondents 5 to 8 appears at the bottom of the merit list of the panel, therefore, the candidates who are above them are entitled to be appointed at least from the date on which Respondent Nos. 5 to 8 at Sl. Nos. 23 to 26 were appointed as Supervisors (ICDS). Mr. Lalitkumar also submits that the Govt. has appointed the candidates whose names appear at Sl. Nos. 17 to 19 and who are made as party Respondent Nos. 9 to 11 in the present case, depriving the petitioners whose names appear at Sl. Nos. 2 to 16 of the waiting list. I have already discussed and found that the appointment of Respondents 9 to 11 whose name appears at Sl. Nos. 17 to 19 are illegal and unconstitutional and as such the same is required to be cancelled by the Government. On the same principle the petitioners cannot claim appointment only because their names appear in the waiting list.

16. As regards the appointment of Respondents 5 to 8 whose names appear in Sl. Nos. 23 to 26, Mr. A. Nilmani Singh, learned counsel for the respondent/State submitted that these respondents were appointed by the Govt. initially on ad hoc basis and thereafter their appointments were regularised as per Scheme framed by the Govt. under Office Memorandum No. 14/1/94- adhoc DP dated August 22, 1995 at Annexure-A/3. These are not fresh appointments but regularisation of service of Respondents 5 to 8 as per the aforesaid memorandum of the Govt. dated August 22, 1994 at Annexure-B/1.

17. Mr. I. Lalitkumar Singh, the learned counsel appearing on behalf of the petitioners, submits that along with Respondents 5 to 8 one Smt. K. Rani Devi was also appointed as Supervisor on ad hoc basis. In the DPC all the ad hoc appointees (Respondents 5 to 8 along with K. Rani Devi) appeared and Smt. K.

Rani Devi was selected on the basis of merit and the DPC recommended her name along with 5 others for appointment on regular basis against 6 (six) posts advertised by the Government. It is further, submitted that Respondents 5 to 8 could not get their selection by the DPC and they were placed at the bottom of the list. Mr. Lalitkumar, consequently, submits that since Respondents 5 to 8 failed to get their selection in the DPC their services should not have been regularised by the Government under Office Memorandum at Annexure-B/1. The learned counsel, further submits that such backdoor appointment should not be encouraged and since they have failed to get their selection in the DPC, they must give way for meritorious candidates and their ad hoc appointments should have been discontinued by the Govt. As the Govt. appointed Respondents 5 to 8 whose names appear at Sl. Nos 23 to 26 the Govt. is under obligation to appoint all the persons who have better merit and who are placed above the aforesaid respondents in the reserved merit list.

18. Mr. Lalitkumar Singh, further, argued that the Government has appointed the candidates at Sl. Nos. 17 to 19 and 23 to 26 of the reserved panel list and therefore it is evident that the Govt. has acted on the reserved panel list and since the candidates at Sl. Nos. 23 to 26 were appointed by the Govt. the persons above them in the merit list have a legal right to be appointed to the post of Supervisors. In support of his contention the learned counsel referred to a case law reported in 1996 LLJ 786 (SC) (Prem Singh and Ors. v. Haryana State Electricity Board and Ors.). The relevant portion of the judgment is as follows :

"26. In the present case, as against the 62 advertised posts the Board made appointments on 138 posts. The selection process was started for 62 clear vacancies and at that time anticipated vacancies were not taken into account. Therefore, strictly speaking the Board was not justified in more than 62 appointments pursuant to the advertisement published on November 2, 1991 and the selection process which followed thereafter. But as the Board could have taken into account not only the actual vacancies but also vacancies which were likely to arise because of retirement, etc. by the time the selection process was completed it would not be just and equitable to invalidate all the appointments made on posts in excess of 62. However, the appointments which were made against future vacancies in this case on posts which were newly created must be regarded as invalid. As stated earlier, after the selection process had started 13 posts had become vacant because of retirement and 12 because of deaths. The vacancies which were likely to arise as a result of retirement could have been reasonably anticipated by the Board. The Board through oversight had not taken them into consideration while a requisition was made for filling up 62 posts. Even with respect to the appointments made against vacancies which arose because of deaths, a lenient view can be taken and on consideration of expediency and equity they need not be quashed. Therefore, in view of the special facts and circumstances of this case we do not think it proper to invalidate the appointments made on those 25 additional posts. But the appointments made by the Board on posts beyond 87 are held invalid. Though the High Court was right

in the view it has taken we modify its order to the aforesaid extent. These appeals are allowed accordingly. No order as to costs."

In the present case the State Government made an advertisement for filling up of six posts of Supervisors under direct recruitment quota in the year, 1992. The DPC was held from November 18, 1992 to November 21, 1992. At that time there were only six vacant posts against which the advertisement was made. Consequently, the Govt. cannot appoint more than 6 persons and any appointment in excess of six must be invalid and unconstitutional. It is not in dispute that additional 53 posts of Supervisors were created by the Government vide Order No. 6/4/94-S (SW) dated June 15, 1995. Consequently, it is apparent that these 53 posts were created long after the aforesaid six vacancies were notified. Therefore, the Government cannot appoint any person from the reserved panel list prepared by the DPC in 1992 against these 53 posts created by the Government in 1995. In the aforesaid case the Apex Court held that appointments which are made against the newly created posts must be regarded as invalid. Consequently, I am of the opinion that the aforesaid case law of the Apex Court may not be applicable in the present case at least in favour of the petitioners. I have already discussed the decision of the Apex Court reported in 1996 LLJ 1103 and State of Bihar and another Vs. Madan Mohan Singh and others, and also relying on the decision cited by the learned counsel for the petitioners, Mr. I. Lalitkumar Singh, it is clear that any appointment beyond the notified 6 (six) posts are invalid and unconstitutional. Consequently, I have already found that the appointments of the petitioners in Civil Rule Nos. 44, 45 and 46 of 1996 are illegal and is to be cancelled. On the same principle the present petitioners of C.R. No. 394, 395 and 680 of 1995 cannot claim their appointment only because their name appears in waiting panel.

19. Now, the only question that requires to be decided is whether the regularisation of the services of Respondents 5 to 8 whose names appear at Sl. Nos. 23 to 26 of the reserved panel list as per the Office Memorandum at Annexure-B/1, is valid or not.

20. It is admitted by the Govt. that Respondents 5 to 8 along with one Smt. K. Rani Devi were initially appointed on ad hoc basis as Supervisors, (ICDS). Thereafter, when DPC was constituted in 1992 the Selection Board recommended six candidates and amongst these six candidates, the DPC recommended the name of Smt. K, Rani Devi who was at Sl.No. 3 in the merit list. Consequently, K, Rani Devi was appointed by the Government by an order dated January 6, 1992 vide Annexure A/10, but the Respondents 5 to 8 could not perform well before the DPC and their names appeared at Sl. Nos. 23 to 26 of the reserved waiting list. It is true that in exigency of public service, the Govt. may have to resort to ad hoc appointment, but for regular appointment the ad hoc appointees must qualify themselves before the DPC or the Selection Board. In the instant case, the ad hoc appointees, Respondents 5 to 8, failed to qualify in the selection test and their names were not recommended for appointment against the six posts

advertised by the Govt. The stand of the Govt. is that Respondents 5 to 8 were ad hoc appointees and their services were regularised as per Scheme framed by the Govt. at Annexure B/ 1. It appears from the Office Memorandum at Annex-B/1 that the Govt. issued the aforesaid memorandum for regularisation of services of persons who are holding posts on ad hoc basis against direct recruitment quota. In paragraph 2 (i) of the aforesaid Memorandum at Annexure-B/1 it has been specifically provided, inter alia, that all posts held on ad hoc basis against direct recruitment quota which were requisitioned to the M.P.S.C. for recruitment may be frozen and withdrawn unless the M.P.S.C. had already issued advertisement. Similarly, all non gazetted posts against direct recruitment quota which are held on ad hoc basis where no advertisement had so far been issued would also be covered.

21. On a plain reading of the aforesaid provisions it is clear that where the posts have been advertised, the scheme at Annexure-B/1 will not apply. In the present case the Government has issued an advertisement for filling up of 6 posts of Supervisors (ICDS) against direct recruitment quota in 1992. The DPC selected six candidates in 1992 itself and appointment in these six posts have also been made on January 6, 1992 (Annexure-A/10). All the five ad hoc appointees in the post of Supervisors appeared before the DPC in 1992. Out of the 5 (five) ad hoc appointees, only one, Smt. K. Rani Devi, was recommended by the DPC for appointment. The other 4 (four) ad hoc appointees who are Respondents 5 to 8 were not recommended and their names appear at Sl. Nos. 23 to 26 of the reserved list. Therefore, it is obvious that the aforesaid memorandum of the Govt. at Annexure-B/1 cannot apply in the case of the Respondents 5 to 8 who are ad hoc appointees in the post of Supervisors and since they have failed to get the selection in the DPC in 1992, they should have made way for those duly selected candidates. But, instead of doing so, the State Govt. continued their ad hoc appointment and subsequently regularised their services by an order of the Govt. dated May 20, 1995 at Annexure-B/2. Now, it is to be examined whether the regularisation made by the Govt. is legal and proper.

22. Mr. I. Lalitkumar Singh, learned counsel appearing for the petitioners submitted that the question of regular appointment of the Respondents 5 to 8 was decided by this Court in Civil Rule 2020 of 1992 and analogous Civil Rules Nos. 615/94 and 925 of 1994. The findings and observations of the Division Bench of this Court in paragraphs 14 and 15 of the judgment of the aforesaid cases at Annexure-A/12 are relevant and as such the relevant portion of the judgment is reproduced below :

"14. This apart, admittedly, the petitioners also appeared before the DPC held from November 18 to 21, 1992 for selection to the post of Supervisors. The DPC was held in terms of the Recruitment Rules for recruitment to the post of Supervisors. It is well settled principle of law that once statutory rules have been made, the appointment shall be only in accordance with the Rules. In *Jammu & Kashmir Public Service Commission, etc. v. Dr. Narinder Mohan and Ors. etc.* the

Apex Court had held in paragraph 7 of its judgment as under :

"7. The rule prescribes direct recruitment which would be done only by PSC or promotion committee duly constituted and by no other body. Therefore, ad hoc employee should be replaced as expeditiously as possible by Direct recruits. A little leeway to make ad hoc appointment due to emergent exigencies does not clothe the executive Government with power to relax the recruitment or to regularise such appointment nor to claim such appointments to be regular or in accordance with rules. Back door ad hoc appointments at the behest of power sources or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair play. The latter are the products of order and regularity."

In the case at hand, recruitment rules for the post of Supervisors only prescribes direct recruitment through selection. No other method has been prescribed by the Recruitment rules.

It is also admitted that the petitioners also competed for the post in the DPC held from November 18 to 21, 1992. If they are selected, well and good, but if they are not selected, they must give way to the regularly selected candidates. In this connection, we may refer to the decision of the Apex Court rendered in State of Haryana and Ors., v. Piara Singh and Ors., 1993 LLJ 937 The Apex Court had held in paragraphs 44 & 45 of its judgment as under :

"44. Before parting with this case we think it appropriate to say a few words concerning the issue of regularisation of ad hoc/temporary employees in Government service.

45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation efforts should always be to replace such an ad hoc/temporary employees by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee".

23. It appears from the aforesaid judgment that Respondents 5 to 8 appeared before the Selection Board and learned Division Bench observed that if these ad hoc appointees (Respondents 5 to 8) get their selection through the DPC it is well and good, but if they do not, then they must give way to the regularly selected candidates. In the DPC of 1992 it appears that out of 5 ad hoc appointees, only one has been recommended by the DPC and other four ad hoc appointees (Respondents 5 to 8) were not recommended by the DPC. Consequently, they should have given way to the regularly selected candidates for appointment to

the post of Supervisors. But, instead of doing so, the Govt. has resorted to regularisation of the appointment of Respondents 5 to 8 as per office memorandum of the Govt. at Annexure-B-1. The Government did not stop there. To regularise the appointment of Respondents 5 to 8, the Govt. has taken recourse to its executive power to relax the shortfall of four days in regularising the appointment of the Respondents 5 to 8, as is evident from the order of the Government dated May 20, 1995 (Annexure-B/2) read with the order of the Govt. dated March 28, 1995. I cannot agree with the submission of the learned counsel for the respondents, Mr. A. Nilmani Singh regarding the regularisation of Respondents 5 to 8 in the post of Supervisors vide Annexure-B/1 on the following grounds.

(a) The memorandum of the Government for regularisation of ad hoc appointees at Annexure- B/1 cannot apply in the case of the Respondents 5 to 8 as post held by these respondents were already notified by the Govt. and DPC was constituted in 1992 and Selection process had already been started for appointment to the six posts of Supervisors;

(b) as per the aforesaid memorandum of the State Govt. (Annexure-B/1) only those ad hoc appointees who have completed 2 years can be regularised. The Respondents 5 to 8 did not complete 2 years and the Govt. has taken recourse to its executive powers to relax the condition of 2 years so as to cover the shortfall of four days in the case of Respondents 5 to 8 ;

(c) the Respondents 5 to 8, ad hoc appointees, appeared before the Selection Board in 1992 but the Selection Committee did not recommend them for regular appointment;

(d) 1 (One) of the ad hoc appointees, Smt. K. Rani Devi, was recommended by the DPC for regular appointment. Consequently the four other ad hoc appointees, Respondents 5 to 8 who failed to get their selection, must give way for the regularly selected candidates ;

(e) the Division Bench of this Court in its judgment at Annexure-A/12 has clearly held that if Respondents 5 to 8 get their selection in the DPC held in 1992 that is well and good, but if they cannot get their selection, they must give way to the regularly selected candidates.

(f) if the regularisation of service of Respondents 5 to 8 are allowed to stand, this will encourage the backdoor appointment and there will be a serious complication in the matter of seniority between Smt. K. Rani Devi and Respondents No. 5 to 8.

24. Having regard to the facts and circumstances stated above, I am clearly of the view that the regularisation of Respondents 5 to 8 is the misuse of executive power of the Govt. and regularisation of the Respondents 5 to 8 must be held to be illegal and invalid. Accordingly, the order of regularisation of Respondents 5 to 8, namely H. Mitabina Devi, N. Ruparani Devi, G. Suprabha Devi, and Teckcham

Memcha Devi which were made by an order of the Govt. dated May 20, 1995 (Annexure B/2) is illegal and is, therefore, quashed.

25. The claim of the petitioners is that since there are sufficient vacancies available and their name appears in the waiting list panel, they should be appointed in the post of Supervisor. I cannot agree with the submission of the learned counsel for the petitioners in view of the law settled by Apex Court in 1996 LLJ 103 and State of Bihar and another Vs. Madan Mohan Singh and others, I have already, discussed aforesaid cases. In those cases the Apex Court has held that appointment from waiting list in excess of advertised post is unconstitutional and violative of Articles 14 and 16 of the Constitution. Consequently, there is no merit in the claim of the petitioners.

26. In view of the facts and circumstances stated above, I am of the opinion that there is no merit in these writ petitions. In view of the findings made above the State Government is directed to terminate the services of the three petitioners in C.R. Nos. 44, 45 and 46 of 1996 by giving them one month notice or may terminate their services forthwith after giving them one month's pay in lieu of notice. The order of regularisation of service of Respondents 5 to 8 vide Annexure-B/2 is quashed. The State Govt. is directed to consider the termination of service of Respondents 5 to 8 in view of the fact that they have failed to get their selection by the DPC held in 1992.

27. With the aforesaid directions, all these writ petitions are disposed of. Having regard to the facts and circumstances stated above, I make no order as to costs.