
(2006) 11 GAU CK 0039
In the Gauhati High Court

Kushal Sarmah

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 24-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 226, 309

Citation : (2007) 1 GLT 239

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Judgement

B.K. Sharma, J.—All the writ petitions pertaining to appointment and regularization of Junior Inspectors/Auditors of the Cooperative Societies have been heard together and are being disposed of by this common judgment and order. As will be noticed hereinafter, the matter makes shocking revelations of flouting the rules of recruitment Government guidelines, orders passed by this Court and eventually even the cabinet decision.

2. I have heard Mr. B.D. Konwar, learned Counsel for the petitioners as well as Mr. N. Dutta, learned Sr. counsel assisted by Mr. J. Roy, learned Counsel for the private respondents. I have also heard Mr. B.J. Talukdar, learned State counsel representing the Officials of the Cooperative Societies and also Ms. R. Chokraborty, learned State counsel for the other official respondents.

3. While in the first two writ petitions, namely W.P.(C) No. 1672/06 and W.P.(C) No. 2843/06, the challenge made is against regularization of service of the private respondents and for a direction to conduct a fresh selection for appointment, in the third writ petition, namely W.P.(C) No. 3217/ 06 filed by the private respondents, the prayer made is for their absorption on regular basis and to pay arrear salary w.e.f. 01.04.02. There is no dispute that all the private respondents numbering 74 were appointed as Junior Inspectors/ Auditors of the Cooperative Societies on ad hoc basis for a period of four months by order dated 23.03.01. Although initially the appointments were stated to be until further order, but by way of a corrigendum issued on 27.03.04. Such appoints were

made for only four months. For a ready reference, the order dated 23.03.01 and the corrigendum dated 27.03.02 are quoted below:

GOVERNMENT OF ASSAM OFFICE OF THE REGISTRAR OF THE COOPERATION SOCIETIES: ASSAM: GUWAHATI

No.CE.61/95/369 Dated at Guwahati the 23rd March 2001 ORDER

Pursuant to the Government order vide No.COOP.452/99/78 dated 21.03.2001 relaxing the existing recruitment rules and conveying clearance of the State Level Empowered Committee Sri Naba Jyoti Patowary, S/o: Nareshwar Das, resident of Bahama Maina Kuchi, Vill./P.O : Hajo, Dist. Kamrup, Assam is appointed temporarily in the interest of public service as Junior Inspector/Auditor or Cooperative Societies, on Ad hoc basis until further order scale of pay was Rs. 3490-90-4480-120-4600-EB-120-5200-175-6600-250-8100 per month plus other allowances as admissible under the rules. This order shall take effect from the date of his/her joining. He is posted in the office of the DRCS, Kamrup.

Sd/- illegible (A. Ahmed) Registrar of Cooperative Societies, Assam, Guwahati

GOVERNMENT OF ASSAM OFFICE OF THE REGISTRAR OF THE COOPERATION SOCIETIES: ASSAM: GUWAHATI

No.CE.61 /95/426 Dated at Guwahati the 27th March 2004 CORRIGENDUM

Ref: This Office Order No.CE.61/95/351 to 425 dated Guwahati

the 23rd March 2001. Please read "for four months" in place of "until further order" at ninth line of the order referred to above.

Sd/- illegible (A. Ahmed)

Registrar of Cooperative Societies, Assam, Guwahati

4. There is no dispute that the services of the private respondents have not been extended further by issuance of any order, yet it is their contention that they are still continuing in their services. The petitioners in the first two writ petitions have annexed Annexures- P/2, P/3, P/4 and P/6 office memoranda by which the Govt. of Assam in the Department of Personnel and Finance conveyed the decision of the Govt. that all direct recruitments should be made by way of regular appointment by following concerned service rules and that there should be no direct recruitment by way of ad hoc appointment in any department. By Annexure- P/6 memorandum dated 30.06.01, the Secretary to the Govt. of Assam in the Personnel Department expressed his serious concern on the recent instances of ad hoc appointments violating the instruction of the State Government. It is the contention of the petitioners that in view of such direction of the State Govt. itself, the private respondents could not have been appointed on ad hoc basis. The petitioners have also contended that there was no clearance of the State Level Empowered Committee (SLEC) towards filling up the vacant posts of Junior Inspectors/Auditors of the Cooperative Societies. They have also

referred to the notes furnished by the Personnel Department and the Chief Minister of the State in respect of ban on ad hoc recruitment and for following the rules for appointment.

5. After the aforesaid appointment of the private respondents limiting the same for only four months and when their terms of appointment was about to expire, they filed the writ petition being W.P.(C) No. 4930/01 praying for a direction to the respondents for extension of their services and for consideration of their cases for regular appointment against the posts. Although in the writ petition an interim prayer was made for protecting the services of the petitioners, this Court did not grant the prayer and only provided that if the authority needed the services of the Junior Inspectors/Auditors in the department, their services should not be replaced by any ad hoc or temporary arrangement.

6. In the aforesaid writ petition the State respondents filed their counter affidavit controverting the claim of the writ petitioners/private respondents contending inter alia that necessary steps were being taken for appointment on regular basis. It was also stated that the salaries could not be paid in view of the objection raised by the Finance Department on the ground that the appointment of the private respondents had been made in gross violation of the existing instruction of the Govt. As regards the extension of the services of the private respondents, it was mentioned that the Registrar of the Cooperative Societies had moved the Govt. for granting extension and the order in that regard was awaited. In paragraph -7 of the counter affidavit it was categorically stated that the posts would be filled up by observing the rules and instructions maintaining fair play and transparency and that the ad hoc appointees would have to make way to the regular appointees.

7. During the pendency of the aforesaid writ petition, the private respondents filed yet another writ petition being W.P.(C) No. 4323/02 making a prayer therein for payment of salary even for the period beyond the period of four months for which only they were appointed. The writ petition was disposed of by order dated 26.07.02 providing payment of salaries to the private respondents if they were continuing in their services. Thereafter, the private respondents filed contempt case No. 421/2003 alleging violation of the order dated 26.07.02.

8. In the contempt petition, the Principal Secretary to the Govt. of Assam in the Cooperation Department filed show cause reply. In the reply affidavit it was categorically stated that it was mandatory on the part of the appointing authority to fill up the vacancies on regular basis as per the rules in force after making necessary advertisement and conducting test/ interview etc. for selection of candidates with due regard to reservation policy. It was also contended that there was ban on ad hoc appointment and that the authorities had emphasized on regular appointment as per rules. It was also indicated as to how the Finance Department insisted for discontinuation of the service of the ad hoc appointees in view of the exiting ban on recruitment on ad hoc basis and as to how the same was approved by the Chief Minister of the State who at that time was also

holding the portfolio of Finance. In the note furnished by the Chief Minister, it was categorically observed that the aforesaid interim order of this Court did not provide for continuation of the services of the private respondents. The Chief Minister categorically observed that there was no need for any extension of the services of the private respondents.

9. In the reply affidavit, it was further stated that there was no valid order continuing the services of the private respondents beyond four months. Thus, in a nutshell, it was the contention of the Principal Secretary of the Department that in absence of any valid order continuing the services of the private respondents beyond four months, they were not entitled to receive their salaries.

10. In the contempt petition, the then Registrar of the Cooperative Societies also filed show cause reply reiterating the same stand that the private respondents were appointed only for four months and their services were never extended and that their salaries for the period of four months have been paid. It was also pointed out that there was no order from this Court extending the services of the private respondents. The objection raised by the Finance Department against the payment of salary beyond four months was also highlighted and that in absence of any order of extension, the private respondents have no legal claim for further salary. As regards the contention of the private respondents that they are continuing in their services, it was contended that they were never asked to continue in their services and that their continuation in service, even if any, being of their own, was of no consequence. In this connection, the statements made in the paragraph-19 of the counter affidavit is reproduced below:

19. That, the statements made in paragraph 17 as regards to their salaries has been explained above and unless their service are extended with the concurrence of the Finance Department, this deponent is helpless to pay their salaries. It is respectfully submitted that the petitioners' claim for attending duties regularly till date is not correct inasmuch as after 30.12.22 none of them are attending their duties at all and the District Officers were directed not to allow the petitioners to continue anymore as there were no concurrence from Finance Department and the Cabinet so far has not approved for extension order of the petitioners' services on ad hoc basis.

11. The first writ petition filed by the private respondents, i.e. W.P.(C) No. 4930/01 has been dismissed by this Court by order dated 09.03.05. As noted above, the prayer made in this writ petition was for extension of the service of the private respondents and also for regularization of their service. The order is reproduced below:

By this writ application, the petitioners numbering 74 have prayed for a direction to the respondents to extend their term as Junior Inspector/Auditor under the respondents. Such a claim has been made on the basis of their appointments by various orders passed in March, 2001. The appointment orders themselves stated that their such appointment was on ad hoc basis. Although initially their

such appointments were stated "until further order", later on, by a corrigendum issued on 27.03.2001 the aforesaid words were substituted by the words "for the months".

It is the case of the petitioners that pursuant to such appointments, they were sent for short terms training by Annexure-III order dated 22.05.2001. It is no dispute that the petitioners were appointed without any selection. Their appointments were on ad hoc basis for a limited period of four months. With the expiry of the period of four months, the appointments made in favour of the petitioners stood automatically terminated. The petitioners after having been appointed without any selection and advertisement and without following the due procedure of recruitment rules, cannot invoke the writ jurisdiction of this Court praying for extension of the term of their services which they accepted while joining their services in March, 2001. Merely because they have been sent for short term training, same will not clothe them with any right to continue in service. Needless to say that in public employment equal opportunity will have to be given to all eligible candidates and the petitioners cannot claim continuation in their ad hoc services on the basis of their initial appointments for a duration of four months. None appears for the petitioners, I have heard Mrs. R. Chokraborty, learned State Counsel.

This Court while entertaining the writ petition by order dated 20.07.01, passed an interim order to the effect that if the authority concerned needs the services of the petitioners as Junior Inspector/Auditor in the Department, the petitioners shall not be replaced by other ad hoc appointees. Thus, there was no stay order in favour of the petitioners to continue in their services.

Be that as it may, I am of the considered opinion that the writ petition merits dismissal. The respondents in their affidavit have also categorically stated that the petitioners were appointed on ad hoc basis in the exigencies of service and that their services cannot be continued. In view of the above, I do not find any merit in the writ petition and accordingly same stands dismissed. The interim order passed on 20.07.01 stands vacated.

Learned State counsel shall communicate to the Registrar of the Cooperative Society about his order passed today for which a copy of this order shall be furnished to her.

12. In the meantime, the private respondents filed yet another writ petition being W.P.(C) No. 3217/04 which is the third writ petition in this proceedings praying inter alia not to terminate their services. Another writ petition being W.P. (C) No. 2660/05 was filed by one Shri Rubul Saikia and others with the prayer for consideration of their candidatures for appointment to the post of Junior Inspectors/Auditors of the Cooperative Societies. While entertaining the writ petition, this Court by order dated 04.04.05 provided that the vacant posts of Junior Inspectors/Auditors of the Cooperative Societies should not be filled up except following the provisions of the rules in force, i.e. Assam Subordinate

Cooperative Services (Recruitment and Conditions of Service) Orders, 1989.

13. In the meantime, the Govt. of Assam in the Cooperation Department by its communication dated 03.02.06 issued under the signature of the Deputy Secretary, requested the Registrar of the Cooperative Societies to hold regular recruitment test for filling up all. 74 posts of Junior Inspectors/ Auditors of the Cooperative Societies held by the private respondents. It was intimated that over age in respect of ad hoc appointees was to be condoned and that they could also apply for regular recruitment.

14. The grievance made in the first two writ petitions is that the Registrar of the Cooperative Societies instead of holding regular selection for filling up the 74 vacant posts of Junior Inspectors/Auditors, has regularized their services by conducting written and vi-va-voce test confining the same only to 74 ad hoc appointees, i.e. the private respondents. Thus, here is a case that a colour of regular recruitment is sought to be given by confining the selection only in respect of ad hoc appointees to the debarment and deprivation of other eligible candidates.

15. Pursuant to such selection, the Registrar of the Cooperative Societies has is sued the impugned order dated 27.02.06 by way of appointing the private respondents on regular basis and/or regularizing their ad hoc services. In the order of appointment, their ad hoc appointments made vide order dated 23.03.01 has also been mentioned. Ironically, the effective date of appointment has not been mentioned although a direction has been issued to join their respective places of posting within 15 days from the date of issuance of the order.

16. Being aggrieved by the aforesaid action/order of the respondents, the petitioners have filed the first writ petition being W.P.(C) No. 1672/06 and this Court by order dated 16.03.06 suspended the impugned order dated 27.02.06 by which the private respondents have been regularized in their services.

17. Defying the aforesaid interim order dated 16.03.06 which was further extended, the Registrar of the Cooperative Society, Assam issued the order dated 18.04.06 deputing the private respondents to undergo training programmes with the duration indicated in the order. Another order dated 03.05.06 was also issued by the Additional Registrar of the Cooperative Societies allowing drawl of the salary from March/2006. These two orders have been issued in clear violation of the interim order dated 16.03.06 by which the very order of regularization of services of the private respondents was suspended.

18. During the course of hearing, an interesting development took place in respect of W.P.(C) No. 1672/06 filed by one Shri Kushal Sarmah. At the stage of hearing of the matter partially, he filed Misc. case No. 1909/06 seeking withdrawal of the writ petition with the submission that the authority has assured him of redressal of his grievance. The petitioner who was present in the Court was asked as to whether such redressal of grievance means cancellation and/or withdrawal of the impugned order of regularization of the services of the private

respondents. His statement was that the Registrar of the Cooperative Societies, Assam has assured him of a job in case of withdrawal of the writ petition and accordingly he has filed the Misc. application seeking withdrawal of the writ petition. With such kind of statement of the petitioner, the prayer for withdrawal of the writ petition was refused, more particularly when the matter was heard at length and apparent illegalities in the matter of appointment and regularization of the services of the private respondents were noticed. However, in the meantime, another writ petition being W.P.(C) No. 2843/06 which is the second writ petition in the instant proceeding was filed by some others making the same prayer as in the first writ petition, i.e. W.P.(C) NO. 1672/06. Thus, even otherwise also this Court was bound to decide the legality and otherwise of the impugned order dated 27.02.06 even if the prayer for withdrawal of the first writ petition had been granted.

19. The official respondents as well as the private respondents have filed their counter affidavit. Their simple stand is that pursuant to the Cabinet decision for regularization of service of the private respondents, their services have been regularized confining the selection process only in respect of the private respondents and that there was no need to advertise the posts and to hold regular selection as provided under the rules. Thus, the whole controversy centres around the Cabinet decision. Before proceeding to deal with the question as to whether even a cabinet decision can override the recruitment rules, I first proceed to deal with the cabinet decision itself.

20. The communication dated 03.02.06 relating to appointment of Junior Inspectors/Auditors issued by the Govt. of Assam in the Cooperation Department to the Registrar of the Cooperative Societies has been noted above by the said communication. Referring to the cabinet decision dated 27.01.06 a request was made to hold regular recruitment test for filling up 74 posts of Junior Inspectors/Auditors providing condonation of over age in respect of the ad hoc appointees. A bare perusal of the communication leaves no manner of doubt that the cabinet decision was for regular recruitment following the rules and not confining the recruitment by way of regularization of the ad hoc services of the private respondents. To quell any doubt, the learned State counsel was requested to produce the relevant file containing the cabinet decision arrived at in its meeting held on 27.01.06. On perusal of the file produced by the learned State counsel, it is clearly established that the Cabinet only approved regular recruitment against 74 posts and not to regularize their services in the manner and method in which the Registrar of the Cooperative Societies has done. For a ready reference, the minutes as contained in the filed No. Coop. 249/03 is reproduced below:

Item No.

File No.

Coop. 249/03 Cooperation Department Sub: Appointment of Junior Inspectors of Cooperative Societies on ad hoc basis in Cooperation Department. Regular

recruitment should be made to fill up these posts. The over age in respect of the serving ad hoc appointees is to be condoned and they can also apply if they so desired. The process should be completed within a month.

21. There is no scope for construing the above cabinet decision to be the one for regularization of services of the private respondents. By no stretch of imagination, the said cabinet decision can be said to be one for regularization of the service of the private respondents. Otherwise, there would not have been any provision in the minutes, permitting the private respondents also to apply for regular recruitment and condonation of their over age.

22. Learned Advocate General of the State who was requested to assist the Court in the matter in view of the involvement of the Cabinet decision, fairly submitted during the course of hearing, that the cabinet decision cannot carry any other meaning except the one that the posts earlier being held by the private respondents were required to be filled up through regular process of selection as per rules. Even in the order passed by this Court on 04.04.05 in W.P.(C) No. 2660/05, it was provided that the vacant posts of Junior Inspectors /Auditors should not be filled up except following the provisions of the recruitment rules, i.e. the Assam Subordinate Cooperative Services (Recruitment and Continuation of Service) Orders, 1989. This Order is still in existence and thus, could not have been flouted by the respondents so as to regularize the services of the private respondents de hors the recruitment rules.

23. This position, really speaking, renders the second issue as to whether a cabinet decision can render a recruitment rule in operative, is only academic, once it is found and held that the above referred cabinet decision did not provide for deviation from the recruitment rules and to regularize the services of the ad hoc appointees de hors the recruitment rules to the deprivation of other eligible candidates. Even if the interpretation sought to be given by the official respondents is accepted, then also the cabinet decision being contrary to the recruitment rules and the principles relating to open competition and recruitment, the impugned action on the part of the respondents being illegal is liable to be interfered with.

24. As noticed above, this Court has already dismissed the earlier writ petition filed by the private respondents, i.e. W.P.(C) No. 4930/01. In the judgment the principles relating to public employment has been emphasized. There the stand of the respondents, as reflected in the final order dated 09.3.2005, quoted above, the stand of the respondents was that the private respondents having been appointed on adhoc basis, their services can not be continued. In the subsequent order dated 04.04.05 passed in W.P.(C) No. 2660/05 also it has been emphasized that recruitment should be made following the recruitment Order 1989. Even while conveying the decision of the cabinet by the communication dated 03.02.06, the true to the cabinet decision, a request was made to fill up the posts through regular recruitment providing condonation of over age and participation of the ad hoc appointees in the event of their desire to do so.

However, the official respondents bypassing all these, conducted the so called selection by way of holding written test and vi-va-voce confining the same only to the private respondents to the deprivation of all other such eligible candidates. Needless to say that in any public employment equal opportunities to all eligible candidates in the selection process as per recruitment rules must be provided and there is no room for regularization of the services of the back door entrants. This aspect of the matter has been emphasized by the Apex Court in various decisions time and again.

25. It is not a case of even allowing continuation of the service of the private respondents. They were appointed only for four months and as has observed by the Apex Court in the Case of State of Gujarat and another Vs. P.J. Kampavat and others, , in case of temporary appointment dehors the rules for a particular period, such appointment comes to an end on expiry of the period prescribed. No order of termination as such is necessary for putting an end to such service, much less a prior notice. Their such appointments stood automatically terminated with the expiry of the period stipulated in the order of appointment.

26. The stand of the then Principal Secretary of the department and the then Registrar of the Cooperative Societies in the contempt proceeding was that, in absence of any orders of extension, the petitioners could not have continued in their services and that if at all they have been continuing in their services, same is on their own. However, in this proceeding the Commissioner and Secretary, Cooperation Department as well as the Registrar of the Cooperative Societies have taken altogether a different stand. According to them as per the cabinet decision, the services of the private respondents were required to be regularized. On the face of it, it is their willful and deliberate misunderstanding of the cabinet decision by way of taking recourse to conducting the selection confining the same only in respect of the private respondents and then to regularize their" services. I have failed to understand as to what was the necessity to conduct the selection, when as per their willful and deliberate misunderstanding of the cabinet decision, the services of the private respondents were to be regularized pursuant to the cabinet decision. If there services were to be regularized, there was no need to hold any selection. Thus, the holding of selection de hors the recruitment rules is a total farce and a slap on the principles underlying regular recruitment in any public employment.

27. There is another aspect of the matter. All the private respondents were appointed as ad hoc basis. Even for ad hoc appointments it is always desirable that equal opportunity should be given to all eligible candidates and such appointments can not be on pick and choose basis. In the instant case, the official respondents were directed to produce the relevant file in which the ad hoc appointments of the private respondents were initiated. They were also directed to produce the applications offering candidatures by the private respondents. However, the stand of respondents is that neither the file nor the applications are traceable. It is also not the case of the respondents that the private respondents

were appointed on ad hoc basis pursuant to an employment notice and giving equal opportunity to all eligible candidates. They have admitted that neither in the case of ad hoc appointments nor in regularizing their services, the reservation policy was followed. Thus, the recruitments in public employment have been made as per the sweet will of the appointing authority in violation of all the rules and the Commissioner and Secretary of the Department remained a mere spectator. He has rather supported the stand of the Registrar of the Cooperative Societies, Assam towards illegal regularization of the service of the private respondents and thereby not only has given the seal of approval to illegal appointment, but has also flouted the cabinet decision.

28. I have perused the records pertaining to the so called selection for regular recruitment. The private respondents participated in the written examination and they were invited for vi-va-voce as well, without first declaring the results of the written test. No minimum pass mark for clearing the written examination and the vi-va-voce was indicated. The private respondents simply appeared in the written examination and so also in the vi-va-voce test. Without declaring as to whether they have cleared the written examination and vi-va-voce test, their services have been regularized. However, this aspect of the matter need not detain us, once it is held that the very process of regularization of the services of the private respondents is arbitrary, illegal and violative of the fair play and transparency in the matter of public employment.

29. The recruitment rules, namely the Assam Subordinate Cooperative Services (Recruitment and Condition of Services) Orders, 1989 have laid down the detailed methodology for selection and appointment of the employees of the department. Order 4 provides for recruitment to the services by competitive examination to be conducted by the Registrar. Order 12 provides for recruitment to the services by competitive examination and for preparation of select list in order of merit. Seniority of the appointees is to be determined as per the merit positions obtained in the selection (Order 15). Order 17 provides for reservation to ST and SC candidates in accordance with the provisions of the Assam Scheduled Castes and Schedule Tribes (Reservation of Vacancies in Services and Posts) Act, 1978 and the Rules therein. There shall also be reservation in favour of the candidates belonging to other backward classes (OBC) including More Other Backward Classes (MOBC).

30. The very term of competitive examination as envisaged in the order implies participation of all eligible candidates in terms of the Order. Even otherwise also in any public employment all eligible candidates must be provided with equal opportunity to compete and the same cannot be confined to few to the likings of the appointing authority. Even as per the cabinet decision about which mention has been made above, the appointing authority was to conduct the selection as per the rules. However, the appointing authority deliberately misconstrued the same confining the selection only in respect of 74 ad hoc appointees (private respondents).

31. In case of Keshav Chandra Joshi and others etc. Vs. Union of India and others, the Apex Court held that the services rendered on ad hoc basis for 5 to 12 years cannot be taken into account for seniority. Countering the argument that the Rules should be deemed to have been relaxed by the Governor, it was held that such power could be exercised by the Governor in consultation with the PSC. In that case the Apex Court made the distinction between "rules of recruitment" and "conditions of service". It observed that to be a member of the service in a substantive capacity, it must be preceded by selection of a direct recruit. It was observed that "If the contention of the promotees that rules of recruitments are conditions of service is accepted. It would be open to the governor to say that "I like the face of "A" and am satisfied that he is fit to be appointed; I dispense with the rules of recruitment and probation and appoint "A" straight away to the service in a substantive capacity as Assistant Conservator of Forests". It was held that the basic rules of recruitment which is not condition of service, cannot be relaxed.

32. In the case of v. Sreenivasa Reddy (supra), the Apex Court referring to the case of K.C. Joshi reiterated the views expressed by the Apex court. It was noticed as to how the Governments resort to massive ad hoc appointments de hors the rules giving a go-bye to make recruitment in accordance with the rules and then resort to regularization of such appointments exercising the power under Article 320(3) proviso or Article 162 to make them the members of the service. The Apex Court observed that such practice not only violates the mandates of Article 14 and 16 but also denies to all eligible candidates, their legitimate right to apply for and stand for selection and get selected.

33. In the case of J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., the Apex Court was involved with the issue, whether the ad hoc appointments of the respondents were valid and whether it was permissible to the Government to use its executive power to regularize such ad hoc appointments bypassing the PSC. Countering the direction given by the High Court to regularize the services of the respondents, the Apex Court observed in paragraph 10 of the judgment as follow:

It is true that the ad hoc appointees have been continuing from 1986 onwards but their appointments are de hors the Rules. Rules prescribed only two modes of recruitment, namely direct recruitment or promotion by selection. As regards the lecturers are concerned, it is only by direct recruitment. The mode of recruitment suggested by the High Court, namely regularization by placing the service records of the respondents before the PSC and consideration thereof and PSC's recommendation in that behalf is only a hybrid procedure not contemplated by the rules. Moreover, when the rules prescribed direct recruitment, every eligible candidate is entitled to be consideration and recruitment by open advertisement which is one of the well accepted modes of recruitment. Inviting applications for recruitment to fill in notified vacancies is consistent with the right to apply for, by qualified and eligible persons and

consideration of their claim to an office or post under the State is a guaranteed right given under Articles 14 and 16 of the Constitution. The direction, therefore, issued by the Division Bench is in negation of Articles 14 and 16 and in violation of the statutory rules. The PSC cannot be directed to devise a third mode of selection, as directed by the High Court, nor be mandated to disobey the constitution and the law.

34. In the case of Excise Superintendent Malkapatnam, Krishna District, A.P. Vs. K.B.N. Visweshwara Rao and Others, the Apex Court deprecated the practice of making appointment only through the Employment Exchange sponsored candidates. In paragraph 6 of the judgment the following observation was made:

Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the name sponsored, though their names were either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under this circumstances, many a deserving candidates is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange and employment exchange should sponsor the names of the candidates to the requisitioning department for selection strictly according to the seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.

35. Referring to the case of P. Ravindran and Others Vs. Union Territory of Pondicherry and Others, the learned Counsel for the private respondents submits that having regard to the cabinet decision referred to above, the appointing authority, i.e. the Registrar of the Cooperative Societies, Assam was within his competence and jurisdiction to regularized the service of the private respondents. In the said case, the Apex Court deprecated the Government for exercising the power under Article 320 of the Constitution taking of the post form the purview of the commission and to regularize services de hors the commission. In another case reported in the same volume, i.e. Ram Ganesh Tripathi v. State of U.P., the Apex Court held that the Government could not have treated the respondents and other ad hoc employees whose services were regularized on 17.05.85 as persons regularly appointed from an earlier date, nor could the Government have counted seniority from an earlier date either for promotion to higher post or for the purpose of giving selection grade.

36. The Apex court in the case of Suraj Parkash Gupta and Others Vs. State of Jammu & Kashmir Others, noticing the recent trend of cases held that the recruitment rules cannot be relaxed. It emphasized on the need of requiring strict conformity with the Recruitment Rules for both direct recruits and promotees. The wholesale regulation order by way of implied relaxation of the Recruitment Rules was held to be invalid. It was held that the power to relax the Rules cannot be treated as wise enough to include a power to relax rules of recruitment. Even for relaxation, the reasons are required to be recorded and even if such reasons are recorded, it was emphasized that the recruitment rules themselves cannot be treated to be producing hardship and bypassed on that ground.

37. In the recent decision reported in (2006) 4 SCC 01 (Secretary of State, Karnataka v. Uma Devi), the Apex Court has elaborately discussed the principles involving public employment. Expressing its concern in respect of a class of employment described as "litigious employment", the Apex Court has expressed its concern over its rise like aphorism seriously impairing the constitutional scheme. It has been observed that while directing that appointments, temporary or casual, be regularized or made permanent, the Court is swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It has been observed that such an argument fails when decided in the touchstone of constitutionality and equality of opportunity enshrined in the Article 14 of the Constitution. In the instant case, the private respondents were appointed only for a period of four months and their condition in service either in the strength of the interim orders passed by this Court or on the basis of the love and affection showered by appointing authority, same cannot clothe them with any right. Some of the observations made by the Apex Court in the said case are noted below:

43. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by

following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

45. While directing that appointment, temporary or casual, be regularized or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be rue that he is not in a position to bargain -not at arm's length- since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining [power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succour to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted

fully knowing the nature of it and the consequences flowing from it. In other words, even when accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not (sic) one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution.

47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

38. Similar view has been expressed in *Principal, Mehar Chand Polytechnic, Jalandhar City and Another Vs. Anu Lumba and Others*, It has been observed thus:

16. Public employment is a facet of right to equality envisaged under Article 16 of the Constitution of India. The State although is a model employer, its right to create posts and recruit people therefore emanates from the statutes or statutory rules and/or rules framed under the proviso appended to Article 309 of the Constitution of India. The recruitment rules are framed with a view to give equal opportunity to all the citizens of India entitled for being considered for recruitment in the vacant posts.

17. Parliament for giving effect to the provisions of Article 16 of the Constitution enacted the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. The statutes and the statutory rules framed by the Union and other States also invariably require issuance of public notices so as to enable all eligible candidates to file applications thereof. The Constitution and/or statutes or statutory rules do not make any distinction between post and posts. The

requirement process for all posts is the same. 18. In a large number of cases, this Court noticed that the holders of public posts had been making recruitments in total violation of the recruitment process. In regard to the question of regularization also, different orders had been passed by different Benches. Some Benches pointed out that the equality doctrine enshrined in Articles 14 and 16 of the Constitution of India had been grossly violated by the authorities, and the provisions of the recruitment rules were given a complete go-by. Even the beneficial provisions of the reservation applicable to the backward classes of people had not been adhered to.

21. The Constitution Bench of this Court while answering some of the said questions in no uncertain terms held that any appointment made in violation of the statute or in derogation of the equality clause contained in Articles 14 and 16 of the Constitution would be void and of no effect. It was opined that such persons who had obtained such illegal appointments were not entitled to claim regularization.

39. In the case of Accounts Officer (A and I) A.P. SRTC and Ors. v. P. Chandra Sekhara Rao and Ors. reported in (2006) 7 SCC 488 reference has been made to the aforesaid decision of Umadevi as well as the decision of the Apex Court in A. Umarani Vs. Registrar, Cooperative Societies and Others, in which it has been categorically observed that:

No regularization is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules.

40. In the aforesaid decision of P. Chandra Sekhara Rao (supra), the Apex Court has observed that no direction for regularization could have been made on the basis of the guidelines issued, which in any event could not have been made even in terms of Article 162 of the Constitution of India. In the case of A. Umarani (supra) involving appointment of a large number of employees without notifying the vacancies to the Employment Exchanges and without following other mandatory provisions of the rules relating to recruitment and without even following the reservation policy of the State as in the instant case, the Apex Court held that the State cannot invoke the power under Article 162 of the Constitution to regularize such appointments. It has further been observed that regularization cannot give permanence to an employee whose service is ad hoc in nature. Referring to the decision in the State of U.P. and others Vs. U.P. State Law Officers Association and others, it has been observed that it is equally well settled that those who come by back door should go through that door.

41. The Apex Court in the said case of A. Umarani further held:

If the appointment itself is in infraction of the rules or it is in violation of the provisions of the Constitution illegality cannot be regularized. Ratification or regularization is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner

which does not go to the root of the appointment. Regularization cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.

42. It has further been observed in *A. Umarani (supra)* that no regularization is permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules. As noticed above, in terms of the provision for appointment as envisaged under the aforesaid Order of recruitment to the services is to be by way of competitive examination providing reservation to reserved category candidates. The respondents merrily flouted with the provisions of the Order to make their own choice both for ad hoc appointments and for regular recruitments.

43. In *Binod Kumar Gupta v. Ram Ashray Mahato* reported in AIR2005SC2103 , the apex court noticing the illegality and lack of transparency in making the appointments and upholding the judgment of the High Court in not interfering with the illegal appointments, although the appointees confirmed in service for long 15 years observed thus:

The District Judge, who was ultimately responsible for the appointment of Class-IV staff violated all norms in making the appointments. It is regrettable that the instructions of the High Court were disregarded with impunity and a procedure evolved for appointment which cannot be said to be in any way fair or above-board. The submission of the appellants that they had been validly appointed is in the circumstances unacceptable. Nor can we accede to their prayer to continue in service. No doubt, at the time of issuance of the notice on the special leave petition, this Court had restrained the termination of services of the appellants. However, having regard to the facts of the case as have emerged, we are of the opinion that this Court cannot be called upon to sustain such an obvious disregard of the law and principles of conduct according to which every Judge and any one connected with the judicial system are required to function. If we allow the appellants to continue in service merely because they have been working in the posts for the last 15 years we would be guilty of condoning a gross irregularity in their initial appointment. The High Court has been more than generous in allowing the appellants to participate in any fresh selection procedure as may be held and in granting a relaxation of the age limit.

44. The manner and method in which the matter has been dealt with by the respondents leads to the irresistible conclusion that the private respondents have been favored at the behest of someone at the helm of affairs. First they were appointed on ad hoc basis without any advertisement and selection giving equal opportunity to all eligible candidates. As has been observed above, even in case of ad hoc employment fair play and transparency demand equal opportunity to all eligible candidates. The respondents could not even produce the file in which the ad hoc appointments of the private respondents were proposed and finalized. They also could not produce the applications and/or any evidence of offering the

candidatures by the private respondents. Thus, the question necessarily arises as to how they were appointed. As per the own admission of the official respondents neither in the matter of ad hoc nor towards regularization of their services, the reservation policy was followed and the appointments were made without resorting to reservation.

45. The private respondents were first appointed on ad hoc basis for four months and they have been allowed to continue in their service without any order of extension. The finance department of the State has rightly objected to the grant of extension of service to the private respondents in view of the policy decision of the Govt. itself not to resort to ad hoc appointment and to grant any extension thereof. Here is a case in which departmental authorities as well as appointing authorities have deliberately violated the adopted policy of the State and the instruction of the Chief Minister of the State which was in tune with the policy decision and the principles underlying public employment.

46. The entire episode leads to the irresistible conclusion that the authorities at the helm of affairs favoured the private respondents to save their appointments at any costs, even by way of bypassing the orders of this Court as well as appropriate departmental authorities even to the extent of violating the cabinet decision. This should be the matter of serious concern for the State Government requiring initiation of departmental proceeding against the erring officials. The matter also requires to be investigated by an independent agency to find out as to how the illegal appointments could be made by flouting all norms and even by defying the cabinet decision.

47. The stand of the State respondents in the earlier writ proceeding and contempt proceeding has been noted above. It was the pleaded stand that if the private respondents have been continuing in their services without any order of extension beyond four months, they have been doing so at their own accord. It was also contended that the appointment should be made strictly in accordance with rules. However, in the instant proceeding both the Commissioner and Secretary of the Department as well as the Registrar of the Cooperative Societies, Assam have taken the stand that the process of regularization was initiated and completed as per the decision of the Cabinet. Even a layman on perusal of the cabinet decision will understand the meaning of the decision which is to make recruitment to the aforesaid 74 posts of Junior Inspector/Auditor of the Cooperative Societies by regular process of selection allowing the private respondents to participate in the same alongwith other eligible candidates. However, the departmental authorities giving their own interpretation to the same have resorted to the strange procedure of regularization by conducting written examination and oral test confining the same only to 74 ad hoc appointees. Ironically no one has failed and all of them have qualified and naturally so when the said authorities are somewhat bonded to them with the pledge of favouring them to the deprivation of all others, who are not even fortunate to offer their candidatures, even in the matter of public employment.

48. In view of the above, both on facts as well as on law the impugned order dated 27.02.06 (Annexure P/21) cannot be sustained and liable to be interfered with which I accordingly do. Ad hoc appointments of the private respondents have already come to an end.

49. Upon setting aside the impugned order the next question which arises for consideration is as to whether the private respondents are entitled to any salary. Admittedly they claim to have continued in service beyond the period of four months for which they were appointed. Their such appointment were at a time when there was ban on ad hoc appointments. This is precisely the reason as to why the finance department of the Govt. has objected to payment of salary to them. In such a situation I am of the considered opinion that any direction for payment of salary except the period which the respondents have admitted for payment of salary will be antithesis to the position in which it has been held that the private respondents were not entitled to continue in their services and the impugned order dated 27.02.06 has been set aside.

50. The matter does not come to an end here. It is not only the duty of the court to interfere with the mischief committed by the concerned authorities, but it is also the to see that in future no such recurrence takes place. Entire discussion made above leads to only one conclusion that there is somebody at the helm of affairs who has all along favoured the private respondents for obvious reasons. That somebody is so powerful that he could defy the adopted policy decision of the Government and even the sound opinion given by the highest executive of the State, the Chief Minister. In such a situation, it will be appropriate for the State Govt. to conduct an enquiry as to how the illegal appointments could be made. It is also desirable that departmental proceeding should be initiated against the erring officials.

51. At this stage, it will be appropriate to refer to the strange stand taken by Mr. M. Ali, Addl. Registrar of the Cooperative Societies, Assam as recorded in the order dated 16.05.06. On being pointed out as to how inspite of the interim order of stay of the impugned order of regularization, i.e. the orders dated 27.02.06, the orders dated 18.04.06 and 03.05.06 could be issued permitting the private respondents to undergo training and providing them salary, his answer was that the interim order was not continued, but on being pointed out that same was continued vide Misc. case No. 942/06, it was submitted by him that the department was not concerned with Misc. case. In such a situation, it was recorded that such stand on his part prima facie constitutes contempt of Court. However, later on by filing an affidavit, he tried to explain his stand as recorded in the order dated 16.05.06 that he made the submission on a wrong notion of the matter.

52. In view of the above, the writ petition being W.P.(C) No. 2843/2006 is allowed awarding a cost of Rs. 20,000/-against the official respondents to be realized by the Registry in accordance with rules. The writ petition being W.R(C) No. 1672/2006 in which the petitioner by appearing in person before the Court

took a strange stand that he would like to withdraw the writ petition in view of the assurance of the Registrar of Co-operative Societies that he would be provided with a job in case of withdrawal of the writ petition, is also disposed of in terms of this judgment. The third writ petition being W.P. (C) No. 3217/2006 stands dismissed for the reasons stated above. The State Govt. shall take appropriate action against the erring officials in accordance with the observations made above.

53. Writ petitions are answered in the above manner.

54. The Registry shall send copies of this judgment and order to the Chief Secretary of the State and the Commissioner and Secretary, Finance Department for their appraisal and necessary action.