

(1993) 10 PAT CK 0002

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 103 of 1990

Nand Kumar Prasad and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-10-1993

Acts Referred:

Citation : (1993) 10 PAT CK 0002

Judgement

B.P. Singh, J.—In this batch of writ applications the Petitioners have prayed for substantially the same reliefs and, therefore, these writ petitions have been heard together, and are being disposed of by this common judgment. At the threshold I may briefly indicate the scope of the writ petitions. The Petitioners were appointed by the State Leprosy Eradication Officer of the State of Bihar in the month of June 1987 as Non-Medical Assistants, and were posted at the different Leprosy Rehabilitation Centres under different Civil Surgeons in different districts. They claim to have joined their places of posting, but the Secretary, Government of Bihar, issued a letter only a few days later on 15-6-1987 terminating all the appointments, since they were said to have been illegally made by the State Leprosy Eradication Officer. Consequently, the Civil Surgeons, under whom the Petitioners were working, stopped, them from functioning against the post to which they were appointed. Consequently, the Petitioners did not receive the salaries and allowances due to them. They had, therefore, represented to the State Government and ultimately the Director, Primary Health Services, by his letter dated 24-4-89 communicated to the authorities concerned that the State Government had reconsidered the matter, and had directed that 467 persons appointed by the then Leprosy Eradication Officer be absorbed in Service. A list of 467 appointees was appended to the said communication dated 24-4-89. Despite the letter of the Director, Primary Health Services, the Petitioners were not allowed to join, which compelled them to file the instant writ applications. Some of the writ applications also refer to a subsequent telegraphic message communicating a subsequent order dated 2-5-1989 issued by the Director-in-Chief, Health Services, staying pending further enquiry, the order

dated 24-4-1989 which had directed absorption of the Petitioners. The Petitioners have, therefore, prayed that the order terminating their appointments dated 15-6-1987 be quashed, and the order of the State Government communicated by the Director, Primary Health, Services, dated 24-4-1989 be implemented. In some of the writ applications the Petitioners have also prayed for quashing of the subsequent order dated 2-5-1989, whereby the earlier order dated 24-4-1989 has been stayed, pending further enquiry.

2. Large number of writ applications were admitted by this Court on different dates, and they were directed to be heard together. It appears that when C.W.J.C. No. 103/90 was being heard at the admission stage, the learned Advocate General appearing on behalf of the Respondents informed the Court that in the list of 467 persons appended to the communications dated 24-4-1989, there were about 100 new names, which had been included in the list by the Director, Primary Health Services even though those 100 persons had not been appointed at any stage, and consequently their service had never been terminated. Such names included in the list circulated by the Director, Primary Health Services, were of those persons who had managed to get their names included in connivance with the members of the staff of the Health Department. Those names did not appear in the list of 467 appointees submitted by the appointing authority, namely, the Leprosy Eradication Officer. Some of the Petitioners have also contended in the writ applications that 100 new names had been wrongly included in the list appended to the communication dated 24-4-1989. However, in C.W.J.C. No. 9939 of 1989 filed on behalf of Bihar Chikitsa Jan Swasth Karmachari Sangh, the Petitioners have taken the stand that the list appended to the communications dated 24-4-1989 contains the list of genuine appointees, who had been appointed by the competent authority, although on ad hoc basis.

The learned Advocate General had prayed for liberty being given to State pending disposal of the writ petitions, to issue any appropriate order after making an enquiry into the legality of the appointments said to have been made by the Leprosy Eradication Officer. The Court rejected the prayer on the ground that the very communication dated 24-4-1989 was under examination in the writ petitions and hence it would not be proper to direct any enquiry or issuance of any order during the pendency of the writ application. That question was left to be considered by the Bench hearing the writ applications at the stage of final disposal. However, the Court directed that as regards 100 persons, whose names are said to have been included at a later stage, and whose names find place in the list appended to the communication dated 24-4-1989, the State may, if so advised, hold a detailed enquiry as to how their names were so included, and to file a counter-affidavit giving details of such an enquiry. The Bench admitting the writ applications observed that since the dispute was pending for more than three years, it was just and proper that the writ application be heard by a Special Bench consisting of three Judges as early as possible. Accordingly, these writ applications were placed before a Full Bench of this Court presided over by

Hon"ble the Chief Justice. After considering various aspects of the matter, the Full Bench held that the reference was not maintainable at that stage, because no terms of reference had been set out, no question of law had been formulated, and it was not stated that there were conflicting decisions of two or more Division Benches of this Court. The order making the reference did not indicate that the Bench was inclined to differ with any other decision by a Division Bench of this Court. However, the Full Bench clarified that in the enquiry, in so far as it related to the inclusion of the names of 100 persons in the list appended to the order dated 24-4-1989, only the question of fact was to be enquired into and not the question of law. The enquiry was to be confined to the question as to whether those 100 persons were in fact appointed at any stage whatsoever, and if so whether their appointments were in fact terminated. With these observations the writ applications were sent back to a Division Bench for disposal. I may only notice that it was directed that C.W.J.C. No. 9939 of 1989 shall be heard separately.

3. I shall now refer to the facts in detail. The representative facts are taken from C.W.J.C. No. 103 of 1990.

4. According to the Petitioners, permanent vacancies existed in the various Leprosy Rehabilitation Centres of the Health Department. Applications were invited from eligible candidates for appointment to the post of Non-Medical Assistant, Peon and Helper. An advertisement to this effect was published in the daily newspapers "Aaj" and "Aryavarta" on 23-1-1987 and 26-1-1987 respectively. The Petitioners applied for appointment to the post of Non-Medical Assistant. After the interview, the Petitioners were appointed by the appointing authority (Respondent No. 4), namely, the State Leprosy Eradication Officer. They were deputed to work as Non-Medical Assistants in the different Leprosy Rehabilitation Centres under the Civil Surgeons of Aurangabad and Palamau. The Petitioners were appointed under different memos, all issued on 1-6-1987, which has been annexed as Annexure-1 series. A perusal of Annexure-1 series discloses that the Petitioners were appointed to the post of Non-Medical Assistant on a purely temporary and ad-hoc basis. Soon after their appointment, the Secretary to the Government of Bihar Department of Health, issued an order (Annexure-2) communicating to all Regional Deputy Directors of Health Services and Civil-Surgeons-cum-Chief Medical Officers that the Government on coming to know about the illegal manner in which the State Leprosy Eradication Officer had been making appointments, and after proper consideration of the matter, has decided that all illegal appointments made by the State Leprosy Eradication Officer be cancelled, with effect from the date of issuance of the order. All officers were required to report compliance within one week. It will be noticed that Annexure-2 was issued only 15 days after the issuance of the letters of appointment. The Petitioners contend that no order of termination was ever issued to the Petitioners, but after issuance of Annexure-2 the Civil Surgeons stopped allotment of work to the Petitioners. Thereafter, Dr. Rajendra Prasad, the then State Leprosy Officer (appointing authority) was required by letter dated

14-3- 1988 to submit the list of persons appointed by him against Class III and Class IV posts. Accordingly, he submitted a list of 467 persons. Out of the seven Petitioners, the names of three appeared in the said list. The names of Petitioners Nos. 1, 2 and 3 appeared at serial Nos. 437, 372 and 376 respectively in the aforesaid list. Since the Petitioners were not being paid their salaries, they filed an application before the State Government. The State Government after a reconsideration of the entire matter, by its letter dated 24-4-1989, issued by the Director, Primary Health Services, communicated its decision that all those persons appointed against Class III and Class IV posts by the then State Leprosy Eradication Officer, Dr. Rajendra Prasad, be absorbed in service afresh, subject to the conditions that they shall be entitled to their pay and allowances only from the date of their joining, and shall not be entitled to pay and allowances for the past period. The aforesaid communication issued by the Director, Primary Health Services dated 24-4-1989 has been annexed as Annexure-3. Appended to the aforesaid communication is the list of 467 persons appointed against Class III and Class IV posts. The names of all the Petitioners appear at serial Nos. 430, 372, 376, 463, 364, 465 and 437.

At this stage I may only observe that the names of Petitioner Nos. 4 to 7 did not find place in the list submitted by the appointing authority, but their names did find place in the list appended to the communication dated 24-4-1989.

5. The grievances of the Petitioners is that when they went to join their posts pursuant to the communication dated 24-4-1989 they were not allowed to do so and they were informed that only those who had obtained orders from the High Court could be allowed to join. The Petitioners have referred to several orders passed by this Court in different writ applications, whereby the Petitioners of those writ applications were permitted to join pursuant to orders of this Court. The Petitioners contended that the policy followed by the authorities in permitting only some persons to join pursuant to the communication dated 24-4-1989, was arbitrary and discriminatory, and all those persons whose names found place in the list appended to the aforesaid communication must be permitted to join. It is the case of the Petitioners that they were validly appointed by the appointing authority pursuant to an advertisement, and that the order (Annexure-2) dated 15-5-1987 directing cancellation of those appointments was illegal. The State Government, having reconsidered the entire matter, changed its earlier decision and directed that the persons so appointed be absorbed in service. The Respondents were, therefore, not justified in refusing to permit the Petitioners to join against the posts to which they had been validly appointed.

6. I may, however, observe that in C.W.J.C. No. 2474 of 1990, where substantially the same facts have been pleaded, the Petitioners have also prayed for quashing of an order (Annexure-7) in that writ application) which is a relex message issued by the Director-in-Chief, Health Services, Government of Bihar, Patna, to all Civil Surgeons intimating that the Minister of Health had directed

that his order dated 24th April, 1989 be stayed till further orders, as some complaints had been received in this connection which were under examination. The Civil Surgeons and the Regional Deputy Directors were, therefore, directed not to accept any joining report, and if some have already been accepted by them, its implementation should also be stayed till further orders. It will thus, appear from the aforesaid Annexure-7 dated 2-5-1989, that only about a week after the issuance of Annexure-3 dated 24-4-1989, its operation was stayed by Annexure-7.

7. In the counter-affidavit filed on behalf of the Respondents in C.W.J.C. No. of 1990, the stand of the Respondents is to the following effect. The State Leprosy Eradication Officer had made appointments illegally and, therefore, the State Government having come to know of it, issued a direction to terminate all the appointments. Since the appointments were illegally made, the Petitioners could not seek any relief before this Court. It has been contended in the counter-affidavit that though the State Leprosy Eradication Officer made appointments against Class III and Class IV posts, the advertisement issued by him did not at all relate to Class IV posts and, therefore, appointments made against Class IV posts were clearly illegal. It has been explained that several Class III and Class IV posts in the Department had fallen vacant during the 6th and 7th five year plan period under the National Leprosy Eradication Programme sponsored by the Government of India. To fill up those posts the State Government had constituted an Appointment Committee consisting of the Deputy Director, T.B. as the Chairman, the Assistant Director, Filaria, the State Leprosy Eradication Officer, and an officer of the Department belonging to a Scheduled caste, as its members. This was done vide Government letter No. 284(11) dated 30th December, 1986. The Appointment Committee was empowered by the State Government to recommend appointments. The State Leprosy Eradication Officer was the member Secretary of the Committee. An advertisement was issued for appointment against Class III posts only, and the last date fixed for receiving the application was 15th February, 1987. However, even before the expiry of the last date for receiving applications, the Government received reports that several appointments had been made even prior to the expiry of the last date for receiving applications by the then State Leprosy Eradication Officer, Dr. Rajendra Prasad, 15th February, 1987, being the last date for receiving applications, the Joint Secretary in the Department of Health by his letter dated 16-2-1987 as well as the Director-in-Chief, Health Services by his letter dated 17-2-1987 directed the then State Leprosy Eradication Officer not to make appointments pursuant to the advertisement. Those communications have been annexed as Annexures B and C to the counter-affidavit. The Director-in-Chief, Health Services, again by letter dated 20th May, 1987, asked the State Leprosy Eradication Officer to explain as to how and in what circumstances the appointments were made by him despite the directions issued by the Department not to make appointments. A copy of the said communication has been annexed as Annexure-D. The State Leprosy Eradication Officer did not respond to the said communication. In those

circumstances, after careful consideration, the State Government vide Government order dated 623(18) dated 15th June, 1987, suspended the appointing authority, namely, Dr. Rajendra Prasad, and simultaneously, by Government order Nos. 685(18) of the same date cancelled all the illegal appointments made by the aforesaid officer. These orders have been annexed as Annexures E and F to the counter-affidavit. By Anr. order issued on the same day being Government Order No. 584(18), Dr. B.K. Jha, Regional Deputy Director, Health Services, Patna Division, was directed to perform the functions of the State Leprosy Eradication Officer in addition to his own duties. The said communication is annexed as Annexure-G. When Dr. Jha assumed charge as State Leprosy Eradication Officer he found that there were as many as 22858 unopened envelopes lying in the office. These envelopes contained applications from the candidates who had applied in response to the advertisement published in the local dailies for appointment against the posts of Non-Medical Assistant, a Class III post. He got those envelopes opened and necessary entries were made in a register. These facts clearly demonstrate that the appointing authority appointed persons who had, perhaps, not even applied in response to the advertisement issued, since envelopes numbering 22858 received in response to the advertisement, were lying unopened in the office of the State Leprosy Eradication Officer. On the other hand, Dr. Rajendra Prasad did not hand over charge of the files relating to the appointments, and other relevant files and documents, including the issue register etc. In response to a communication dated 14-3-1988 Dr. Rajendra Prasad replied-vide letter dated 25-10-1988 stating that 467 persons were appointed by him against Class III and Class IV posts. The letter of Dr. Rajendra Prasad dated 25-10-1988 has been annexed as Annexure-H to the counter affidavit. It also contains a list of 467 persons appointed by him.

It is not disputed that the then Director-in-Chief, Health Services had issued a Communication on 24-4-1989 allowing 467 persons whose names found mention in the list appended to the communication, to join the posts against which they had been appointed, but when all facts were brought to the notice of the Health Minister, and he was apprised about the illegal manner in which the appointments had been made, an order was issued on 2-5-1989 staying the operation of the order dated 24-4-1989. It is asserted that in the list appended to the communication dated 24-4-1989 there are 100 names which did not find mention in the list submitted by Dr. Rajendra Prasad, the appointing authority. The matter was under examination by the Lok Ayukta, Bihar. Apart from departmental proceeding, the State was also contemplating criminal prosecution of the concerned officers, who were involved in making illegal appointments and issuing the orders permitting the Petitioners to join.

8. In C.W.J.C. No. 2474 of 1990 the Petitioners have also challenged the order dated 2-5-1989 staying the earlier order passed on 24-4-1980. To the writ application an order of this Court is annexed as Annexure-8 in which this Court had directed that in view of the order dated 24-4-1989 those persons who

wanted to join should be permitted to join, and that in each and every case the person concerned should not be compelled to move this Court. It appears from a perusal of the order in C.W.J.C. No. 9764 of 1989, that the fact regarding stay of the order dated 24-4-89 by a subsequent order dated 2-5- 1989 was not brought to the notice of the Court, and in these circumstances the aforesaid order was passed. When the instant writ application (C.W.J.C. No. 2474/90) came up for admission, a Bench of this Court; passed an order on 11-7-1990 issuing notice to the Director-in-Chief, Health Services to show cause as to why he should not be punished for contempt of Court for the reasons that inspite of the order (Annexure-8) passed in C.W.J.C. No. 9764/89 the Director-in-Chief. was trying to by pass the matter. In that connection a show cause was filed on behalf of the Director-in-Chief in which detailed facts were stated with regard to the manner in which different orders were passed by the Government and the reasons therefor. Subsequently, a supplementary counter-affidavit was filed on behalf of the Respondents on 7-4-1992 referring to the show cause filed on behalf of the Director-in-Chief (Respondent No. 3) and praying that the same may be treated as supplementary counter-affidavit on behalf of the State. That is how the show cause has been treated as a counter-affidavit on behalf of the Respondents in these writ applications.

9. It is necessary to refer to some of the facts stated in the aforesaid show cause/ counter-affidavit, because it refers to the circumstances and the manner in which the order dated 24-4-1989 and the subsequent order dated 2-5-1989 staying the operation of the earlier order, were passed. It is stated in paragraph No. 15 of the show cause that after the change of ministry headed by Sri Bindeshwari Dubey, the Minister I/C of the Health-Department in the Successor Government with the intention to give legal shape to the illegal appointments made, took undue interest in the matter which was apparent from, the fact that the Private Secretary to the then Minister, Health-Vide V.O.I. No. 286(p) dated 27-1-1989 conveyed the Minister's desire that the file relating to the illegal appointments made by the State Leprosy Eradication Officer should be placed before the Minister on 27-1-1989 The files were sent to the Private Secretary to the Minister by the Registrar on 27-1-1989. On 29-1-1989 the Minister directed that all 467 persons should be reinducted in service, and further, the Chief Medical Officers should be directed to accept the joining report of concerned persons at once. The Secretary Department of Health protested against the above direction of the Minister on 2-2-1989 and on 2-3-1989, but was overruled. The Secretary, Department of Health had pointed out that the Minister's order was against the decision of the Chief Minister, and also against the opinion of the then Health Minister. Hence, any change in the above order required approval of the Chief Minister However, the Secretary was overruled. It is further averred that the Minister's order dated 23-1-1989 and 8-3-1989 were is violation of Item No. 38 of Schedule III of the Rules of Executive Business which provides that any proposal to rescind, modify or annul a decision of the State Government taken earlier by a Minister or the Council of Ministers or the Advisor of the Governor or

the Advisors has to be placed before the Council of Ministers through a memorandum. It was actually in pursuance of the directions of the Minister for Health dated 29-1-1989 and 8-3-1989 that the then Director-in-Chief issued letters to all Regional Deputy Directors and all Civil Surgeons and other concerned officers vide letter dated 24-4-1989 conveying the directions of the Government to permit all 467 persons to join as per the list enclosed, and to submit compliance report at once. It has been reiterated in paragraph No. 17 of the show cause that the earlier Government order regarding cancellation of the illegal appointment of the Petitioners and Ors. was issued by the then Secretary, Health Department under the orders of the then Chief Minister which could not have been reviewed by the Minister-in-Charge of Health, nor could the order of the Director-in-Chief be issued in violation of the provisions of the Rules of Executive Business.

It has been explained in the show cause that after the then Minister-in-Charge of Health realised his mistake, he discussed the matter with the then Director-in-Chief, and directed him to issue an order staying the operation of the earlier direction as contained in the letter dated 24-4-1989. In these circumstances, the Director-in-Chief sent a telegraphic message vide Memo No. 134 dated 2-5-1989 staying the operation of his earlier order dated 24-4-1989. In fact, the earlier order cancelling the appointments dated 15-5-1987 had never been cancelled by the Government, and that was an order issued by the Secretary, Government of Bihar in the Department of Health with the approval of the Chief Minister.

10. It was urged before us on behalf of the Petitioners that since they had been validly appointed, there was no justification for issuance of the order dated 15-6-1987 whereby these appointments were treated as cancelled. In these circumstances, the issuance of the order dated 24/4/1989 by the Director-in-Chief cured an illegality by permitting the Petitioners to be absorbed in service though without back wages. There was, therefore, no justification for issuance of the order dated 2-5-1989 staying the operation of the order dated 24-4-1989.

11. I shall first examine whether there is substance in the contention that the appointments were made validly in accordance with the rules by the then State Leprosy Eradication Officer. It has been contended that an advertisement was issued which is Annexure-1 in C.W.J.C. No. 2474 of 1990. Pursuant to the said advertisement the Petitioners claim to have applied and were ultimately selected after interview. At the very outset it may be noticed that 467 appointments were made by the appointing authority against Class III and Class IV posts. So far as the Petitioners are concerned, they were appointed against Class III posts of Non-Medical Assistant. Apparently, there was no advertisement for appointment against Class IV posts of Peon, Helpers etc. There is, therefore, substance in the contention of the Respondents that the appointment of Class IV employees by the Leprosy Eradication Officer without issuance of an advertisement was clearly illegal. Consequently, in any event all the appointments made should not be held to be valid. The contention of the Respondents, however, is that even though an

advertisement was issued, the appointing authority never acted in accordance with the direction of the State Government, and in fact the appointments made were not pursuant to the advertisement. The case of the Respondents is that a Committee had been appointed to select the candidates for appointment. The vacancies were to be filled up in a regular manner. The appointing authority acted without reference to the Selection Committee and made appointments on purely temporary and ad-hoc basis. Obviously, therefore, the appointments were not made pursuant to the advertisement issued because the vacancies ought to have been filled up in a regular manner after consideration of the relative merits of the applicants by the Selection Committee. Since substantive vacancies existed, there was no question of making appointments on purely temporary or ad-hoc basis. Annexure-A to the show cause filed on behalf of Respondent No. 3 in C.W.J.C. No. 2474 of 1990 is an order of the State Government issued by the Joint Secretary, Government of Bihar to the effect that all appointments to Class III and Class IV posts created in connection with the National Leprosy Eradication Programme shall be filled up on the recommendation of a Committee consisting of the Deputy Director, Health Service, T.B., as the Chairman, a Medical Officer belonging to the Scheduled Caste/Scheduled Tribe employed in connection with the Leprosy programme as a member, the State Leprosy Eradication Officer as Member Secretary and Assistant Director, Filariasis as the fourth member. In these writ applications the Petitioners have not claimed that they were appointed on the recommendation of the Selection Committee constituted by the State Government. Though they vaguely assert that they were interviewed, it is not asserted that they were interviewed by the Selection Committee despite the clear assertion by the Respondents that the appointments were made by the State Leprosy Eradication Officer without the recommendation of the Selection Committee. The fact that the Leprosy Eradication Officer acted on his own without reference to the Selection Committee is also obvious from the explanation furnished by him, which is Annexure-8 in C.W.J.C. No. 2474 of 1990. Annexure- 8 is a communication addressed to the Deputy Secretary, Department of Health by Dr. Rajendra Prasad, the State Leprosy Eradication Officer in response to the letter dated 14-3-1988 issued by the Secretary annexing the list of employees appointed by him. In justification he has stated that with a view to successful implementation of the programme he got an advertisement issued and from amongst those persons who had applied, he had made appointments on an ad hoc basis in accordance with the order of the Joint Secretary dated 14-4-1987. There was considerable pressure from the Central Government as well. There were more than 1000 vacancies, but with a view to carry on day to day work, only a few appointments on ad hoc basis were made by him. His objective was; the success of the programme. It was under these circumstances that he had made these appointments. From Annexure-8 it is apparent that the appointing authority did not consider all the applications which were received by him, neither did he make appointments on a regular basis on the recommendation of the Selection Committee. Since he felt that it was necessary to make appointments immediately, he made some appointments on purely ad-

hoc basis. No doubt, he has mentioned in Annexure-8 that he had appointed some persons from out of those who had applied in response to the advertisement, but the appointments were-made on ad-hoc basis.

12. From the facts stated above it will appear that the appointments were not made pursuant to the advertisement, these appointments should have been made on regular basis and on the basis of the recommendation of the Selection Committee. The Selection Committee constituted for the purpose never met to consider the applications received pursuant to the advertisement. It appears that the Leprosy Eradication Officer picked out a few names and after a so called interview appointed them on ad-hoc basis. Since he was making appointments on ad-hoc basis, he, perhaps, did not feel the necessity to seek the recommendation of the Selection Committee of which he was himself a member. The fact that all the applications received were not considered by him is also obvious from the fact that when Dr. Jha, the Deputy Director, Health Services was asked to perform the duties of the State Leprosy Eradication Officer by Order dated 15-6-1987 after suspension of Dr. Rajendra Prasad, he found as many as 22858 unopened envelopes in the office of the Leprosy Eradication Officer which contained applications made in response to the advertisement issued in the press. Dr. Rajendra Prasad who made the appointments neither handed over charge nor the relevant files and registers, In fact, he had made himself scarce. These circumstances, therefore, do create a serious doubt about the validity of the appointments made by Dr. Rajendra Prasad, the Leprosy Eradication Officer, who was the appointing authority.

13. The action of the appointing authority has also to be viewed in the light of the communications (Annexures B and C in C.W.J.C. No. 103/90) whereby the Joint Secretary, Health Services by his letter dated 15-2-1987 and the Director-in-Chief, Health Services, by his letter dated 17-2-1987 wrote to Dr. Rajendra Prasad, the State Leprosy Eradication Officer, not to make appointments pursuant to the advertisement. It may be noticed that the last date for receipt of applications was 15th February, 1987, and these communications were issued on 16th and 17th February, 1987. Despite these orders Dr. Rajendra Prasad issued letters of appointment under different memos issued on 1-6-1987. In the light of these facts the appointments made by Dr. Rajendra Prasad was cancelled by order (Annexure-8) dated 15-6-1987 by the State Government. It, therefore, follows that despite orders prohibiting him from making appointments, and without following the procedure for making such appointments, and even without the recommendation of the Selection Committee constituted for the purpose, Dr. Rajendra Prasad appointed 467 persons against Class III and Class IV posts on ad-hoc basis. Obviously, Dr. Rajendra Prasad wanted to avoid the procedure prescribed for making such appointments on the basis of recommendation of Selection Committee. He, therefore, made appointments on ad-hoc basis, not only against Class III posts but also against Class IV posts when no advertisement was issued for such appointments. It has been observed by the Supreme Court in the case, reported in Delhi Development Horticulture

Employees" Union Vs. Delhi Administration, Delhi and others, that when appointments are made in such illegal manner, court can take judicial notice of the fact that they have been made on extraneous considerations, including monetary consideration. I am, therefore, satisfied that circumstances do exist raising serious doubts about the validity of the appointments made by the State Leprosy Eradication Officer. It is worth noticing that the appointments were sought to be cancelled within a fortnight of the appointments being made, and as stated by the Petitioners, after issuance of the impugned order dated 15-6-1987 they were neither allotted work nor were they paid their pay and allowances. The State Government not merely cancelled the appointments made by Dr. Rajendra Prasad, the then Leprosy Eradication Officer, but also suspended him and initiated a departmental proceeding against him for making illegal appointments.

14. The next question that arises for consideration is whether the order issued on 24-4-1989 by the Director-in-Chief directing that the persons appointed by the Leprosy Eradication Officer should be permitted to join whose names were contained in the list appended to the order, validated the appointments made by the State Leprosy Eradication Officer. There was no express revocation of the order dated 15-6-1987 cancelling the appointments made. In what circumstances such an order was issued by the Director-in-Chief, Health Services has been explained in the show cause filed on behalf of Respondent No. 3 to which I have referred earlier. It is not known on what basis the list appended to the order dated 24-4-1989 was prepared. It is obvious and virtually admitted in these Writ applications that the two lists -- one submitted by the appointing authority and the other annexed to the order dated 24-4-1989, are not identical. Both the lists contain 467 names, but there are 100 names in the list appended to the order dated 24-4-1989 which are not to be found in the list submitted by the appointing authority. This is also obvious from the averments made in C.W.J.C. No. 103 of 1990. The Petitioners have stated in paragraph No. 12 of the writ petition (C.W.J.C. No. 103/90) that in the list submitted by Dr. Rajendra Prasad consisting of 467 names, the names of Petitioner Nos. 1, 2 and 3 appear at serial Nos. 436, 372 and 376 respectively. In paragraph No. 13 of the Writ application the Petitioners have stated that in the list annexed to the order dated 24-4-1989 the names of Petitioner Nos. 1 to 7 figure at serial Nos. 436, 372, 376, 463, 354, 465 and 437. It is, therefore, clear that so far as Petitioner Nos. 4 to 7 are concerned, their names did not find place in the list submitted by the appointing authority, but those names found place in the list appended to the order issued on 24-4-1989 (Annexure-3). It was, therefore, rightly contended on behalf of the Respondents that if Petitioner Nos. 4 to 7 were never appointed by the appointing authority, even though illegally, they could not be permitted to join pursuant to the order dated 24-4-1989. Since they were never appointed, there was no question of either terminating their appointment or permitting them to join against any post. There also appears to be substance in the contention urged on behalf of the Respondents that in collusion with the staff of the Health Department 100 names were surreptitiously included in the list after excluding

100 names which found place in the list submitted by the appointing authority. The order dated 24-4-1989 permitted the persons so appointed to join their posts, but without payment of salary for the period during which they had not worked. It is not disputed that after issuance of the order cancelling the appointments on 15-6-1987 the Petitioners had not been permitted to work and were not paid their salaries, and this continued till 24-4-1989-. Even thereafter when the Petitioners wanted to join they were not permitted to join, because of the issuance of the order dated 2-5-1989 whereby operation of the order dated 24-4-1989 was stayed.

15. It is significant, that the order dated 24-4-1989 permitting the appointees to join was cancelled within a few days only by issuance of an order dated 2-5-1989, which is Annexure-7 in C.W.J.C. No. 2474/90. It was contended on behalf of the Respondents that the impugned order (Annexure-7) had to be issued since complaints had been received and the matter was under examination. The implementation of the order dated 24-4-1989 was stayed only till further orders. The Government was yet to take a final decision in the matter. It was, therefore, contended that Annexure-7 cannot be characterised as illegal, because it only stayed the operation of the earlier order pending investigation into the complaints received. The order in term says that the implementation of the earlier order was stayed till further orders. It was contended before us that the order dated 2-5-1989 (Annexure-7) contemplated an enquiry into the matter since circumstances existed justifying an enquiry. It is for these reasons that at the stage of admission of the writ petitions, the Respondents sought liberty to make an enquiry with regard to the legality of the appointments made by the appointing authority. The Court was not pleased to grant liberty to the State, as prayed for, but made it clear that the Bench hearing the writ applications may pass appropriate orders while disposing of the writ applications. In these circumstances, no further enquiry could be made by the Respondents. It is no doubt true that in some of the writ applications filed and disposed of earlier, orders were obtained from this Court on the strength of Annexure-3 dated 24-4-1989 directing the Respondents to permit the Petitioners in those cases to join the posts to which they were appointed. In none of those cases the order dated 2-5-1989 staying the implementation of the order dated 24-4-1989 (Annexure-3) was brought to the notice of the Court. In the instant cases the Respondents have pleaded that the order dated 24-4-1989 could not be given effect to because of the subsequent order of the State Government staying the, operation of the earlier order.

16. In these circumstances, the question rises as to what relief can be granted to the Petitioners. If the appointments made by the State Leprosy Eradication Officer are illegal and unconstitutional, the Petitioners cannot claim any right to hold the posts. In any event, the appointments have been made on a purely ad-hoc basis. There is sufficient material of record to raise a very strong suspicion that the appointments have not been validly made. There is also considerable doubt as to who were the 467 persons, who were actually appointed by the

appointing authority. There are two lists on record, and though 367 names are common, the remaining 100 names are not common in the two lists. The appointments were made by the State Leprosy Eradication Officer without reference to the Selection Committee constituted for the purpose. The appointing authority had not considered all the applications which had been received and over 22800 application received in response to the advertisement were lying unopened in office of the State Leprosy Eradication Officer. He made the appointments despite the order issued by the State Government prohibiting him from making such appointments. Though only Class III posts were advertised, he also appointed large number of persons against Class IV posts. Though the advertisement was issued for filling up substantive vacancies in regular manner on the recommendation of the Selection Committee, with a view to avoid the Selection Committee the State Leprosy Eradication Officer made appointments on ad-hoc basis by passing the Selection Committee. I have highlighted those aspects of the matter only with a view to ascertain whether circumstances exist which justify a thorough investigation into the matter. If they exist, the State cannot be faulted if it wishes to hold an enquiry in my view the existence of these circumstances do justify a thorough investigation into the manner in which the appointments were made by the State Leprosy Eradication Officer. If, in fact the appointments have been illegally made for extraneous considerations, there is no justification for upholding the validity of those appointments. Even the order dated 2-5-1989, which is Annexure-7 in C.W.J.C. No. 2474/90 contemplated a further enquiry into the matter, and stayed the operation of the earlier order dated 24-4-1989 pending such inquiry. In my view, therefore, this is an appropriate case in which the Respondents should be directed to hold a thorough enquiry into the manner in which the State Leprosy Eradication Officer made 467 appointments. An enquiry must also be made as to who were those 467 persons actually appointed by him. If it is found that the Petitioners and Ors. have been validly appointed, the order dated 15-6-1987 (Annexure-2) cancelling the appointments as also the order dated 24-5-1989 restraining the authorities from giving effect to the order dated 24-4-1989 must be revoked, and the persons found duly and validly appointed be permitted to join in terms of the communication dated 24-4-1989(Annexure-3 in C.W.J.C. No. 103/90). If however, it is found that the appointments were illegally made inasmuch as the appointments were made in a manner contrary to the procedure prescribed by the rules or orders of the Government or on extraneous consideration, or in breach of the Articles 14 and 16 of the Constitution of India, no relief can be granted to the Petitioners. I order accordingly.

17. A question then arises as to whether in the enquiry to be conducted by the Respondents, the Petitioners must have an opportunity of representing their case. It has been observed by the Supreme Court in the case, reported in Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, that if the appointments are illegal, the rule of audi alteram partem does not apply, since the termination of appointment is not on the ground of

misconduct of the employees concerned. However, in the instant case, in the interest of justice I consider that the Petitioners must be given a fair opportunity of representing their cases before the State Government in the said enquiry. Since the process of issuance of individual notices to the Petitioners and Ors. appointed by the State Leprosy Eradication Officer may take considerable time, I direct that the State Government shall publish such a notice in a newspaper with wide circulation throughout the State of Bihar calling upon the persons concerned to furnish their show cause within the prescribed period. Notice may also indicate the date on which the persons concerned may be heard if they wish to be heard personally.

18. These writ applications are, therefore, disposed of with the above directions and observations. The Respondents are directed to complete the enquiry and to take a final decision in the matter within a period of six months from the date on which a copy of this order is either received or produced before the Secretary-cum-Commissioner, Health Department, Government of Bihar, Patna. There will be no order as to costs.

S.K. Chattopadhyaya, J.

19. I agree.