

(1986) 07 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6126 of 1985

Rajendra Sinha and others

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 21-07-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(1), 234

Citation : (1986) PLJR 890

Hon'ble Judges : S.N. Jha, J; N.P. Singh, J

Bench : Division Bench

Advocate : Basudev Prasad, Anil Kumar and Sunil Kumar, for the Appellant; Tara Kant Jha, Shyama Prasad Mukherjee, Ashok Kumar Choudhary, Birendra Prasad Sinha, Ratan Kumar Sinha, Narayan Singh and Md. Wasi Akhtar, Messrs R.B. Mahto, A.G. and S.K.P. Sinha, J.C. to A.G. For the State, for the Respondent

Judgement

N.P. Singh, J.—The petitioners, who have been appointed as Munsifs in accordance with the provisions of the Bihar Civil Service (Judicial Branch) (Adhoc Recruitments on Temporary Basis) Rules, 1974 (hereinafter referred to as "the 1974 Rules"), have questioned the validity of part of Rule 9 of the "1974 Rules". They have also made a prayer for a direction to the respondents to re-determine their seniority vis-a-vis the Munsifs who have been appointed after them, in accordance with the provisions of the Bihar Civil Service (Judicial Branch) (Recruitment) Rules, 1955 (hereinafter referred to as "the 1955 Rules"). It may be mentioned that both the rules have been framed in exercise of the powers conferred by Article 234 of the Constitution by the Governor of Bihar in consultation with the High Court of Judicature at Patna and the Bihar Public Service Commission (hereinafter referred to as "the Commission"). In the year 1973, the State Government took a decision to create 152 temporary, posts of Munsifs in the Bihar Civil Service (Judicial Branch), as the Code of Criminal Procedure, 1973 was coming in force with effect from 1.1.1974 and because of that many cases which used to be heard and decided by the Executive Magistrates were to be heard and, decided by the Judicial Magistrates. On

18.5.1974 the "1974 Rules" framed by the Governor in consultation with the Patna High Court and the Commission, were published in the Bihar Gazette.

2. On 14.10.1974, advertisement for appointment as temporary Munsifs against the aforesaid 152 posts was issued in accordance with the provisions of "1974 Rules". The petitioners along with others applied. It has been stated on behalf of the petitioners that after a written competitive test, petitioners were called for interview by the Selection Committee. On 23.5.1975, on the basis of recommendation of the Selection Committee, a notification was issued by the State Government appointing the petitioners and others on adhoc basis as Munsifs for a period of six months from the date of the issuance of the notification.

3. It may be mentioned that in the meantime steps had also been taken to appoint Munsifs in accordance with the provisions of "1955 Rules" and for that purpose 15th competitive examination had been held. Out of the candidates, who had appeared at the aforesaid 15th competitive examination, 158 persons were appointed as Munsifs on temporary basis against temporary posts before the appointment of the petitioners in accordance with the "1955 Rules" between March, 1975 to 22nd May, 1975. On the basis of 15th competitive examination, nine more candidates were appointed after the appointment of the petitioners as temporary Munsifs against temporary posts between 14.6.1975 to 4.8.1975.

4. By two notifications dated 17.11.1975 and 23.2.1976 petitioner and others, who had been appointed on adhoc basis under "1974 Rules" for a period of six months, by aforesaid notification dated 33.5.1975, were again appointed Munsifs on adhoc and purely temporary basis. In the aforesaid notifications, no period of appointment was mentioned like the earlier notification dated 23.5.1975.

5. Between 17.6.1976 and 1.9.1976, 33 more candidates, who had appeared at the 15th Judicial Examination, were appointed according to the "1955 Rules". Thereafter 16th Judicial Examination was held and Munsifs were appointed according to the "1955 Rules", between 13.9.1977 and 8.10.1977. In March, 1979, more Munsifs were appointed on the basis of the 17th Judicial Examination held in accordance with the "1955 Rules". Again in June, 1980, more Munsifs were appointed on the basis of the 18th Judicial Examination held in accordance with the "1955 Rules".

6. It may be mentioned that the petitioners and others, who had been appointed according to the "1974 Rules", have been confirmed by a Government Notification dated 22.11.1985 with effect from 1.9.1980 whereas the candidates appointed out of 15th Judicial Examination were confirmed by a notification dated 9.3.1983 with effect from different dates in the years 1977 and 1978. Similarly, the candidates, who had been appointed Munsifs out of 16th, 17th and 18th Judicial Examination, were confirmed with effect from earlier dates.

7. According to the petitioners, there was no justification on the part of the State Government to confirm the petitioners from a later date than the Munsifs, who

had been appointed after the petitioners, on the basis of 15th, 16th, 17th and 18th Judicial Examinations aforesaid, when the petitioners were senior to them and had been appointed before them as temporary Munsifs. It was pointed out on behalf of the petitioners that the date of their confirmation and seniority has been fixed on the basis of the invalid part of Rule 9 of the "1974 Rules" which says that on absorption a Munsif appointed under the Rules "will not be entitled to reckon the period of his service as a temporary Munsif for the purpose of his seniority". It was urged that persons appointed under "1974 Rules" as well as those appointed under "1955 Rules", having been appointed in the same service on temporary basis, after proper advertisement and their names having been recommended by the two statutory committees, in one case by the committee constituted under Rule 4 of "1974 Rules" and in other by the Commission, there was no rational basis to ignore the period of temporary appointment in one case and to add the same in the other for purpose of determining the seniority. In other words, according to the petitioners, two equals are being treated as an unequal without any rational basis which amounts to discrimination within the meaning of Articles 14 of the Constitution

8. Several appointees out of 15th, 16th, 17th and 18th Judicial Examinations filed applications for being added as respondents to this application apprehending that their seniority is likely to be affected, in case this writ application was allowed. Their prayer has been allowed by this Court and they have been added as respondents to this application. Counter affidavits have been filed on their behalf.

9. Before I discuss the question as to whether the persons appointed under "1974 Rules" can be held to be equal to persons appointed under "1955 Rules", I consider it advisable to refer to the salient features of "1974 Rules" and "1955 Rules". Rules 3 and 4 of "1974 Rules" which are relevant are as follows:-

3. Ad hoc recruitment to the posts of Munsifs.-Ad hoc recruitment to the post of Munsifs purely on temporary basis shall be made by the Governor on recommendation of the Selection Committee to be constituted in accordance with Rule 4.

4. Constitution of Selection Committee.-The Selection Committee shall consist of the following persons namely:-

(a) The Chief Justice or the Judge of the High Court to be nominated by him in this behalf.

(b) One more Judge of the High Court to be nominated by the Chief Justice in this behalf, and

(c) The Chairman of the Commission or any member of the Commission to be nominated by the Chairman in this behalf.

Rule 6 requires applications to be invited by advertisement in the manner to be decided by the Chief Justice. Rule 7 prescribes the age limit as well as the

condition that the applicant must have practised at least three years at the Bar on the date of advertisement. Rules 8, 9 and 10 are as follows:-

8. Procedure for selection and recommendation for appointment. The Selection Committee shall select candidates for interview on the basis of a short written test or by such other method as the Selection Committee may decide. Recommendation will be finally made by the Selection Committee for appointment of candidates as Munsif under these Rules in order of merit, to the Governor, only on the basis of the performance of the selected candidates at such interview.

9. A Munsif appointed may be absorbed in the permanent cadre.-A Munsif appointed under these Rules may be absorbed in the permanent cadre of the Bihar Civil Service (Judicial Branch) by the Governor on the recommendation of the High Court in consultation with the Commission. On such absorption a Munsif will not be entitled to reckon the period of his service as a temporary munsif for the purpose of his seniority.

(emphasis added)

10. A Munsif appointed not required to undergo training. -Munsif appointed under these Rules are not to be required to undergo training under the Training and Departmental Examination Rules, 1963:

Provided that the temporary Munsifs after being absorbed in the permanent cadre shall not be confirmed until they pass the departmental examination as provided under the Training and Departmental Examination Rules, 1978.

10. In the "1955 Rules", service has been defined to mean Bihar Civil Service (Judicial Branch). Rule 3 vests power in the Governor to decide each year the number of vacancies in the posts of Munsifs to be filled up on a substantive basis or on temporary basis. Under Rule 4 the Commission has to advertise the vacancies and to invite applications from eligible candidates. Rule 14 prescribes that an examination shall be held according to the syllabus specified in Appendix "C" to those rules which are liable to alteration from time to time by Government after consultation with the High Court and the Commission. Under Rule 15 the Commission has discretion to fix the qualifying marks in any or all the subjects at the written examination in consultation with the Patna High Court. In view of Rule 17, on the basis of the marks obtained at the written examination, the Commission has to arrange for viva voce test of the candidates. Rule 19 provides that the number of marks obtained at the viva voce test shall be added to the marks obtained at the written examination and then a list of successful candidates in order of merit shall be prepared. Thereafter such recommendation has to be submitted to the Governor. Rules 25 and 26 prescribe the mode of appointment of Munsifs on temporary basis and their confirmation. They are as follows:-

25. Candidate, appointed on a temporary basis shall have to undergo all the

training for the post as if he were appointed on a substantive basis.

26. Notwithstanding anything to the contrary contained in these rules, a Munsif appointed on temporary basis shall be eligible for permanent appointment to the Service without there being any upper age limit subject to the conditions that-

- (i) he has completed two years of service from the date of his first appointment,
- (ii) he has passed such tests as may from time to time be prescribed in the Departmental Examination Rules, and
- (iii) he is recommended by High Court for such permanent appointment.

11. It may be pointed out that candidates appearing at the 15th to 18th competitive examinations held according to the "195(sic) Rules" had also been appointed on temporary basis under Rule 25. Later they have been confirmed and made permanent in accordance with Rule 26 with retrospective effect, covering even the period of their temporary appointment, whereas in case of petitioners and other appointed under "1974 Rules" their period of temporary appointment between 23.5.1975 and 1.9.1980 has been ignored in view of Rule 9 aforesaid.

12. On behalf of the petitioners it was first submitted that as the petitioners had been appointed in the Bihar Civil Service (judicial Branch) since the very inception although on temporary basis, after proper advertisement, screening and test by a high level statutory committee constituted under Rule 4, it shall be deemed that they have been absorbed in the cadre with effect from the date of their initial appointment. In other words, according to the petitioners, their absorption in the permanent cadre of the Bihar Civil Service (Judicial Branch) and seniority shall not be dependent on the compliance of the procedure provided under Rule 9. In this connection reference was made to the well-known case of the Supreme Court in the case of S.B. Patwardhan and Another Vs. State of Maharashtra and Others, . In the aforesaid case, the Supreme Court had to consider the effect of confirmation in a service. While examining the scope of rule 8 (iii) of Bombay Service of Engineers (Class I and Class II) Recruitment Rules, 1960 it was observed:-

Instead of adopting an intelligible differentia. Rule 8 (iii) leaves seniority to be determined on the sole touchstone of confirmation which seems to us indefensible. Confirmation is one of the inglorious uncertainties of Government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies.

It was further pointed out:

Rule 8 (ii) in the instant case adopts the seniority-cum-merit test for preparing the statewise Select List of seniority. And yet Clause (iii) rejects the test of merit altogether. The vice of that clause is that it leaves the valuable right of seniority to depend upon the mere accident of confirmation. That, under Arts. 14 and 16

of the Constitution, is impermissible and therefore we must strike down Rule 8 (iii) as being unconstitutional.

On the basis of the aforesaid judgment of the Supreme Court it was urged that the seniority of the petitioners in the cadre should not be dependent on the notifications of absorption or confirmation as prescribed under Rule 9 and Rule 10 of the "1974 Rules". It was pointed out that if the seniority of the petitioners is made dependent on absorption in accordance with Rule 9 then Rule 9 has to be struck down as unconstitutional.

13. On behalf of the petitioners reference was also made to the well-known case of Baleshwar Dass and Others Vs. State of Uttar Pradesh and Others, . There Supreme Court considered the question as to what is meant by "substantive appointment in service". It was pointed out in that case that merely a person has been appointed on temporary basis that does not mean that till he is confirmed he has not been appointed on substantive basis. In that connection it was observed as follows:-

We see no reason to hold that when engineers are appointed So temporary posts but after fulfilment of all the tests for regular appointments, including consultation with the Public Service Commission, they are not appointed in a substantive capacity...That is to say, although they are temporary appointees, if their probation is completed and other formalities fulfilled, they become members of the Service. It follows that merely because the person is a temporary appointee it cannot be said that he is not substantively appointed if he fulfils the necessary conditions for regular appointment such as probation and consultation with the Public Service Commissions etc.

It was obsrved in the aforesaid case that confirmation cannot be the sole touchstone of seniority. Following the aforesaid judgments of the Supreme Court a Bench of this Court in the case of Taraka Nath Sharma v. State of Bihar (1985 P.L.J.R. 829) while interpreting the expressions "with the date of their substantive appointment to the service" occurring in Rule 39 of the Bihar Finance Service Rules came to the conclusion that it did not mean with effect from the date of the confirmation of the appointees concerned.

14. The judgments, referred to above, no doubt, help the petitioners to a great extent but the facts of the present case are different from the facts of the cases of Balesbwar Das v. State of U.P. and others and Taraka Nath Sharma v. State of Bihar. In the case of Baleshwar Das the relevant rule only defined "members of the service" to mean a Government servant "appointed in a substantive capacity". In that context, it was considered as to (sic)whether for appointment in a substantive capacity the order of confirmation is a must. But in that case there was no rule like Rule 9 saying in clear and unambiguous terms that on absorption the appointee shall not be entitled to reckon the period of his service on temporary basis for the purpose of his seniority. Similar is the position in the case of Taraka Nath Sharma v. State of Bihar. Rule 39 of that case simply stated

"with the date of their substantive appointment to the service". This Court held that it shall not necessarily mean with effect from the date of confirmation. In my view, unless that part of Rule 9 which prescribes a bar on reckoning the period of temporary appointment for the purpose of seniority is held to be ultra vires the seniority of the petitioners and others who have been appointed in accordance with "1974 Rule" cannot be determined with reference to the date of their initial appointment on temporary basis.

15. It was then submitted on behalf of the petitioners that on the principle laid down in the S. B. Patwardhan's case, this Court should declare part of Rule 9 to be unconstitutional being in conflict with Articles 14 and 16 of the Constitution. On behalf of the petitioners it was pointed out that but for appointment of the petitioners, and the intervenors under two different rules framed under Article 234 of the Constitution for practical purpose there is no difference so that the petitioners who have been appointed under "1974 Rules" should be treated as a separate class to whom the benefit of temporary appointment should have been denied for the purpose of seniority.

16. The learned Advocate General, who has appeared on behalf of the State, submitted that as both the rules have been framed under Articles 234 of the Constitution and the Governor has made the appointments on the recommendation of the Commission in one case and on the recommendation of the Committee constituted under Rule 4 in the other there is no rational basis for allowing the appointees under "1955 Rules" to count the period of their temporary appointment towards their seniority, whereas to deny the same to the appointees under "1974 Rules". The learned Advocate General further pointed out that even the High Court on more than one occasion at earlier stages had been writing to the State Government for deletion of part of Rule 9 so that even appointees under "1974 Rules" could be absorbed with effect from the dates of their temporary appointment as has been done in the case of appointees under "1955 Rules". In this connection reference was made to a letter dated 3.11.1982 addressed by the Registrar of the Patna High Court to the Commissioner, Department of Personnel and Administrative Reforms, Government of Bihar. The relevant part thereof is as follows:-

I am directed to say that on reconsideration of the matter, the Court have decided that the existing Rule 9 of the Bihar Civil Service (Judicial Branch) Ad hoc Recruitment on Temporary Basis Rules, 1974 should be deleted and substituted as follows:-

"Rule 9--A Munsif appointed may be absorbed in the permanent cadre.

A Munsif appointed under the rules may be absorbed in the permanent cadre of the Bihar Civil Service (Judicial Branch) by the Governor on the recommendation of the High Court. On such absorption, a Munsif will reckon the period of his service as a temporary Munsif for the purpose of his seniority from such date as the High Court may fix in relation to Adhoc Munsifs generally or an individual Ad

hoc Munsif in particular.

Provided that:

(i) he has completed two years of service from the date of his first appointment, and

(ii) he has passed such tests as may, from time to time, be prescribed in the Departmental Examination Rules.

The Court therefore, recommend that necessary amendment in the Bihar Civil Service (Judicial Branch) Ad hoc Recruitment on Temporary Basis Rules, 1974 should be made accordingly.

I am further to request that necessary notification of the State Government giving effect to the above recommendation of the Court may be issued at an early date.

Again the view of the High Court in respect of Rule 9 was communicated to the State Government by letter dated 14.1.1984. The relevant part thereof is as follows:-

The Rules were framed in the year 1974 having provision in rule 8 that on absorption in the permanent cadre, the temporary Munsifs appointed under these rules will not be entitled to reckon the period of their service as temporary Munsifs for the purpose of their seniority. But such Rules, in the Hon"ble Court view will operate harshly against the interest of Ad hoc Munsifs appointed in the year 1975 or those who may be appointed on the basis of those Rules in future. The proposed amendment is not going to adversely affect others who have been appointed prior to ad hoc Munsifs. The Hon"ble Court on careful consideration of pros and cons have made proposal for amendment of Rule 9.

In view of the stand taken by the learned Advocate General on behalf of the State and the opinion of the Patna High Court as contained in the communications aforesaid it is obvious that now the Patna High Court as well as the State Government admit that there is no rational basis to treat the appointees under "1974 Rules" as a separate class and to deprive them of the period of their temporary appointment for the purpose of reckoning their seniority. The Commission is a respondent to this application but it has not appeared to contest the claim of the petitioners. Normally, in view of the stand taken by the State and the Patna High Court and non-appearance of the Commission, there was no difficulty in declaring the objectionable part of Rule 9 invalid. But that decision is likely to affect the seniority of the intervenors who although have been appointed in the Bihar Civil Service (Judicial Branch) after the petitioners but have been given seniority over the petitioners by taking note of their period of temporary appointment their objection have to be considered.

17. According to the intervenors, as the appointees under "1974 Rules" cannot be treated as equal to the appointees under "1955 Rules", they being a separate

class, Rule 9 rightly ignored their period of temporary appointment. In this connection it was pointed out under the provisions of "1955 Rules" a written competitive examination is held according to the syllabus specified in Appendix "C" to those rules. Thereafter interview is held by the Commission and a merit list is prepared. It was urged that in view of Rule 8 of "1974 Rules" only "a short written test of the applicants" was held. It was further pointed out that the marks obtained at such written test only entitled the selected applicants to appear for the interview but while preparing the merit list the marks obtained at the written test was not added; the merit list was prepared under Rule 8 only on the basis of the performance at the interview. In my opinion, on the ground that the petitioners were selected only on the basis of the interview, it cannot be held that the persons appointed under "1974 Rules" were inferior in merit and as such a separate class. It is well known that in many services appointments are made only on the basis of the interview. Reference in this connection may be made to the appointment of Addl. District Judges by direct recruitment in the State of Bihar. The recommendation in respect of the appointment of the Addl. District Judge are made by the High Court only on the basis of the interview and State Government makes appointment on the basis of that recommendations. In respect of the petitioner admittedly after a short written text they were required to appear for interview before the statutory committee consisting of two Judges of this Court and a Member of the Commission. In this background, it is difficult to hold that meritwise they shall be deemed to be of an inferior class vis-a-vis persons appointed under "1955 Rules".

18. It was then submitted on behalf of the intervenors that the persons appointed even on temporary basis under "1955 Rules" become the member of the Bihar Civil Service (Judicial Branch) since the date of their initial appointment, whereas persons appointed under "1974 Rules" become the member of that service only after absorption under Rule 9. From bare reference to letter dated 27.3.1974 creating 152 posts for persons to be appointed under "1974 Rules" it is apparent that those posts had been created in the Bihar Civil Service (Judicial Branch) with effect from 1.4.1974. A copy of that letter is annexure "14" to the writ application. The preamble of "1974 Rules" says in clear words that rules were being framed "for regulating ad hoc recruitment to the Bihar Civil Service (Judicial Branch)". It has been rightly admitted on behalf of the petitioners that when 152 posts against which the petitioners and others were appointed had been created in the Bihar Civil Service (Judicial Branch) the appointment of the petitioners since very beginning will be deemed to be in that service. Rule 9 speaks of absorption "in the permanent cadre of the Bihar Civil Service (Judicial Branch)". From Rule 9 it cannot be inferred that till the petitioners were absorbed in accordance with Rule 9 they were not members of the Bihar Civil Service (Judicial Branch); it only means that till that day they were not members of permanent cadre. In my view, it is difficult to hold that till the notification dated 22.11.1985 was issued absorbing the petitioners in the permanent cadre with effect from 1.8.1980 the petitioners had not been

appointed to the Bihar Civil Service (Judicial Branch). As such no distinction can be made on this ground between the petitioners and the intervenors.

19. Another distinction which was pointed out on behalf of the intervenors was about undergoing training after the appointment. The appointees under "1955 Rules" have to undergo training, whereas the appointees under "1974 Rules" were not required to undergo any training in view of Rule 10 thereof. In my view, this distinction is also not of any consequence. The applicants under "1955 Rules" were required to be a continuous practitioner at the Bar for at least one year on the date of advertisement (vide Rule 6 (c)), whereas the applicants under "1974 Rules" were required to have practised as advocate for "at least three years continuously at the Bar on the date of advertisement (vide Rule 7)". Perhaps, that was the reason that after appointment they were not required to undergo training by Rule 10. This was also necessary because the new Code of Criminal Procedure had come in force which required more Judicial Magistrates to take up the cases for hearing which used to be heard by the Executive Magistrates prior to coming into force of the New Code. In any case, on this ground, it is difficult to hold that the petitioners belong to a class different from the intervenors.

20. A distinction was also sought to be drawn between appointment on ad hoc basis as in the case of the petitioners and on temporary basis as in the case of the intervenors. It was urged that an appointment on adhoc basis cannot be treated at par with an appointment on temporary basis and as such the period of adhoc appointment has been rightly ignored under Rule 9. In support of the aforesaid contention reliance was placed on behalf of the intervenors on the case of A.P.M. Mayankutty Vs. The Secretary and Another, . In that case after making a reference to Rule 10 (a) (i) (1) of the Madras State and Subordinate Services Rules it was pointed out that the aforesaid provision contemplated the making of temporary appointments when it was necessary in the public interest to do so, under an emergency, "otherwise than in accordance with law". In that background, the appointments were held to be a stop gap or emergency arrangement which could not have been taken into account for the purpose of Seniority. It is true that adhoc appointment made under fortuitous circumstances, without following any statutory rule or a procedure consistent with Articles 14 and 16 of the Constitution, as a stop gap arrangement, to meet an emergency situation, cannot be held to be in appointment on temporary basis in its strict sense. But if appointments have been made after due advertisement and selection by a statutory committee or following a procedure consistent with Articles 14 and 16 of the Constitution i.e. selection in order of merit, after giving opportunity to all eligible persons, then such appointments have to be treated at par with temporary appointments even if they are notified as adhoc appointments. The petitioners were appointed in accordance with "1974 Rules" after advertisement, screening and interview by a statutory committee consisting of two Judges of this Court and a Member of the Commission. In that background, it is difficult to hold that when the petitioners were appointed on

ad hoc basis under the "1974 Rules" their nature of appointment was inferior to appointment on temporary basis. In this connection it may be pointed out that Rule 9 itself speaks about the period before absorption as "service as a temporary Munsif" and provides for absorption of such appointees in permanent cadre.

21. The petitioners and those appointed under "1955 Rules" had been appointed in the same service in accordance with two statutory Rules, were holding identical posts and an appointee under "1974 Rules" used to be transferred to a post held by appointee under "1955 Rules" and they were never treated separately during the period of their temporary appointment. Under such a situation, it has to be held that persons appointed under "1974 Rules" are not inferior as a class so that their period of temporary appointment before absorption in the permanent cadre ought to have been ignored by Rule 8. There being no rational basis to treat the petitioners separate as a class from appointees under "1955 Rules" they have to be treated as equals with the appointees under "1955 Rules". It is well known that when two equals are treated as unequals Article 14 of the Constitution is attracted and any order/rule treating two equals as unequals has to be struck down. In the case of *S. M. Pandit v. State of Gujarat* (1972(1) LLJ 127), the Supreme Court, while considering the question as to whether Mamlatdars directly recruited and those appointed by promotion can be treated as unequals, held as follows:-

Both the directly recruited Mamlatdars as well as promotee Memlatdars are designated as Mamlatdars. They have the same pay scale. They discharge same functions. The posts held by them are interchangeable. There is nothing to show that the two groups are kept apart. The only circumstance urged in support of the contention that they form two different classes is that before promotion to the post of Deputy Collector, the directly recruited Mamlatdars have to put in a certain minimum period of service. This condition, in our opinion, does not indicate that the two groups were kept apart. The High Court seems to think that that condition is not a valid condition. We express no opinion on that question. Even if it is a valid condition, the same does not show that the directly recruited Malatdars formed a different class.

On the aforesaid finding, the concerned rules were held to be violative of Articles 14 and 16 of the Constitution and as such invalid. It was pointed out in the case of *State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others*, "a statutory provision may offend Art. 14 of the Constitution both by finding differences where there are none and by making no difference where there is one". It has been repeatedly pointed out by Courts that the classification must be founded on an intelligible differentia which: distinguishes persons or things that are grouped together from others left out of the group and that the differentia must have a rational relation to the object sought to be achieved by the statute in question. In the instant case, I do not find that either of the tests have been fulfilled. Neither the appointees under "1974 Rules" can be treated as a class

separate from the appointees under "1955 Rules", for the reasons mentioned above, nor the differentia has any rational relation to any object which is sought to be achieved by objectionable part of Rule 9 aforesaid. The learned counsel for the intervenors could not point out as to what was the object which was sought to be achieved by depriving the appointees under "1974 Rules" the period of their temporary appointment for the purpose of seniority. I on my part find none. As already mentioned above, even the High Court as well as the State Government later have come to the conclusion that the objectionable part of Rule 9 denying the period of appointment on temporary basis prior to absorption for purpose of seniority under Rule 9 was unjust, arbitrary and liable to be deleted. In such a situation I am left with no option but to hold that part of Rule 9 purports to discriminate the petitioners without any rational basis and as such ultra vires being violative of Articles 14 and 16 (1) of the Constitution. Accordingly, I direct that the seniority of the appointees under "1974 Rules" be re-fixed in accordance with law ignoring the aforesaid objectionable part of Rule 9.

22. During the course of argument it was brought to our notice on behalf of the interveners that some of them had been appointed in accordance with "1974 Rules" along with the petitioners but later they were selected in accordance with "1955 Rules" and in view of the objectionable part of Rule 9 they resigned from the post of adhoc Munsifs and accepted their appointments under "1955 Rules". It was submitted on their behalf that in case the objectionable part of Rule 9 is held to be ultra vires their seniority shall be affected for no fault of theirs. In view of Rule 9, they were justified in accepting their appointments later under "1955 Rules" where there was no bar in reckoning the period of temporary appointments. If no direction is given by this Court an injustice is likely to be perpetuated without any fault of such persons. Accordingly, I direct that in respect of such persons who had been appointed under "1974 Rules" and who later accepted their appointment under "1955 Rules" after resigning their posts, the period of their continuous temporary appointment under the "1974 Rules" be taken into consideration for purpose of determining their seniority, so that they may not become victim of our judgment for no fault of theirs.

23. In the result, this writ application is allowed to the extent indicated above. In the circumstances of the case, there shall be no order as to costs.

S.N. Jha. J.-I have had the advantage of going through the judgment prepared by my learned Brother N. P. Singh, J and I entirely agree with his judgment but I am tempted to add a few words of my own.

24. Both the petitioners and the respondents are members of Bihar Civil Service (Judicial branch). The petitioners were appointed as Munsifs under the "1974 Rules" whereas the Intervenor respondents were appointed as Munsifs under the "1955 Rules"; both the rules framed in exercise of powers conferred by Article 234 of the Constitution of India by the Governor of Bihar in consultation with the High Court and the Commission respectively as indicated above in the judgment

of my learned Brother in detail. It is needless to go into the facts of this case as it is already in the main judgment.

25. My learned Brother has rightly pointed out that the classification must be based on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group and that the differentia must have a rational relation to the object sought to be achieved.

26. In the instant case, can it be said that the petitioners on the one hand and the intervenor-respondents on the other form two different classes when they are performing the same duties simply because the petitioners were appointed under the "1974 Rules" and the respondents were appointed under the "1955 Rules". It is relevant to mention here that "1974 Rules" were framed by the Governor in consultation with the High Court of Judicature at Patna to appoint certain Munsifs as Code of Criminal Procedure, 1973 was coming into effect from 1.1.1974 with an object to have complete separation of judiciary from executive branch of the State organ and under the said "1974 Rules" the petitioners were appointed as temporary Munsifs, of course, on ad-hoc basis after proper advertisement and their names having been recommended by a statutory committee, but that does not mean that their nature of appointment was in any way inferior to that of the appointees under "1955 Rules" for the reasons already mentioned in the main judgment. Both the parties holding the same post and discharging similar duties cannot, in my view, be treated differently and termed as "separate class". There cannot be any justification for it. After giving my anxious consideration to the materials placed before us, I find myself in complete agreement with my learned Brother that part of rule 9 of "1974 Rules" which purports to discriminate the petitioners from intervenor-respondents without any reasonable nexus is ultra-vires to Articles 14 and 16(1) of the Constitution of India and fit to be struck off.