

**(2010) 07 GAU CK 0010**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No's. 356, 339, 353, 336, 341, 354, 355, 357 and 342 of 2007

Ranu Sinha and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

---

**Date of Decision :** 30-07-2010

**Acts Referred:**

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

**Citation :** (2011) 3 GLR 591 : (2011) 1 GLT 387

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

**Bench :** Single Bench

**Advocate :** S. Talapatra, S.M. Chakraborty, A.K. Bhowmik and D.K. Biswas, for the Appellant; S. Chakraborty and J. Mazumdar, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

B.K. Sharma, J.—All the writ petitions based on same set of facts with same cause of action and the relief's prayed for being one and the same, have been heard together and are being disposed of by this common judgment and order.

2. The Petitioners who were appointed way back in 1990 as Lower Division Clerk (for short LDC)/Store Keeper against permanent posts and whose services have also been confirmed in the year 2000 are aggrieved by cancellation of their appointments after long 17 years of continuous service by the impugned order issued in 2007.

3. The relevant facts pleaded in the writ petitions are not in dispute. Pursuant to an employment notice issued by the Govt. of Tripura in the then Directorate of Social Welfare and Social Education, all the Petitioners had offered their candidatures for appointment to the post of LDC/Store Keeper. They were invited for a selection in which they duly appeared. On conclusion of the selection and presumably the Petitioners having been selected for appointment, they were all appointed as LDC/Store Keeper by orders of appointment issued on 1.9.1990.

One of the clauses in the orders of appointment was that the appointments might be terminated at any time by a month's notice given by either side. Another condition stipulated was that the conditions of the service would be governed by the relevant rules and orders in force.

4. Although, the initial appointment of the Petitioners was stated to be for a period of 12 (twelve) months but their services were continued. In due course, they also appeared in the Type Writing Test as was conducted by the departmental Authorities and cleared the same as will be evident from Memo dated 30.6.92, annexed to the writ petitions.

5. In due course, the Director of Higher Education under whom the Petitioners have been working published the seniority list of LDC/Store Keepers in which the names of the Petitioners appeared in relevant places. The seniority list so published was the final seniority list issued vide Memo dated 11.11.1993.

6. The Petitioners were also recommended by the DPC for confirmation in their respective posts and accordingly vide Memo dated 4.2.2000 issued by the Director of Higher Education, their services were confirmed along with some others.

7. While the Petitioners after their aforesaid appointments with all service benefits including the confirmation of service were continuing in their services, some of the Petitioners were issued with the show cause notice dated 24.8.02 (after 12 years of service) under the signature of the Director, Social Welfare and Social Education, alleging irregularity in appointment. By the said show cause notice, the Petitioners concerned were asked to submit their reply to the show cause notice within 10 (ten) days. In the notice, the allegation made was that the positions occupied by the notices did not permit them to be appointed and thus there was violation of the recommendation of the Selection Committee in making the appointments.

8. The Petitioners who had received such notices furnished their replies denying the allegations made in the show cause notices. It was inter-alia contended that the show cause notice was totally uncalled for after 12 years of long and continuous service. In the reply, the notices also pointed out as to how after their appointments in 1990, they had been conferred with all service benefits and as to how they had also been treated as regular and permanent employees like any other such regular and permanent employees.

9. After the aforesaid development, nothing happened so as to make the Petitioners worried. Long 5 (five) years after the show cause notice dated 24.8.02, the Director of Social Welfare and Social Education, issued the impugned memorandum dated 21.9.07 cancelling the appointment of the Petitioners which were provided to them long 17 years back. Admittedly, before taking such a drastic action disturbing the long and confirmed services of the Petitioners, they were not put to any kind of notice.

10. At this stage, it would be appropriate to mention that although the aforementioned show cause notices had been issued to some of the Petitioners in response to which they had also submitted their replies, but as noted above, nothing followed thereafter and the impugned memorandum dated 21.9.07 was not issued as a sequel to the said show cause notices. In fact, there is no whisper in the impugned memorandum regarding the said show cause notices and the replies thereto.

11. It is in the aforesaid facts and circumstances, the writ petitions have been filed making a grievance against the said impugned order dated 21.9.2007, which is common to all the Petitioners.

12. The Respondents have filed their counter affidavit. Their basic contention is that since the Petitioners had been appointed in violation of the merit list prepared for the purpose of appointment to the post of LDC/ Store Keeper, the authority in consideration of all the aspects of the matter, issued the impugned memorandum cancelling the appointments. Be it stated here that the merit list was prepared under 2(two) categories which are merit basis and need basis. According to the Respondents, the appointments were not made on the basis of merit list prepared and that the positions in the merit list were flouted towards making the appointments.

13. After noticing the stand of the Respondents in their counter affidavit, it will now be pertinent to mention a relevant aspect of the matter, which is filling of a suit being Title Suit No. 21/91 by one Smt. Mithu Deb. In the suit, the case of the Plaintiff Mithu Deb was that although she was selected in the aforesaid selection and was within the zone of consideration for appointment but was not appointed. Accordingly, she prayed for a declaration that she was entitled to be appointed to the post of LDC on the basis of the said selection.

14. It will be pertinent to mention here that in the suit, the State of Tripura and its Authorities who had made the selection and appointment were party Defendants and they resisted the claim of the Plaintiff Mithu Deb. It was contended that the selected and appointed candidates i.e. the Petitioners in the instant proceeding being not party Defendants, the suit was bad in law for non-jointer of parties. It was also contended that recruitment was to be made 50% on merit basis and 50% on need basis and that following the said criteria, 12 persons had been appointed from the interviewed candidates as per decision of the Govt.

15. The suit was decreed by judgment and decree dated 12.3.93 with the declaration that the Plaintiff Mithu Deb was entitled to get appointment as LDC on the basis of the selection in question and accordingly direction was issued for her appointment within one month. It is on record that pursuant to the said judgment and decree, Smt. Mithu Deb has been appointed.

16. Another proceeding was initiated by one Smt. Sutapa Nath by means of a writ petition being Civil Rule No. 196/1994. As in the suit, in the writ petition

also, the prayer was made to appoint the Petitioner on the basis of the aforementioned selection. It will be pertinent to mention here that neither in the suit nor in the writ petition, the present Petitioners were party Defendants/ Respondents.

17. As in the suit, in the writ petition also, the Respondents State justified their action towards appointment of the Petitioners. As regards the allegation made that some of the Petitioners had been appointed without adhering to the merit position in the select list, the contention of the State Govt. was that some of them had been appointed pursuant to an earlier selection/examination. The Respondents had only opposed the appointment of the Petitioner therein Smt. Sutapa Nath.

18. The writ petition was allowed by judgment and order dated 16.3.2001- directing appointment of the Petitioner as LDC. In the judgment, it was noticed that the selection process was undertaken for filling up as many as 20 (twenty) posts, of which 12 (twelve) for general candidates, 6 (six) for candidates belonging to ST and 2 (two) for candidates belonging to SC. The categorization of the posts under merit and need was also noticed. The learned Single Judge also duly took note of the aforesaid judgment and decree passed in respect of Mithu Deb.

19. The aforesaid judgment and order passed by the learned Single Judge was carried on appeal by the State by way of WA No. 83/2001. The writ appeal was disposed of by judgment and order dated 8.3.07 allowing the same. The appeal was allowed primarily on the ground that merely on the basis of a selection, no right accrued to the Petitioner for appointment and thus it would be improper for a Court to direct appointment only on the basis of a selection. It was also observed that after long 17 years of the selection way back in 1990, it would not be justified to order for appointment of the Petitioner.

20. In the writ appeal, although the Petitioners were not party Respondents, a plea was taken against them by the State Govt. that some of the candidates were offered appointment on the basis of an earlier selection. Contrary to the earlier stand in the aforementioned suit, the State Respondents took all together a different stand that the appointments were made violating the positions in the merit list. It was conveyed that the State Govt. had taken a decision to cancel such irregular appointments.

21. After the aforesaid judgment and order-dated 8.3.07, the impugned memorandum dated 21.9.07 has been issued in respect of all the Petitioners canceling their appointments. For a ready reference, the impugned Memorandum dated 21.9.07 is quoted below:

Registered Post

No. F.3(13)-DSWE/ESTT/2002/1962 (19)

Government of Tripura

Directorate of Social Welfare & Social  
Education

(Establishment Division)

Dated, Agartala, the 21/09/2007

Memorandum

Whereas, 9 (nine) persons were appointed as Lower Division Clerk (LDC) vide Memo No. F.3 (13)-DSWE/ESTT/89 dated 26.11.90 and No. F. 3(13)-DSWE/ESTT/89 dated 14.12.90 in Social Welfare and Social Education Department, Tripura without following the laid down procedure because of which the selection process itself has ipso facto become void. Subsequently one Smt. Mithu Deb had filed a Title Suit No. 21 of 1991 and as per the order of Learned Munsiff, Sadar, West Tripura, dated 12.03.1993, she was given offer of appointment and appointed as LDC vide Memo No. F. 34 (22)-SWE/LA/91 dated 22.07.93. Implication of giving effect to this order was examined while another person Smt. Sutapa Nath filed CR No. 196 of 1994 in the Hon''ble High Court and in their order dated 16.03.2001, Hon''ble High Court allowed the petition and directed to appoint Smt. Nath as LDC.

And

Whereas, after considering all relevant facts and careful consideration of all aspect of the matter. It was found that it would be appropriate to cancel appointment of all the 10 (ten) LD Cs including Smt. Mithu Deb and to submit the difficulties in complying with the order in the case of Smt. Sutapa Nath before the Hon''ble High Court subject to the condition that keeping in-view humanitarian angle while filling up the vacancies (to arise following termination), the said 10 (ten) persons working as LDC and all the candidates included in the original panel will be given opportunity for appearing in the interview along with relaxation in age, as deemed necessary.

And

Whereas, the matter was also considered by the Hon''ble High Court in appeal WA No. 83 of 2001 in the State of Tripura v. Sutapa Nath and Hon''ble High Court has vide order dated 8th March, 2007 observed that "We must not also be unmindful of the legal position that merely on the basis of a selection, no right accrues for appointment and it would be improper for a Court to direct appointment only on the basis of selection". After considering relevant issues, Hon''ble Court endorsed the Government's decision to cancel the appointment of all 10 (ten) LD Cs.

Now, therefore, the appointment of all the 10 persons is hereby cancelled with immediate effect. Dues as admissible under rules shall be paid. Further, he/she may participate in the selection process for the post of LDC and for the purpose relaxation in the age limit shall be provided, if required.

Sd/- Director

Social Welfare & Social Education

Tripura.

22. I have heard Mr. A.K. Bhowmik, Mr. S. Talapatra, Mr. S.M. Chakraborty and Mr. D.K. Biswas, learned Counsel appearing for the Petitioners. I have also heard Mr. S. Chakraborty and Mr. J. Mazumdar, learned State Counsels representing the State Respondents.

23. The learned Counsel for the Petitioners during their elaborate argument individually advanced, have submitted that the confirmed services of the Petitioners could not have been terminated after long 17 years by a stroke of pen. As regards the plea of the Respondents that the particular stand of the Govt. was made known in the aforementioned writ appeal proceeding, they have submitted that whatever might be the plea of the Respondents in the said proceeding, the Petitioners being not party to the said proceeding, any of the observations made in the said proceeding is not binding on the Petitioners. According to them, the Petitioners being confirmed employees, their appointments could not have been cancelled by the impugned memorandum which according to them amounts to removal from service, without following the procedure laid down under Article 311 of the Constitution of India and the provisions of the CCS (CCA) Rules, which is applicable to the employees of the State Govt.

24. The learned Counsel for the Petitioners have placed reliance on the decisions of the Apex Court reported in Roshni Devi and Others Vs. State of Haryana and Others, : Kamal Nayan Mishra Vs. State of Madhya Pradesh and Others, : Kamal Nayan Mishra v. State of Madhya Pradesh and Ors.

25. Learned Counsel for the Petitioners have also drawn my attention to the decision of this Court reported in Mithu Deb Vs. The State of Tripura and Others, : Mithu Deb v. State of Tripura and Ors. This judgment has a material bearing in the instant proceeding, inasmuch as, like that of the Petitioners, her service was also terminated by the same very impugned Memorandum dated 21.9.07 on the same very ground assigned therein. In the said judgment, this Court has interfered with the said impugned Memorandum on the ground that the judgment and decree dated 12.3.93 passed in TS No. 21/91, about which mention has been made above having attained its finality and the Plaintiff Mithu Deb having been appointed pursuant to the said judgment and decree, her appointment could not have been terminated and/or cancelled by the impugned Memorandum dated 21.9.07. It is submitted at the bar that pursuant to the said judgment and order Smt. Mithu Deb has again been reinstated in service.

26. Mr. Chakraborty and Mr. Mazumdar, learned State Counsels on the other hand have submitted that the appointment of the Petitioners being founded on illegality and/or irregularity, there is nothing wrong in canceling their

appointments by the impugned memorandum. On being asked as to whether the impugned memorandum was preceded by any notice to the Petitioners, they fairly admitted that the Petitioners were not put to any kind of notice before issuing the said memorandum. Although, they faintly tried to refer to the earlier show cause notice dated 24.8.02 issued to some of the Petitioners but on being asked as to whether the said show cause notices and the replies thereto submitted by the concerned Petitioners had been taken into consideration while passing the impugned order, they fairly admitted that the records of the case do not reflect such a position. Be that as it may, placing reliance on two decisions of the Apex Court reported in *M.P. State Coop. Bank Ltd., Bhopal Vs. Nanuram Yadav and Others*, : *State of Bihar Vs. Upendra Narayan Singh and Others*, : *State of Bihar v. Upendra Narayan Singh and Ors.*, both the learned State Counsels submitted that there being violation of merit positions while appointing the Petitioners and the appointments having been made irregularly, the authority has rightly passed the impugned order.

27. I have carefully considered the submissions made by the learned Counsel for the parties and the entire materials on record including the records produced by the learned State Counsel. The records are in file No. F. 3(13)-DSWE/ESTT/89 and F. 3(13)-DSWE/ESTT/2002.

28. On perusal of the records, there is nothing to indicate that the impugned memorandum has been issued pursuant to the aforementioned show cause notices and the replies thereto. This position is also amply evident on a bare perusal of the impugned order. However, to satisfy myself as to whether there is any semblance of any reference to the said show cause notices and the replies thereto, I have verified the records and on careful consideration of the same, I do not find any nexus between the show cause notices and the impugned Memorandum by which the appointment of the Petitioners have been cancelled.

29. Thus from the above, what is evident is that the Respondents have cancelled the appointments of the Petitioners without putting them to any kind of notice and accordingly, there was gross violation of principles of natural justice, more so, when all the Petitioners were enjoying confirmed services.

30. As noted above, in the suit filed by Smt. Mithu Deb, the State Govt. in their written statement supported the selection and the appointments made there after. Unfortunately, the same very State Govt. by way of approbate and reprobate took altogether a different stand in the aforementioned writ appeal about which mention has been made above. The State Govt. instead of acting as a model employer, took different stand according their sweet will. Towards issuance of the impugned memorandum dated 21.9.07.

31. A little reference to the contents of the show cause notices and the impugned memorandum dated 21.9.07, at this stage, may not be out of context. In the show cause notice, what was contended was that the merit positions in the select list did not permit appointment of the notices and that the seniority positions in

the merit list was floated and thereby recommendation of the Selection Committee was not adhered to. But in the impugned memorandum which has been quoted above, the basic point taken is that the selection process itself was void. The memorandum recites that considering all relevant facts and careful consideration of all aspects of the matter, it would be appropriate to cancel appointments of all 10 (ten) LD Cs including Smt. Mithu Deb.

32. The impugned memorandum also refers to the judgment and order dated 8.3.07 passed in the aforementioned writ appeal No. 83/2001. Thus, apart from an omnibus statement with vague allegation of the selection process itself being void and conveying the decision of the Govt. to cancel the appointments, there is no material particulars in the impugned memorandum on the basis of which the grounds of cancellation of appointments can be discerned. It gives an impression that the authority was guided by the observations made in the judgment in the aforementioned writ appeal that:

We must not also be unmindful of the legal position that merely on the basis of a selection, no right accrues for appointment and it would be improper for a Court to direct appointment only on the basis of a selection".

Another observation made in the impugned memorandum is that:

After considering relevant issues Hon''ble Court endorsed Government''s decision to cancel the appointment of all 10(ten) LD Cs.

33. Both the aforementioned grounds are not at all sustainable and/or applicable to the case of the Petitioners. First of all, the aforementioned quoted portions are the observation in respect of the general proposition of law that mere empanelment does not give indefeasible right of appointment to the empanelled candidate. The said principle was reiterated only in the case of the Petitioner involved in the said proceeding i.e. Smt. Sutapa Nath and in the context of her right to get appointment after long 17 years. Secondly, the Court in the aforementioned judgment and order never endorsed the position of the Govt. to cancel the appointment of 10 (ten) LD Cs. Such an endorsement cannot be made in a proceeding in which the persons likely to be affected are not party Respondents. What was recorded by the Division Bench is the plea of the State Respondents that the Govt. had decided to cancel the appointments of 10 LD Cs. Such observation and that too when the Petitioners were not party to the said proceeding, cannot cloth the state Respondents and/or empower them even to the extent of canceling the appointments of the confirmed services of the Petitioners.

34. The aforementioned position which has emerged from the impugned memorandum will also go to show that the particular position was taken by the State Respondents behind the back of the Petitioners and in the process the barest minimum requirement of putting them to a notice before cancellation of appointment was also abandoned. The State Govt. was under the impression that their stand in the matter having been made known to this Court and this

Court having recorded such stand in the judgment and order passed in the writ appeal. it was empowered to play with the appointments of the Petitioners which were made way back in 1990 and by the time the impugned memorandum was issued, long 17 years had elapsed.

35. In *Roshni Devi (supra)*, the Apex Court noticing the fact that the appointees had been appointed and continued in service for more than 9 (nine) years, protected their services, although they might not have been appointed strictly in accordance with law.

36. In *Kamal Nayan Mishra (supra)*, the Apex Court interfering with the termination of services of confirmed employees (holder of civil posts) without an enquiry or opportunity to show cause observed thus:

15. A confirmed government servant is the holder of a civil post entitled to the benefits of the safeguards provided by Article 311 of the Constitution. On the other hand, a probationer does not have any substantive right to hold the post, and is not entitled to the protection under Article 311. A probationer's services can be dispensed with during the period of probation, or at the end of the probation period, if his service is found to be unsatisfactory or if he is found to be unfit for appointment.

37. In *Jagdish Chopra (supra)*, on which the learned State Counsel has placed reliance, the Apex Court while laying down the principles in the matter of public appointment emphasized on adhering to the principles underlined in Articles 14 & 16 of the Constitution of India. It was observed that the Court should not exercise its jurisdiction on misplaced sympathy. There cannot be any quarrel with the said proposition of law laid down by the Apex Court. However, in the instant case, the grounds assigned in the impugned memorandum have been noted above, which are not at all sustainable in law.

38. Another decision in which the learned State counsel has placed reliance is *Upendra Narayan (supra)*. It was observed that persons appointed by back door methods or as a result of favoritism, nepotism or corruption, are not entitled to un-warranted sympathy. In the said decision, the Apex Court up-held the termination of illegal appointments. In the said case large-scale appointments were made to Class-III and IV posts without following the recruitment process. Same is not the case in hand. On the own showing of the Respondents, there was selection and preparation of merit list but in the show cause notice, the contention was that the merit positions were not adhered to while making the appointments. On the other hand, in the impugned memorandum the recitation is that the selection process itself was void and that mere empanelment does not give any right for appointment and most importantly this Court by its aforesaid judgment in the writ appeal had approved the decision of the State Govt. to cancel the appointments of 10 (ten) LD Cs, which on the face of it is not borne on records and thus not sustainable in law.

39. In *Karnataka State Road Tpt. Corporation and Another Vs. S. Manjunath*, the

Apex Court dealing with the case of an employee deemed to have been confirmed in service, held that his services could not have been put to a end except by means of disciplinary proceedings after following mandatory requirement of law.

40. The Apex Court, way back in 1964 in the case of Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., dealing with the particular clause in the service rule empowering termination of service of a permanent employee by notice, held that following the procedure laid down in Article 311 of the Constitution of India is a sine-qua-non before dispensation of the services of a permanent employee.

41. In the case of Nazira Begum Laskar v. State of Assam, reported in AIR 2001 SC 102: 2001 (1) GLT (SC) 16, the Apex Court noticing the large scale illegalities made in the appointment of large number of teachers while upholding the termination of service pursuant to an enquiry conducted as per the direction of the Court duly took note of the fact that the appointees at-least were put to notice providing them a reasonable opportunity of being heard before termination of their services. In the instant case, not to speak of following the procedure laid down in Article 311 of the Constitution of India or the provisions of CCS (CCA) Rules, the Petitioners were not even issued with any notice towards passing the impugned memorandum with the misconception that this Court in the aforementioned writ appeal permitted the State Respondents to do so.

42. In Canara Bank and Others Vs. Shri Debasis Das and Others, dealing with the principle underlined Audi-alte-partem, the Apex Court observed that it embodies rule of fair play and must precede the adverse order, which must be clear and precise, so as to appraise the party determinatively of the case he has to meet. This principle so well cherished in any adverse administrative decision was not followed in the instant case.

43. In A.P. Aggarwal Vs. Govt. of N.C.T. of Delhi and Another, , it was observed that the State Action, in order to be valid, must not be susceptible to vice of arbitrariness and thus the essence of Article 14 of the Constitution and the Rule of Law, the system which governs the country.

44. The Apex Court in Dipti Prakash Banerjee Vs. Satvendra Nath Bose National center for Basic Sciences, Calcutta and Others, Dealing with the case of termination of service of a probationer and discussing the principles underlining "Foundation"" and "motive" of termination noticing that the allegations against the Appellant were the foundation and not mere motive for his termination, found fault with the same as no enquiry was conducted. It was further observed that in the matter of termination, punitive or simplicitor, stigma may be inferable either from the order or from the references quoted in the termination order. In such a situation, absence of any regular enquiry was held to be fatal and accordingly the termination order was interfered with.

45. Even in the case of Vishwant Kumar Vs. Madan Lal Sharma and Another, ,

while emphasizing on the need for fairness in the matter of employment and dealing with the various modes of appointment and deprecating the practice of regularization of service of casual and/or temporary employees and making a distinction between those who are continuing in service on the basis of litigations and those continuing in service without litigations, the Apex Court also emphasized the need for regularization of services of irregular appointees who have continued to work for 10 (ten) years or more without the intervention of orders of the Courts. In this connection, the observations made in paragraph 53 of the judgment is quoted below:

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in *State of Mysore and Another Vs. S.V. Narayanappa*, *R.N. Nanjundappa Vs. T. Thimmiah and Another*, and *B.N. Nagarajan and Others Vs. State of Karnataka and Others*, and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the steps to regularize as a one-time measure, the services of such irregularity appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of tribunals and would further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wages are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularization of making permanent, those not duly appointed as per the constitutional scheme.

46. In the instant case, it cannot be said to be a case of illegal appointments, at best, there was some irregularity in making the appointment. It is an admitted position that the Petitioners duly participated in the selection process and a merit list was prepared. The same very Respondents, who have now opposed the appointments of the Petitioners and have issued the impugned memorandum, defended such appointments in the Title Suit filed by said Smt. Mithu Deb. With the change of situation, they took altogether a different stand, so as to contend that there was irregularity in appointing the Petitioners. While in the show cause notice referred to above, the Respondents pointed out about the irregularity in the matter of appointment but in the impugned memorandum, they have taken altogether a different ground so as to contend that the selection process itself was void and that mere inclusion of name in the panel did not confer any right to the 10 (ten) LD Cs who had been appointed way back in 1990 and also that this Court endorsed the decision of the Govt. to cancel the appointment of the said LD Cs. Such a view expressed in the impugned memorandum dated 21.9.2007 is

absolutely arbitrary, contrary to justice, equity and fair play and wholly unsustainable in law.

47. As noted above, in the appointment order, it was clearly spelt out that service could be terminated only on one month's notice from either side and that the appointees would be governed by the relevant Service Rules. While at the initial stage of the service, it was a contract according to the terms and conditions indicated in the order but with efflux of time and in due course, the Petitioners derived the status of a confirmed employee and thus their services could not have been dispensed with by a stroke of pen without putting them to any kind of notice and without following the relevant service rules.

48. In the suit filed by Smt. Mithu Deb, the same very Respondents which have passed the impugned order, justified their action in appointing the Petitioners. In the writ petition filed by Smt. Sutapa Nath also, they took the same stand but in the writ appeal proceeding conveyed the purported decision to cancel the appointments. The Respondents could not have made a volte-face and/or resiled back from their earlier stand by way of approbate and reprobate, which if allowed will lead to chaos and uncertainty in administrative action. The Respondents are bound by their stand in the aforesaid proceedings and cannot be allowed to take a different stand altogether, which will be iniquitous.

49. For all the aforesaid reasons, I find sufficient force in the case of the Petitioners and accordingly the writ petitions are accepted. They are allowed and the impugned Memorandum dated 21.9.2007 stands set aside and quashed. Consequently, all the Petitioners shall be reinstated in service immediately. They will be entitled to continuity in service with all service benefits as if the impugned memorandum dated 21.9.2007 did not exist. However, it is made clear that the Petitioners will not be entitled to any back wages for the period during which they remained out of employment but they will be entitled to all other service benefits, including notional fixation of pay etc.

50. All the writ petitions are allowed, without however, any order as to costs.