

(2000) 03 PAT CK 0109
In the Patna High Court
Case No : C.W.J.C. No. 3345 of 1997

Ravindra Narain Thakur and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-03-2000

Acts Referred:

Bihar Service Code, 1952 — Rule 288
Bihar State Universities Act, 1976 — Section 35
Constitution of India, 1950 — Article 14, 142, 16, 226, 320

Citation : (2000) 3 PLJR 206

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh, Rajeev, Niranjana Kumar, in C.W.J.C. Nos. 3345, 4837, 10830, 10971 and 10995 of 1997, Chandra Shekhar, Rajeev Ranjan, Brajesh Kumar, Rajesh Ranjan, in C.W.J.C. Nos. 9473, 9591, 9608 and 10210 of 1997, Tara Kant Jha, Prafull Chandra Jha, Baidya Nath Thakur, in C.W.J.C. Nos. 6070 and 6596 of 1998, B.P. Pandey, Yogendra Jha, in C.W.J.C. No. 10991 of 1997, Ganesh Prasad Singh, Bishnu Kant Dubey, in C.W.J.C. No. 10490 of 1997, P.N. Roy, Ashish Anshu, in C.W.J.C. No. 3822 of 1997, Anil Kr. Upadhyay, Indu Bhushan Singh, Asim Jha, Satendra Kumar Jha, in C.W.J.C. No. 11772 of 1997, Barun Kumar Choudhary and Lalit N. Jha, in C.W.J.C. 6904 of 1998, for the Appellant; G.P. Rai, Satish Kumar Sinha, in C.W.J.C. Nos. 3345, 3822, 4837, 4982, 9591, 9608, 9773, 10210, 10436, 10490, 10971, 10995, 11772 of 1997 and 6200 of 1998, Ashok Kr. Singh, Pravin Kumar Verma, in C.W.J.C. Nos. 6070 and 6596 of 1998, V.N. Sinha and S.C. Jha, in C.W.J.C. Nos. 10830 of 1997 and 6904 of 1998, for the Respondent

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—All these writ petitions filed by different set of Petitioners have been heard together because Petitioners in all the cases are class III or class IV employees who were appointed on temporary basis in various project of dealing with rehabilitation or land acquisition works connected with the projects in question under the Water Resources Department, Government of Bihar and their services have been terminated by impugned orders mainly on the ground

that their initial appointment was not made by a competent authority or on the ground that after several years when they were asked to produce their appointment letters they failed to produce the same which led to an interference that their appointments were illegal and not made by a competent authority. The Petitioners have challenged their orders of termination on more or less similar grounds. They have also made a prayer to direct the Respondents to regularise their services or to accept them as regular employees.

2. At the outset it is worth noticing that most of these writ petitions were admitted and ordered to be heard together on the plea that they involved common questions of law but in course of hearing in some of the cases learned Counsel for the Petitioners advanced arguments on facts allegedly peculiar to those cases or to some of the Petitioners even in a single case filed on behalf of large number of persons. In my considered view it is not possible to take note of peculiar facts of individual Petitioner but depending upon the facts and grounds mentioned in the impugned orders of termination these batch cases may be classified into three broad categories only for the sake of convenience and proper discussion of the relevant issues. For that purpose I have categorised all the cases into three categories A, B and C. Writ petitions in which the impugned orders of terminations have been passed on the ground that even after notice the Petitioner failed to produce their original letters of appointment and, therefore, the appointments were deemed to be illegal, have been placed in category A which consists of CWJC Nos. 3345/97, 3822/97, 4837/97 and 4982/97. Such writ petitions wherein the impugned orders of termination have been passed on the ground that subsequent appointment of Petitioners as retrenched employees by competent authority, the Director of the Department, was of no consequence because their initial appointment was itself illegal and hence, they cannot be accepted as legally retrenched employees have been categorised in category B. These include CWJC Nos. 6904/98, 10830/97, 10971/97, 11772/97 and 6596/98. In rest 10 writ petitions the impugned orders of termination are based upon a ground that the Rehabilitation Officer, who had initially appointed the Petitioners, had no legal authority to make such appointments. These cases have been included in category C.

3. Before noticing and discussing the salient facts and features of different categories of cases as mentioned above, it is desirable to note certain facts common to all these cases. All the Petitioners in these cases were initially appointed on temporary or ad hoc basis and generally for a limited period but the appointments were permitted to be continued for long period of 8 to 14 years except in category B cases where the initial appointments were soon terminated by the Director on the grounds that services of concerned employees were no longer required but soon thereafter he himself reappointed such employees treating them as retrenched employees. Thereafter, such reappointed employees also continued in service for long periods of 8 to 9 years. The removal of the Petitioners is not on the ground that the projects have closed or the posts are not available. Their removal is also not on the ground that their appointment

Procedure was against any established norms, law or provisions such as Articles 14 or 16 of the Constitution. From the counter affidavit filed on behalf of the Respondents, it appears that after a gap of time a probe was started into nature of massive temporary appointments after 1985 but the records and files relating to them were missing and, therefore, a through probe by the Vigilance Department was ordered and simultaneously legal opinion was obtained from the Law Department. The Advocate General looked into the materials and categorised appointments into two categories: (a) Illegal appointments which were made by the authorities who were not competent to do so and (b) Irregular appointments which were made by authorities who were competent to appoint but proper Procedure was not followed by them. As per the said opinion of Advocate General services of illegal appointees falling in category (A) were decided to be terminated after giving the affected persons reasonable opportunity of hearing. Notices were issued to such persons through Newspaper as well as individually through registered post. The Petitioners filed their replies in response to the notice mentioned above and thereafter, the impugned orders of termination were issued by the Director, Land Acquisition and Rehabilitation on either of the three grounds respectively applicable to Petitioners falling in the categories A, B and C mentioned earlier.

4. Coming to writ petition falling under category A, in CWJC No. 3345 of 1997 the services of all the 86 persons (Petitioner No. 87 is an Union of employees) have been terminated on the ground that the Petitioner on being asked to produce their appointment letters failed to do so and hence, their appointments must be deemed to be illegal. Learned Counsel for the Petitioner referred to show causes filed by various Petitioners as contained in Annexure 8 and 9 series to show that there were two types of cases as per reply given by the Petitioners. Some of the Petitioners had taken stand in their replies that they had to submit their appointment letters with the concerned treasury in relation to payment of their salary at the initial stage and thereafter they were not given back those appointment letters. The reply of another set of Petitioners was to the effect that they are attaching their appointment letters along with the show cause. This fact has been pleaded in paragraph 35 of the writ petition and are borne of Annexures 8 series and 9 series. The counter affidavit does not controvert the aforesaid pleading and in fact, there is no reply to paragraph 35 of the writ petition. Through a supplementary affidavit the copies of appointment letters of 64 persons were brought on record and with regard to remaining Petitioners the stand is, as noticed above, that their appointment letters were submitted in the treasury and thereafter not returned but full particulars relating to their appointment are mentioned in the service book of the Petitioner. Petitioners have also pleaded in paragraph 28 of the writ petition that service book was opened for all the Petitioners prior to 1990. Hence, the factum of their appointment is admitted and opening of service book, as provided under Rule 288 of Bihar Service Code goes to show that Petitioners were being treated like permanent employees. As per chart contained in Annexure-3 all these appointments were

made between 1986 and 1989 for a short duration but they were allowed to continue and in this regard reference has been made to a letter of Director dated 13.5.1998 by which services of such temporary employees were extended until further orders.

5. In cases falling under category A, learned Counsel for the Petitioners tried to show by reference to copies of appointment letters subsequently brought on record that majority of appointments were made by the Special Land Acquisition Officer who was competent authority to appoint and even in cases of appointments made by Rehabilitation officer some of the appointment letters show that appointments had been made under the orders of the competent authority-the Director. On the basis of some unreported judgments of this Court including one by me dated 11.1.2000 in CWJC No. 6586 of 1998 *Sunil Kumar Singh v. State of Bihar and Ors.* it was submitted that even in cases of such Petitioners who were appointed by Rehabilitation officer, the subsequent order of extension of service by Director should be construed as an order approving or affirming the appointments and hence, the appointment of Petitioner cannot be treated as made by a person without authority.

6. It was next contended that the impugned orders do not show proper application of mind inasmuch as from the admitted materials in the writ petition it is apparent that as many as 64 persons had annexed their appointment letters with their show causes but the impugned orders contain a wrong statement to the contrary. It was further contended on behalf of the Petitioners that equity was in favour of the Petitioners as the action of the Respondents in terminating their services was quite belated. On the basis of pleadings it was submitted that the authorities had knowledge of these appointments and in the year 1992-93 after an enquiry the matter was decided to be closed and a decision was taken to regularise the services of such appointees as the Petitioners but subsequently, for no good reasons instead of issuing the orders of regularisation the Respondents have proceeded to terminate the services of the Petitioners in an arbitrary and illegal manner.

7. Lastly, it was submitted that in view of number of years of service put in by the Petitioners direction may be issued for regularisation of their service on the ground of equity. For this purpose, reliance was placed on a large number of judgments of this Court as well as of the Apex Court.

8. In the cases falling under category A, the concerned authorities have apparently failed to examine the cases of the Petitioners on the basis of their appointment letters which according to pleadings were enclosed with show causes filed by the concerned Petitioners. Even in the type of cases where the Petitioners expressed in their show cause and pleaded in the writ petition that their appointment letters had been submitted in the treasury and that particulars of their appointment are duly mentioned in the service book opened for all the Petitioners, the concerned authorities have not applied their mind to the entries in the service book as well as to the contention of such Petitioners that their

appointment letters had been submitted in the treasuries. In such a situation, in my view, it would not be appropriate for this Court to apply its mind to the letters of appointment of such Petitioners who have produced copies of such appointment letters in this Court or whose particulars of appointment are allegedly mentioned in their service books. Such an enquiry must be done by the concerned authority. Since they have failed to apply their mind to such relevant materials hence, at this stage, the impugned orders of transfer (sic-termination?) must be held to be without proper application of mind and on this count alone the same are hereby quashed.

9. Ordinarily, the matter relating to Petitioners covered by category A cases requires to be remitted back to the, concerned authorities with liberty to re-examine the matter and come to a fresh decision in accordance with law but before ordering for such a course of action it becomes necessary to examine the contention advanced on behalf of the Petitioners; first relating to delay in taking action for termination of their services and the second relating to equity on account of their continuance in service for a number of years. Both these contentions have a common root. Delayed action even after knowledge can be assailed on principles of acquiescence or estoppel. But in matters relating to public employment where the allegation relates to appointment by authorities having no power to appoint it can never be safe to apply the principles of acquiescence or estoppel because this would amount to ask the State to accept wholly unauthorised actions of persons who at the first place may not have any authority to make such appointments. For the same reasons it does not appear proper to raise the ground of equity to sustain such appointments which may have been made wholly without authority of law. But before coming to a final conclusion of this aspect of the matter it is useful to refer to various judgments cited by the parties on this aspect of the matter.

10. On behalf of the Petitioners strong reliance was placed on judgment of the Apex Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., . In this case while dealing with matter of regularisation of ad hoc/temporary employees the Apex Court interfered with the direction of the High Court for regularisation of those ad hoc/temporary employees who have continued for more than an year on the grounds that the direction had been given without reference to the existence of a vacancy or to the eligibility and qualifications for the post etc. It further cautioned that such a direction cannot be given in each and every case in a mechanical manner rather it must be moulded in each case having regard to all the relevant facts and circumstances of that case in the next case reported in C.A. Shankar Prasad and others Vs. Karnataka State Adult Education Council and others, termination of employees concerned had taken place on account of closure of a scheme and the Apex Court having found that the Petitioners had Served for over a decade issued a direction to utilise the services of those Petitioners if and when some vacancies are made available in the case of Roshni Devi v. state of Haryana (1998) 8 SCC 19 on account of more than 9 years of service equity was invoked by the Apex Court to

such appointments which were found to have been made through invalid recruitment process. The invalidity in that case was largely on account of mistakes committed by the Service Selection Board. In the case of Mrs. Rekha Chaturvedi (Smt) Vs. University of Rajasthan and Others, although the selection was found to be illegal on account of application of wrong date for scrutiny of qualifications but the appointments were interfered with on the ground that appointees had continued in service for about 8 years. In the case of Dhrub Prasad and Others Vs. The State of Bihar and Others , the services of some excise constables had been terminated after about 12 years without issuing any show cases notice on the ground that power of appointment was vested in the District Officers and not in the superior officer, Deputy Commissioner, Excise- While quashing the termination order the court came to a conclusion on the basis of certain rules that the power of appointment will be deemed to be vested in the superior officer and thereafter refused to permit the Respondents to reopen the matter again on the ground of delay of about 12 years. In the case of Saryu Singh v. State of Bihar 1995 (2) PLJR 785 this Court found that the Petitioners had been working on daily wages for 5 years without any interruption or any complaint and hence directed for regularisation of the services. In case of Pawan Kumar v. State of Bihar 1997 (1) PLJR 869 the Petitioners were daily rate workers whose services had been regularised and thereafter their services were terminated without affording the pro codural safeguard available to a regular employee and on that ground the termination orders were quashed. In the case of Balmiki Prasad v. State of Bihar 1983 PLJR 131, a Division Bench of this Court quashed termination orders on the ground that termination orders were based upon an assumption that the appointments were only for a period of six months and did not take into account the intervening action by which the Petitioners had been regularised in service, though on ad hoc basis. In the case of Azimuddin Ansari v. State of Bihar, 1983 PLJR 716, the Division Bench of this Court found the impugned order of Chairman of Bihar Secondary Education Board interfering with appointment of the Petitioner made by a competent authority as without jurisdiction and thereafter in paragraph 15 highlighted the humanitarian aspect also with observations that if the Petitioner was dislodged from service today then "equity may stand massacred"

11. On the other hand learned Counsel for the state placed heavy reliance upon judgment of the Apex Court in the case of E. Ramakrishnan and Others Vs. State of Kerala and Others, . In that case posts in question were required by the (sic) to be filled up through selection by Public Service Commission. The Petitioners had been appointed de hors the said rule and although they had been working for a long period of 14 years, the Supreme Court held that the High Court had rightly refused the relief of regularisation because a decision in favour of regularisation would be in teeth of statutory requirement under Article 320 of the Constitution. He also placed reliance upon another judgment of the Apex Court in the case of Ashwini Kumar v. State of Bihar 1997 (2) PLJR (SC) 59. In this case while dealing with large number of illegal and fraudulent appointments made by one

Dr. Mullick, in paragraph 12 the Apex Court considered the effect of confirmation of such employees whose entry itself was illegal and void. In that context it was held "question of confirmation or regularisation of an irregularly appointed candidate would arise if the concerned candidate is appointed in an irregular manner or on ad hoc basis against an available vacancy which is already sanctioned. But if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility, it would amount to decorating a still born baby". Learned Counsel for the State also placed reliance on the following judgments of this Court. In the case of *Bijay Kumar v. State of Bihar* 1993 (1) PLJR 99 this Court was dealing with appointments made in violation of mandatory provisions of the recruitment rules as also Article 16 of the Constitution. In view of such violation the court held the appointments to be a nullity and observed that State as an employer is not bound to recognise an appointment made by its servant ignoring the mandatory provision of recruitment rules or Article 16 of the Constitution. In the case of *Lalan Kumar Singh and Others Vs. The State of Bihar and Others*, the Division Bench of this Court was dealing with a large number of fraudulent appointments made by or at the behest of one Dr. A.A. Mullick, Deputy Director (Tuberculosis). It found that appointments had been made illegally and without following statutory rules and then held that illegal appointees who were continuing for long period may get relief of regularisation of their services on equitable or humane considerations by the Supreme Court under Article 142 of the Constitution but High Court exercising power under Article 226 cannot do so. It further held that where fraud is established in appointment the termination of such appointees cannot be challenged on ground of equity. With regard to regularisation it was further held that regularisation can be done only by virtue of or under the provisions of a legislative Act or a policy decision adopted by the State in exercise of its executive power. In the case of *Amresh Kumar Singh v. State of Bihar* 1992 (2) PLJR 583, while dealing with an illegal appointment made without requisite advertisement and without due selection process, it was held that such appointment is void ab initio and in case of such an appointment all the subsequent evidence to the effect that the appointee was functioning as a regular employee are wholly irrelevant.

12. A careful consideration of the judgments cited on behalf of the Petitioners reveals that these judgments did not deal with appointments alleged or found to have been made by an incompetent authority. In those judgments the courts were not called upon to decide as to how equity would be applicable in a case where the initial appointment is unauthorised or against Article 16 of the Constitution of India and, therefore void ab initio. On the other hand the judgment of the Apex Court in the case of *Ashwini Kumar* (supra) clearly holds that if the initial entry itself is unauthorised and is not against any sanctioned vacancy then the question of regularising the (sic) cannot survive and even

after such regularisation is done it would be an exercise in futility. To similar effect are the judgments of the Division Bench in the case Bijay Kumar (supra) and Lalan Kumar Singh (supra). There can be no manner of any doubt that if the appointment is by an unauthorised person then the appointment has to be treated as void ab initio and the initial entry of an appointee in such case must be treated as unauthorised. In view of aforesaid discussion it must be held that as per settled law there can be no acquiescence or estoppel in the case of an appointment which is found void ab initio nor can delay alone create equity in favour of such illegal appointees. Hence in these cases where the case of the Respondents is that the appointments in question must be held to be illegal because of failure of the Petitioners to produce their appointment letters I have no option but to remit back the matter to the concerned authorities with liberty to re-examine the matter in view of observations made earlier and in accordance with law. I order accordingly however some more directions in this regard may have to be given in view of discussion with regard to cases falling under category B and C. Hence, final directions even with regard to category A cases may have to be reiterated at the end of the entire discussion covering at the other category of cases.

13. Next for the sake of convenience, I take up cases falling under category C. In these 10 writ petitions the impugned orders of termination are based upon a ground that the Rehabilitation Officer who had initially appointed the Petitioners had no legal authority to make such appointments. Most of the concerned Petitioners in these cases were appointed prior to 1985 but some of the Petitioners falling under this category were appointed even till the year 1988. The appointments were made by the Rehabilitation Officers and the main question that falls for consideration in these cases is whether the appointments were made by unauthorised persons or not. In cases of almost all the Petitioners falling under this category although the order of appointment was issued by the Rehabilitation Officer but in some cases there is clear mention in the order of appointment itself that the appointments were being made on temporary basis/ ad hoc basis as per order of the Director, the competent authority. Such Petitioners can be found in CWJC 9473/97 and 10991/97 However, in majority of cases the initial appointments were either granted specific approval by the competent authority, the Director or general approval by various orders for extending the period of appointment pursuant to which the Petitioners in these cases continued in service for long period. In course of their service the concerned Petitioners were treated as duly appointed temporary employees and as such they were paid regular salary, their service books were maintained and in some cases orders of promotion were also issued promoting class IV employees to class III posts as in the case of Petitioners in CWJC 6070/98. In these cases the main argument on behalf of the Petitioners is that the order of appointment issued by the Rehabilitation Officers should be read along with order of Director, the admitted competent authority, to make such appointments and on joint reading of such orders it should be held that in such cases the

appointments were made by a competent authority, the Director and the State having accepted such appointments to be valid appointments for a long period should not be permitted to terminate the services of such appointees on the ground of lack of power in the Rehabilitation Officers.

14. On behalf of the Petitioners in these cases reliance was also placed upon Annexure to Appendix 1 of Bihar Service Code (Part II) to submit that in the Irrigation Department officers in the rank of Deputy Collector in the Sone and Champaran canals, Revenue Division had been vested with the power to transfer all non-gazetted government servants and menials whose posts he is competent to fill substantially. On the basis of such provision, it was further submitted that the Deputy Collectors in the Revenue Division of Irrigation Department were competent to fill substantially some of the non-gazetted posts of government servants and menials and the posts of Special Land Acquisition Officers and Rehabilitation Officers were manned by officers in the rank of Deputy Collector. It was also submitted on the basis of a circular letter of Secretary, Irrigation dated 18.2.1978 (Annexure 9 to CWJC 6070/98) that the Government had granted specific delegation of necessary appointing power in the case of Irrigation Department in favour of Assistant Engineer, Revenue Deputy Collector (canal), Special Land Acquisition Officer and Accounts Officer. On the basis of materials on record in this regard it was submitted that usually officers of same rank were posted as Revenue Deputy Collector (canal) or Special Land Acquisition Officer or Rehabilitation Officer. Many a times a Special Land Acquisition Officer also worked as Rehabilitation Officer, some times as Assistant Engineer was also posted to work as Rehabilitation officer. It was in such circumstances that the orders of appointment issued by Rehabilitation officers at the relevant time used to be accepted as orders by competent authority and in any event, as per practice, once the Director approved such an appointment the same was accepted as a valid appointment.

15. Further argument was advanced in these cases on behalf of such Petitioners like those in CWJC 6070/98, 10210/97, 9608/97 and 10991/97 that by subsequent orders of appointment to higher posts by promotion the earlier defect in the initial appointment, if any, stood rectified because the subsequent orders of promotion showed that the promotions were on the basis of decision by an Establishment Committee and since 16.5.1986 such Establishment Committee had been given power of appointment to class III and class IV posts.

16. In support of first submission that the order of appointment should be read together with order of Director to hold that in such cases appointment cannot be treated as one made without authority of law. Reliance has been placed upon some unreported judgments of this Court passed in cases of almost similarly situated persons belonging to the same department who were removed from service on similar grounds. On perusal of judgments in CWJC No. 4340 of 1998 Janardan Paswan and Ors. v. The State of Bihar and Ors. and CWJC No. 699 of 1998 Abhay Kumar Pandey v. The State of Bihar, it appears that in these cases

the court dealt with removal from service of displaced persons without holding any enquiry or removal on ground of illegality in the Procedure of appointment. No doubt, long period of service without any grievance was also taken into consideration. But in these cases the ground for removal is different. In CWJC No. 3698 of 1999 the Petitioner was initially appointed by Special Land Acquisition Officer in 1981 and he was terminated from service on being found absent but later on the Director reappointed him in 1987. In this case also the court favourably considered the fact that the Petitioner had worked uninterruptedly for about 11 years but the facts were quite different. In CWJC No. 592 of 1998 Sheo Shankar v. The State of Bihar the Petitioner was appointed by the Rehabilitation Officer which appointment was approved and later extended by the competent authority, the Director and in that view of the matter and also upon a favourable consideration of the fact that the Petitioner had been in service for 14 years this Court held that the Petitioner was appointed by the competent authority on account of approval by the Director and hence, equity was also found to be in favour of the Petitioner and the termination order was quashed. Following the aforesaid judgments in similar facts I had also allowed CWJC No. 6586 of 1998 Sunil Kumar Singh v. The State of Bihar on 11.1.2000. The facts in the present category of cases are more or less similar. In CWJC No. 5692 of 1998 Ravindra Prasad Singh v. the State of Bihar and another analogous case the facts were slightly different inasmuch as the orders of appointment had been issued by the Rehabilitation Officer-cum-Special Land Acquisition Officer and the Court found that there was proper delegation of power of appointment in favour of the Special Land Acquisition Officer and although some of the appointment letters related to establishment of Rehabilitation Officer but the Court came to a finding that the cadre of ministerial employees including the class IV employees of Special Land Acquisition Officer and of Rehabilitation Officer was common and since the appointing authority in that case was Special Land Acquisition Officer-cum-Rehabilitation Officer hence, the appointments were held to be by a competent officer. Continuance of the Petitioners in those cases for more than 9 to 15 years was also considered to be a favourable circumstances in favour of those Petitioners. In view of judgments in the case of Sheo Shankar v. State of Bihar (supra) and Sunil Kumar Singh v. State of Bihar (supra) which were rendered in similar facts and circumstances as applicable to the present category of cases, I find sufficient force in the first submission on behalf of the Petitioners. In administrative matters like appointment, in my view, once the competent authority, the Director granted specific or general approval and allowed extension of service of the concerned Petitioners, the appointments in question cannot be treated as one by authorised person. Moreover, it appears that the establishments of class III and class IV employees under the Special Land Acquisition Officer and that of the Rehabilitation Officer consisted of one common cadre as noticed in the case of Birendra Prasad Singh v. State of Bihar (supra) and since officers of same rank were holding the post of Special Land Acquisition Officer or Rehabilitation Officer hence, the Rehabilitation Officers were also making appointments sometimes under the order of the Director and

sometimes with his approval. The State has pleaded that most of the relevant files relating to such appointments are no longer available. A considerable period of time has also lapsed since then. In such circumstances, it does not appear possible to have a clear picture of the entire situation relating to such appointments. The State has also, for a long time accepted such temporary appointments as valid and even granted promotions to some of the Petitioners of course through competent authorities. For these reasons also, it appears proper to hold that the appointment of the concerned Petitioners was by competent authorities. Since it is not the case of the Respondents in all these cases that there were no posts available for the Petitioners nor it has been alleged in the termination orders that the appointment Procedure suffered from any illegality hence, appointment of the Petitioners in these cases cannot be treated as void ab initio and hence, equity would also come to their help, as has been held in some of the unreported judgments discussed above. Since, in substance, the Petitioners' appointments have been accepted to be by competent authorities, hence, reliance may usefully be placed upon a Division Bench judgment of this Court in the case of Umesh Chandra Jha v. State of Bihar 2000 (1) PLJR 529 where it was held that where the appointees have served for considerable period of time, their appointments cannot be cancelled by the State even if the appointments were made without following the Procedure prescribed under law.

17. In another case Braj Kishore Singh and Others Vs. State of Bihar and Others, , a Full Bench of this Court after dealing with other aspects of the matter relating to Section 35 of the Bihar State Universities Act, in paragraph 32 of the judgment considered whether to remit the matter to the State Government to consider the validity of appointments already made for the purpose of granting or refusing post facto approval. There, having regard to fact that the appointees had continued in service for long period of 17 years, the Court declined to reopen the matter and held that where initial appointment is not made according to rules but the appointees continue in service uninterruptedly for long period then they are entitled to have their service regularised against the posts available.

18. On behalf of the State it was submitted that the appointments were ad hoc or temporary in nature and had not been regularised as yet. With regard to promotion or reappointments given to some of the Petitioners it was submitted that if the initial appointment was void ab initio then such subsequent orders cannot be of any help as held by the Apex Court in the case of Ashwini Kumar (supra) and by this Court in the cases of Vijay Kumar v. State of Bihar and Lalan Kumar Singh v. State of Bihar (supra). So far as the judgments cited by the learned Counsel for the State are concerned they have already been noticed while dealing with cases covered by category A and it is sufficient to point out here that all those cases related to such appointments which were alleged and found to be fraudulent or in violation of mandatory provisions of Articles 14 and 16 of the Constitution of India and therefore, void ab initio. The cases falling under category A have been remitted for examining the facts emerging on perusal of appointment letters or service books of the concerned Petitioners.

However, so far as the Petitioners covered by category C are concerned, the impugned orders do not contain any allegation of fraud or procedural illegality nor any enquiry appears to have been held on those lines. There is no allegation regarding non-availability of sanctioned posts or regarding qualifications or performance of the Petitioners. The only question which the State appears to have examined in these cases, on the advice of the Advocate General, is whether initial appointment was by a competent authority or not and that question has already been discussed and answered earlier. No doubt, attempt was made on behalf of the Respondents to suggest, on the basis of some statements in the counter affidavit, that the appointments in question also suffered from procedural illegality. However, since no documents have been annexed with the counter affidavit to support such a submission nor any records have been produced, in my view, it will not be safe and prudent to take such submission into account. In this connection, it may be noticed that not only the impugned orders do not contain any such ground but even the show cause notices given to the Petitioners do not mention any such ground nor any enquiry was held on these lines.

19. In the facts and circumstances of the case, the subsequent orders of promotion in favour of some of the Petitioners which have admittedly not been cancelled cannot be ignored, more so after lapse of long period when such orders were passed by the competent authorities.

20. Now, the prayer of the Petitioners for regularisation of their services remains to be considered. The Petitioners have continued as ad hoc/ temporary employees for long years against sanctioned posts and hence, in my view, there is no legal impediment in directing the Respondents to consider all the relevant facts and take a decision for regularisation of services of the Petitioners in accordance with law at an early date and not later than six months from today. Accordingly, all the writ petitions covered by category C are allowed, the impugned orders of termination of the concerned Petitioners are quashed and the matter of regularisation of their services, if required, is remitted to the Respondent authorities, as directed above.

21. The cases falling under B differ from category C cases in several aspects. The Petitioners in these cases generally failed to establish as to who were their appointing authorities in the first instance. Their initial appointments do not appear to have been approved or extended by the Director and instead the Director terminated their initial appointments within a short time on the ground that their services were no longer required but subsequently the Director himself appointed them afresh treating them as retrenched employees.

22. In CWJC No. 6596 of 1998 the initial appointment order dated 15.2.1988 of the Rehabilitation Officer (Annexure 1) mentions that the appointment was being made pursuant to unspecified order of the Director. In CWJC 6904/98, as appears from Annexure-1, the Petitioner No. 1 Dina Nath Sah, was an employee of altogether a different establishment, Bihar Legislative Assembly, Patna. Similar is the case of Petitioner No. 7, Ganesh Ram, in whose case the experience

certificate (Annexure 1/B) was granted by the Deputy Collector, Revenue Division, Mohania. With regard to some other Petitioners the earlier termination orders have been annexed in Annexure 3/A, 3/B and 3/C. With regard to some of the Petitioners it has been pleaded that orders showing their earlier appointments or retrenchment are not available but may be produced later on. In this case on the basis of retrenchment orders/experience certificates it has been submitted that Petitioner Nos. 2 to 5 were appointed by the Special Land Acquisition Officer and Petitioner No. 7 by the Deputy Collector of a Revenue Division to have valid delegation to make such appointments. In CWJC 10830/97 the six Petitioners have not disclosed their letters of appointment or the appointing authority and through a chart contained in Annexure-1 they have merely showed that they were initially appointed on various dates in the year 1989. Similar is the case with eleven Petitioners in CWJC 10971/97. In CWJC 11772/97 Petitioner No. 1 has claimed that he was initially appointed on 23.5.1988 vide letter No. 2060 of the then Director but the said letter has not been annexed. He has annexed a transfer order dated 4.6.1988 as Annexure-1 which refers to letter of the Director dated 23.5.1998 and in view of that five persons including the Petitioner No. 1 appear to have been transferred from Deoghar to Tenughat, Hazaribagh. The other two Petitioners of this case have claimed to have been initially appointed like Petitioner No. 1 and they have also not given any particulars of their initial appointment nor have they annexed their appointment orders.

23. In cases falling under this category, learned counsel for the Petitioners did not attempt to argue that the initial appointment of these Petitioners were valid and by a competent authority. This was not attempted obviously because by issuing show cause notices an enquiry in this regard had been held and as per reasons mentioned in the termination orders, the initial appointments of these Petitioners were found to be by persons having no authority to appoint. The argument advanced on behalf of the Petitioners in these cases was that since they were subsequently appointed as retrenched employees by a competent authority, the Director, hence, any illegality with regard to their initial appointment which had ended in termination cannot affect the validity and legality of their subsequent appointments made by a competent authority.

24. On the other hand, on behalf of the Respondent it was submitted that in these cases since the first appointment was not by a competent authority or even with approval of the competent authority, hence, such appointments would be void ab initio and, therefore, incapable of creating any right in such appointees to obtain appointment as retrenched employees. It has further been submitted in these cases that the then Director has apparently acted in a fraudulent manner in first terminating the illegal appointments of most of these Petitioners and subsequently appointing them as retrenched employees.

25. On a careful perusal of the facts and circumstances relating to these cases I find no good ground to interfere with finding of the authorities that the initial

appointments of these Petitioners were not by competent authorities. The only issue that remains to be examined is whether in such circumstances the subsequent appointment of these Petitioners treating them as retrenched employees was valid or not. In view of law laid down by the Apex Court as discussed earlier with regard to category A cases specially those cited on behalf of the State and particularly in view of law laid down in the case of Ashwini Kumari (supra) it has to be held that where the initial appointment was void ab initio and the entry into service wholly unauthorised then such appointment has to be treated as still born and, therefore, such appointment cannot be permitted to create any right in the appointees. Such appointees cannot claim and cannot be conferred with any right to be appointed as retrenched employees. The policy of the State to give preference to retrenched employees must be construed as a policy to give employment to such retrenched employees who were having a valid initial appointment. This inference flows from the judgments of the Apex Court and is also required by sound principles of public policy governing public employment.

26. For the aforesaid reasons I do not find any illegality in orders of termination issued against the Petitioners covered by category B cases and hence, the writ applications of Petitioners covered by this category are hereby dismissed.

27. The earlier findings and directions given in this judgment are summarised as follows:

(I) In cases falling under category A (CWJC Nos. 3345/97, 3822/97, 4837/97 and 4982/97) in which the orders of termination have been passed on the ground that Petitioners failed to produce their original letters of appointment the impugned orders are quashed but liberty is given to the Respondents to re-examine the matter afresh keeping in view the observations in this judgment not only with regard to category A cases but also category C cases.

(II) The cases falling under category B (CWJC Nos. 10830/97, 10971/97, 11772/97, 6596/98 and 6904/98) in which the services of retrenched employees have been terminated on the ground that the initial appointments were invalid, are found without merit and are dismissed accordingly.

(III) The rest of the cases falling under category C (CWJC Nos. 9473/97, 9591/97, 9608/97, 10210/97, 10436/97, 10490/97, 10991/97, 10995/97, 6070/98 and 6200/98) are allowed, the impugned orders of termination are quashed and the Respondents are directed to consider the matter of regularisation of services of such Petitioners, if required, in accordance with law within a period of six months from today.

28. In the facts and circumstances of the case, there shall be no order as to costs.