

(2001) 06 GAU CK 0022

In the Gauhati High Court

Case No : Writ Petition (C) No's. 634 of 1999 and 152, 160, 323, 383, 678, 2381 and 3796 of 2001

Sanjib Baruah and Others

APPELLANT

Vs

State of Assam and Another

RESPONDENT

Date of Decision : 26-06-2001

Acts Referred:

Assam (Food and Civil Supplies) Service Rules, 1970 — Rule 24
Assam Public Service Commission (Limitation of Functions) Regulations, 1951 — Regulation 3
Constitution of India, 1950 — Article 14, 16, 226
General Clauses Act, 1897 — Section 14

Citation : (2005) 1 GLT 140

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : P.K. Goswami, A. Hazarika, R. Kalita, M. Bordoloi, B.K. Mahajan, R.K. Pradhan, A. Choudhury, A. Saikia, R.P. Sarma, P. Sarma, A. Nath, B. Sarma, D. Kalita, P.J. Phukan, B.K. Sarma, P.K. Tewari and B. Malakar, for the Appellant; A.K. Phukan, A.G. and H. Rahman, for the Respondent

Final Decision : Dismissed

Judgement

1. All the eight writ petitions having raised common questions of law and fact, they are taken up for consideration together and are being disposed of by this common judgment and order.

2. WP(C) Nos. 152/2001, 160/2001, 323/2001, 383/2001, 728/2001 and 2381/2001.

The aforesaid writ petitions have been filed by persons aggrieved by an order dated 30.12.2000 appointing 92 persons as Sub Inspectors of Food and Civil Supplies on ad hoc basis. In the aforesaid order, it has been mentioned that the ad hoc appointments are purely temporary and in the nature of appointments under Regulation 3(f) of the Assam Public Service Commission (Limitation and Function) Regulation, 1951. The said appointments have been stated to have

been made for a period of 3 (three) months or till the filling up of vacancies as per provisions of the Assam (Food and Civil Supplies) Service Rules, 1970 whichever is earlier. The writ petitioners pray for quashing of the aforesaid order of appointment dated 30.12.2000 and for further directions from this Court to fill up the vacancies by holding a regular selection. Notwithstanding the reliefs sought, except in WP(C) No. 383/2001, the 91 appointees have not been impleaded as party respondents.

WP(C) No. 634/99

The writ petition has been filed by one Hiren Kalita for appointment against any vacant post in the cadre of Sub Inspector of Supply.

WP(C) No. 3796/2001

This writ petition has been filed by the 91 persons who have been given ad hoc appointment as sub inspector of supply initially by order dated 30.12.2000 and thereafter by order dated 30.3.2001. The petitioners seek appropriate instructions of this Court with a W.T. Message dated 24.5.2001 by which W.T. Message the Director of Food and Civil Supplies has intimated all the District and Sub Divisional level officers of the Food and Civil Supplies Department that the Government of Assam has decided not to extend the services of the aforesaid 91 petitioners beyond 30.5.2001. The relief of continuance in service as Sub Inspector of Food and Civil Supplies till such time that the posts are filled up by regularly selected persons has also been prayed for in WP(C) No. 3796/2001.

3. The facts leading to this high voltage litigation lies within a short compass. In the year 1996, two advertisements were issued calling for applications for filling up of an unspecified No. of posts in the cadre of Sub Inspector of Food and Civil Supplies. Over 37,000 eligible persons are stated to have applied for selection for the posts advertised. However, for reasons not disclosed, the applications received pursuant to the said advertisements, were not processed and no selection was held.

On 30.12.2000 by an order bearing No. TSE.31/96/pt/1/4, 91 persons mentioned in the aforesaid order were appointed on ad hoc basis as Sub Inspector of Food and Civil Supplies. As already stated WP(C) Nos. 152/2001, 166/2001, 323/2001, 383/2001, 678/2001 and 2381/2001 were instituted challenging the aforesaid appointments. This Court by order dated 17.1.2001 passed in WP(C) No. 383/2001, while entertaining the writ petition, directed that the appointments made by orders dated 30.12.2000 shall not be extended beyond 3 months as stipulated in the said order and that there shall be no further appointment under Regulation 3(f) to the post of Sub Inspector of Food and Civil Supplies. Seeking vacation and/or modification of the said order dated 17.1.2001 passed in WP(C) No. 383/2001. The State and many of the respondents No. 5 to 95 filed several Misc. applications in WP(C) No. 383/2001 i.e. MC 359, 469, 470, 471 and 472 of 2001.

4. The State had also filed an affidavit on 7.3.2001 in WP(C) No. 152/2001 seeking to explain before the Court the compelling reasons which had led to the appointments in question. Shortly put, the State in the aforesaid affidavit has pleaded that out of the total of the cadre strength of 248 Sub Inspectors only 149 posts were filled up and it was imperative in the interest of administration to make the aforesaid 91 appointments. It is also stated that before the aforesaid appointments were made on 30.12.2000, clearance of the State Level Empowered Committee was obtained in respect of 102 posts of Sub Inspector of Food and Civil Supplies. It is not disputed at the Bar that clearance of the aforesaid Empowered Committee is a mandatory requirement for filling up of any post and such approval is accorded by the empowered committee only upon full satisfaction that need for filling up the posts exists and also that there is provision for funds for payment of salaries against the posts in question.

5. This Court by order dated 29.3.2001 passed in all the aforesaid Misc. Cases held that the appointment order dated 30.12.2000 cannot be treated as an order under Regulation 3(f). This Court further held that Rule 24 of the Assam (Food and Civil Supplies) Service Rules, 1970 having provided for temporary appointment for a period not exceeding two months, the prayers for vacation of the interim order dated 17.1.2001 and for directions to extend the services of the applicants-respondents have to be considered within the ambit of Rule 24 of the said Rules. This Court was of the view that as Rule 24 of the Rules does not permit extension beyond two months, this Court cannot extend or direct the authorities to extend the said period of appointment. However, this Court left it open for the State Government to deal with the matter in accordance with the provisions of law. In the meantime, on 23.2.2001 another advertisement was published in all the leading newspapers of the State inviting applications for the post of Sub Inspector of Food and Civil Supplies. There is no dispute that pursuant to the said advertisements, a large number of eligible candidates numbering nearly 36,000 have submitted applications.

6. That after the order dated 29.3.2001 was passed by this Court as aforesaid, the State Government passed a series of identical orders dated 30.3.2001 in respect of each one of the aforesaid persons appointing them as Sub Inspector of Food and Civil Supplies under the proviso to Rule 24 of the relevant Service Rules for a period of two months.

During the continuance of the aforesaid appointments made by order dated 30.3.2001, the Director of Food and Civil Supplies published a notice in all leading newspapers on 25.4.2001 stating that in view of the ensuing general election and other administrative reasons, the written test for recruitment to the post of Sub Inspector of Food and Civil Supplies scheduled to be held in the month of April and May, 2001 is deferred to a later date to be notified in due course.

On 24.5.2001, the Director of Food and Civil Supplies issued a W.T. Message intimating the District and Sub Divisional Officers of the Food and Civil Supplies

Department that the Government has decided not to extend the services of the petitioners who were appointed for two months vide order dated 30.3.2001 and that services of the said persons would automatically come to an end on the expiry of two months after 30.3.2001. The aforesaid W.T. Message, it appears, was produced before this Court in the course of hearing of four Misc. applications namely. Misc. Case No. 717/2001, 718/2001, 719/ 2001 and 725/2001 filed in WP(C) No. 383/2001 praying for appropriate orders directing the State respondents to extend the services of the applicants made by order dated 30.3.2001 and/or to allow them to continue as Sub Inspector of Food and Civil Supplies till the posts in questions are filled up on regular basis. Almost simultaneously along with the four Misc. cases, the 91 beneficiaries of the appointment orders dated 30.12.2000 and 30.3.2001, filed WP(C) No. 3796/2001 claiming reliefs already stated, namely to quash the W.T. Message dated 24.5.2001 and for appropriate directions to enable the petitioners to continue in service. This Court by order dated 30.5.2001 directed the matter to come up on 1.6.2001 and also directed that the services of the petitioners in WP(C) No. 3796/2001 will not be terminated till such date. Thereafter, the aforesaid interim order has been extended on piece meal basis and the entire bunch of cases had been heard on as many as 5 days. Seven of the writ petitioners in WP(C) No. 383/2001 along with some other persons who had submitted applications pursuant to the advertisements issued had filed an application for impleadment as respondents in WP(C) No. 3796/2001 which has been allowed by order dated 6.6.2001 passed in Misc. Case No. 740/2001.

7. The State has filed an affidavit dated 1.6.2001 in the case in WP(C) 3796/2001 wherein it has been pleaded that the initial appointment made by order dated 30.12.2000 and the second set of appointments made by orders dated 30.3.2001 have been so made without following the procedure prescribed by the Rules. It is contended that the petitioners have been appointed by an arbitrary process not known to law and that there has been utter abuse and misuse of the power of appointment vested in the authorities. In the said affidavit, it has also been contended that proviso to Rule 24 is exhaustive of the power vested in the State for making ad hoc appointments and there is no power in the State authorities to extend the ad hoc appointment made on 30.3.2001 upon expiry of two months. In the aforesaid affidavit filed on behalf of the State respondents, it has also be pleaded that the Schemes for implementation of which the 91 appointments were considered necessary have, not yet been finalised and funds for this said Schemes have not yet reached the State Cooffers. The initial works in respect of the Schemes have been completed and that the Govt. on a review of the earlier decision regarding the necessity of filling up the posts in question had come to the conclusion that the posts can be kept vacant for the next 4-5 months during which time the selection process for regular appointment is expected to be finalised. Consequently, the W.T. Message dated 24.5.2001 was issued for the aforesaid reasons, it is pleaded.

8. Before advertng to the submissions made by the learned counsel appearing in

the cases, it would be convenient to deal with the one aspect of the matter that has arisen in the course of the arguments. Mr. P.K. Goswami, learned sr. counsel appearing on behalf of the writ petitioners in WP(C) 3796/2001 has pointed out that reliefs sought for in the first batch of writ petitions are in respect of the initial order of appointment dated 30.12.2000 and the period of 3 months for which the said appointments were made has expired. Mr. Goswami has further pointed out that the petitioners in WP(C) 3796/2001 have been appointed afresh by orders dated 30.3.2001 and there is no substantive challenge to the said order dated 30.3.2001. Mr. Goswami has also urged that relief by way of declaration to fill up the vacancies on regular basis by holding selection has also become redundant in view of the fact that it is admitted stand of the State that the process of selection for filling up the vacancies on regular basis will be initiated shortly and completed as early as possible.

On these facts, Mr. Goswami, learned Sr. counsel has urged that there is no live issue for adjudication by this Court in the first batch of cases.

9. Mr. B.K. Sarma, Mr. RP. Sarma and Mr. B. Malakar, learned counsel appearing on behalf of the writ petitioners in the first batch of cases, have submitted that the substantive challenges in the cases being against an arbitrary process of appointment made by order dated 30.12.2000, expiry of 3 months stipulated in the said order and the subsequent developments in the matter i.e. issuance of the order dated 30.3.2001 would not render the writ petitions infructuous inasmuch as the said illegalities in the appointment process has been continued by Issuance of the subsequent order dated 30.3.2001 on the basis of which, claims to continuance in service have been made by the 91 appointees.

10. I have considered the rival submissions. While learned counsels for the writ petitioners in the first batch of cases may be right in their contentions, yet in view of the prayers made in the said cases and in the absence of any additional/modified relief necessitated by the subsequent developments. I am inclined to take the view that the prayers made therein need no formal adjudication by the Court. No prejudice, however, is being caused to the petitioners inasmuch as their contentions regarding the legality of the appointment process will have to be considered while examining the case of the petitioners in WP(C) No. 3796/2001.

11. Insofar as WP(C) 634/99 is concerned, the reliefs sought for namely, appointment against any vacant post in the cadre of Sub Inspector of Supply, does not appear to be founded on the basis of any legally enforceable right. The said writ petition, ex facie, deserves dismissal and the same is, therefore, dismissed.

12. WP(C) 3796/2001

Mr. P.K. Goswami, learned sr. counsel appearing on behalf of the writ petitioners has urged that the necessity for filling up 102 posts of Sub Inspector of Supply was assessed by the State Level Empowered Committee much before the present

controversy had arisen. Such clearance was affected sometime in the month of September, 2000. The clearance for filling up the said vacancies made by the Empowered Committee it is argued sets at rest all disputes as to the administrative necessity for filling up the posts in question.

13. Mr. Goswami has argued that in the affidavit dated 7.3.2001 filed on behalf of the State in WP(C) No. 152/2001, the reasons which had Impelled the State to make the ad hoc appointments in question are clearly spelt out and the stated reasons would go to show that the said ad hoc appointments have been necessitated by compelling administrative exigencies. The learned counsel has also pointed out that in the order dated 30.12.2000, it has been explicitly stated that the ad hoc appointments will continue for a fixed duration of time or till regular selection is made whichever is earlier. The State by issuing the advertisement dated 23.2.2001 has made Its intention to fill up the posts on regular basis absolutely clear. It is only on account of certain factors as mentioned in the newspaper advertisement dated 25.4.2001 that the selection process has got delayed. According to learned counsel, it is the case of the State that selection will be held and the posts would be filled up on regular basis immediately. On these premises, it is argued that keeping in view the indispensable requirement of keeping the posts filled up in the interest of better administration, the discretion to or not to extend the ad hoc appointments is coupled with a duty which discretion has not been exercised fairly by taking into account relevant facts and circumstances. Some aberrations in the process relating to ad hoc appointment according to the learned counsel would not vitiate the same. After all, any process of ad hoc appointment, not being full proof is bound to create some amount of heart burning which is inevitable but that by itself would not be a ground to interfere with the ad hoc appointments, particularly as the ad hoc appointments are not indefinite in point of time, a process of regular selection having been initiated almost simultaneously, it is argued. In any case according to Mr. Goswami, refusal to extend amounts to termination and no such refusal to extend on the ground that ad hoc appointment were made illegally could have been made without giving notice to the writ petitioners. According to Mr. Goswami, the clearance of the Empowered Committee way back in September, 2000 and the averments made in the affidavit dated 7.3.2001 by the State Respondent would go to show that the writ petitioners were not appointed against any scheme as stated in the subsequent affidavit dated 1.6.2001. The writ petitioners were appointed against vacancies in the cadre posts which according to the State could not be kept vacant without effecting the quality of administration. The grounds stated in the second affidavit; it is argued are apertence. Mr. Goswami has also argued that proviso to Rule 24 of the Rules would certainly not exhausted the power of the State to continue the ad hoc appointments made by order dated 30.3.2001. Such power will be always available to the State in view of the provision of Section 14 of the General Clauses Act. On the aforesaid premises, Mr. Goswami has argued that this Court should come to the conclusion that the reasons cited for the refusal to

extend the services of the petitioners are extraneous and collateral and the mind has not been addressed to facts and circumstances relevant to the issue. In such an event, this Court would have ample power under Article 226 to direct the authority to extend the services of the petitioners, it is argued.

14. Mr. A.K. Phukan, learned Advocate General, Assam appearing on behalf of State respondents has argued that the initial appointments of the petitioners made by orders dated 30.12.2000 and 30.3.2001 are in abuse of the power vested with the authorities of the State. No acceptable criteria for appointment was followed in making the 91 appointments in question. Therefore, with the change in Government, it was decided not to extend the services of the petitioners, it is argued. Alternatively, the learned Advocate General has argued that proviso to Rule 24 exhausts all powers available to the Govt. for continuing the services of the petitioners. The period of two months stipulated by the Service Rules having expired, there is no power to extend the services of the petitioners. Additionally, the learned Advocate General has argued that decision of the Government not to continue the services of the petitioners have been prompted by the reasons mentioned in the affidavit dated 1.6.2001 which being good reasons should be approved by this Court.

15. Mr. B.K. Sarma, learned counsel appearing for the newly impleaded respondent Nos. 3 to 15 has placed before the Court the document enclosed as Annexure-A to the affidavit of the aforesaid respondents in MC 717/2001 in WP(C) 383/2001. According to Mr. Sarma, the selection is tainted by glaring illegalities which are prima facie apparent from the contents of the said communication dated 2.4.2001. Mr. Sarma has also argued that the appointment of the writ petitioners being wholly illegal, arbitrary and the product of a perverse process, the writ petitioners can not seek any relief from the Court of equity. Mr. Sarma has further argued that it is settled law that even ad hoc appointments have to conform to the requirements of Articles 14 and 16 of the Constitution. According to the learned counsel, ad hoc appointments, to earn judicial approval must follow some objective and reasonable criteria. Mr. Sarma by referring to the verification made in support of the State's affidavit dated 7.3.2001 in WP(C) 152/2001 has argued that the said affidavit is not an affidavit in the eye of law and has cited some decisions in support of the said proposition. No reliance, therefore, should be placed on the State's affidavit dated 7.3.2001.

It is also argued that the appointment orders dated 30.3.2001 constitutes the attempt to over reach the order of this Court dated 29.3.2001 passed in MC 469/2001. Lastly, Mr. Sarma has argued that in view of the fixed duration of time for which ad hoc appointments can be made under the proviso to Rule 24, this Court would not have the power to pass any orders for extension of the services of the petitioners beyond the said period.

16. The relevant records, in original have been placed before the Court by the learned Advocate General. An opportunity to inspect the records so produced was afforded to the counsel for all the parties. I have perused the contents thereof

particularly, the note sheet in File No. FSA.9/2001. The contents of the note sheet at pages 8, 9 and 10 which are relevant reveal that a note signed by the Secretary, Food and Civil Supplies on 22.5.2001 was put up to the Hon'ble Minister. The said note refers to a discussion held on the previous day between the Minister and the Secretary of the department. It is mentioned in the aforesaid note dated 22.5.2001 that the then Minister of Food and Civil Supplies Shri Pradip Hazarika with the help of Shri N.N. Borah, the then Director and Shri Anjan Kataki, the then Private Secretary to the Secretary of the Minister prepared a list of 107 candidates out of which 91 candidates were selected for appointment as Sub Inspector of Food and Civil Supplies. The note dated 22.5.2001 also indicates that after receipt of the order dated 29.3.2001 passed by this Court in Misc Case No. 469 of 2001, the Minister of Food and Civil Supplies convened a meeting with the Additional Advocate General and the Additional Senior Government Advocate. The aforesaid two law officers verbally opined that the petitioners be given fresh appointment for a period of two months under the provisions of Rule 24 of the Rules. The note thereafter goes to record certain unsavoury incidents that took place in the office chamber of the Minister where the Director of Food and Civil Supplies, Deputy Secretary and the Secretary of the department were present. The sum and substance thereof is that the Minister concerned exercised utmost pressure on the officers present to give fresh appointment to the petitioners whereafter the appointment orders dated 30.3.2001 were issued. The note also ascribes a positive role to some of the candidates in the aforesaid events. The Secretary in his note dated 25.2.2001 has also mentioned that out of 91 candidates appointed, about 15/19 were picked up by the Minister, Food and Civil Supplies; 10 were picked up by Chief Minister; 2/3 were picked up by Commissioner and Secretary, Personnel and the others were recommended by some MLAs and functionaries of the ruling party. The Secretary, Food and Civil Supplies had indicated, in the aforesaid note submitted, that the appointments having been illegally made, instructions may be issued to the Director of Food and Civil Supplies not to extend the appointments in question after 30.5.2001. At page 10 of the note sheet, there is an endorsement of the Minister, Food and Civil Supplies dated 23.5.2001 to the following effect: -

"Please do not give extension of 91 Nos. after 30.5.2001."

17. The stand of the State as indicated in the affidavit dated 1.6.2001 and also in the course of oral arguments made by the learned Advocate General is that the decision not to extend the appointments in question after 30.5.2001 has been taken for three principal reasons. Firstly, it is contended that the proviso to Rule 24 of the Rules having conferred power to make temporary appointments for a period of two months, on expiry of the said period of two months on 30.5.2001, there is no power available to the State to extend the appointments in question. Secondly, it has been contended that the reason for which the immediate appointments of the petitioners were considered necessary namely, for implementation of two particular Schemes, do not exist in view of the fact that

the said Schemes are yet to be executed and funds for the same are yet to be received for which reason the necessity existing earlier for filling up the posts no longer prevails. On the said premises, it is contended that there is no need to keep the posts filled up for the next 3/4 months during which time the process of regular appointment, is expected to be completed. Thirdly, it has been contended that the appointments of the 91 petitioners being contrary to the provisions of law and as the said appointments have been made flouting all the norms and procedures and without reflecting any fairness or transparency, the State Government was of the view that the term of the appointments may not be extended.

18. The records produced as discussed in the preceding paragraphs do not indicate that the first and the second ground were even remotely in the mind of the authority at that time when the decision not to extend the services of the petitioners was taken. Rather, the said record indicates that the only basis on which the impugned decision was taken was that the appointments made earlier were illegal. As the mind of the authority taking the decision was addressed to only one issue, namely, the illegality of the appointments made, the other two grounds mentioned in the affidavit dated 1.6.2001 and argued with a fair deal of vehemence would not require any examination by the Court. The judicial process has to address itself to the factors prevailing at the time when impugned decision was taken up and not to factors subsequently brought to the light in the affidavit filed. This Court is unable to persuade itself to consider the relevance of other two grounds urged on behalf of the State in support of the present decision. In the context what has been revealed by the records produced, no reliance on any other material except for what was before the authority at the relevant time can be permitted in support of the impugned decision.

19. Insofar as the alleged illegality of the appointments as a valid ground for the impugned action is concerned, Mr. Goswami, learned senior counsel for the petitioners has urged that the appointments having been made on grounds of administrative necessity as revealed from the contents of the first affidavit dated 7.3.2001, the State as a respondent cannot in law be permitted to challenge its own orders in support, Goswami relies on a decision of the Apex Court in the State of Assam v. Raghava Rajagopalachari reported in 1970 Assam Law Reports 57. A perusal of the contents of Para-13 of the said decision would go to show that the view of the Apex Court that the respondent to the writ petition cannot be allowed to attack its own order was taken in altogether a different context, in the instant case, the State is not embarking upon any attack against any of its own orders. The stand of the State is that the earlier orders appointing the petitioners having been found, on further scrutiny, to be illegal, the said appointments need not be continued after expiry of the period stipulated in the appointment orders in question. There is a fundamental difference in the stand taken by the State in the present case and in the case of State of Assam v. Rajgaopalachari (supra). Even otherwise, it is settled law that if an earlier action of the State is found, on further scrutiny, to be illegal or unauthorised, it will be

open for the State, for good reasons, to proceed to nullify such illegal orders. Any contention that the State is estopped from correcting its earlier orders, however, illegal such orders may be, cannot be accepted.

Mr. Goswami next argues that the impugned refusal of the authorities to extend the services of the petitioners, in fact, amounts to termination of their services and the said decision could not have been taken by the respondents ex parte without giving any opportunity to the petitioners. Notice to the petitioners, according to the learned counsel, was mandatory and such mandatory requirement in conformity with the principles of natural justice not having been complied with, the impugned decision of the respondents should be interfered with by this Court and necessary consequential orders to enable the petitioners to continue in service ought to be passed by this Court. In support, Goswami relies on a decision of this Court in the case of Hemanta Kumar Pegu v. State of Assam reported in (1988) 1 GLJ 383 and also a decision of the Apex Court in the case of Nazira Begum Lashkar v. State of Assam, reported in 2000(1) SCC 143. In the case of Hemanta Kumar Pegu (supra) a Division Bench of this Court had the occasion to consider the validity of the orders of discharge of incumbents appointed as Block Development Officers under Regulation 3(f) of the Assam Public Service Commission (Limitation of Functions) Regulations, 1951. Specific orders of discharge passed during the pendency of the writ proceedings was the eventual subject matter of controversy in the said case. A reading of the judgment of this Court in Hemanta Kumar Pegu (supra), would go to show that this Court held that the discharge orders being penal in nature, it was on the incumbent on the part of the authorities to afford a reasonable opportunity to the affected persons. In the case of Nazira Begum Lashkar (supra), the State authorities resorted to termination of the services of the petitioners therein after giving an opportunity of showing cause. The termination being challenged before this Court, this Court directed a further enquiry to be made into the allegations of large scale illegalities in the selection held and on basis of the report of enquiry submitted, the Division Bench upheld the validity of the terminations. It is only in these circumstances that the Apex Court upheld the judgment of this Court refusing to interfere with the terminations made. The ratio of law laid down in the aforesaid cases must be understood in the facts of those cases and can have no application to the controversies in the instant case.

20. Curiously, no arguments have been advanced either by the learned Advocate General or by Mr. B.K. Sharma, learned senior counsel appearing on behalf of Respondents No. 3 to 15 to refute the arguments advanced by the learned counsel for the petitioners on the point of requirement of prior notice. In the instant case, regardless of and de hors the specific contents of the note dated 22.5.2001 submitted by the Secretary to the Minister of the department as contained in File No. FSD.9/2001 what emerges from the pleadings and counter pleadings of the parties is that the appointments of the petitioners were made without following any procedure known to law. The petitioners in the writ petition and in various applications and affidavits filed in other connected cases have

maintained a total silence as regards the manner and method of their appointments. There is no averment whatsoever on behalf of the petitioners that the appointments were made on the basis of any selection or even on the basis of any other acceptable criteria. No such indication has also been forthcoming in response to queries made by the Court in course of oral arguments. In such a situation, relevance of the requirement of notice and/or opportunity in the context of adjudication of the correctness of the decision not to extend the services of the petitioners has to follow the ratio of law laid down by the Apex Court in the case of Aligarh Muslim University and Others Vs. Mansoor Ali Khan, The exclusion of all the allegations and materials contained in the note dated 22.5.2001 of the Secretary to the Minister does not obliterate the apparent absence of adherence to any known procedure in selecting the petitioners for the appointments in question.

The necessity to conform to the requirements under Articles 14 and 16 of the Constitution even in a case of ad hoc appointments, as argued by Mr. B.K. Sarma, learned counsel for the respondents No. 3 to 15 has been clearly laid down by the Apex Court in the case of State of Haryana and others Vs. Piara Singh and others etc. etc., The pressing necessity for filling up of posts in the interest of better administration, on the ratio of law laid down by the Apex Court in Piara Singh's case (supra), would not obviate the necessity of conforming to the requirements under Articles 14 and 16 of the Constitution.

21. The records of the case and the pleadings of the parties do not disclose that the appointments of the petitioners were made in accordance with any known procedure which can merit judicial approval. The said facts being apparent and having established themselves by the materials on record, this Court is of the considered opinion that on the ratio of law laid down by the Apex Court in the case of Aligarh Muslim University v. Mansoor Ali Khan (supra), no notice was required to be given to the petitioners.

22. The petitioners seek interference of this Court with the W.T. Message dated 24.5.2001. There is a consequential prayer also for appropriate directions to enable the petitioners to continue in service. In the absence of any materials to indicate on what reasonable and rational criteria, the petitioners were considered for appointment, it is difficult to acknowledge the existence of any legally enforceable right of the petitioners to seek such relief/reliefs. The helping hands to the Court cannot be extended to the petitioners unless the Court is satisfied that they were appointed by following a legally acceptable procedure with known, reasonable and objective parameters. Conspicuously, the same is absent. The writ petitioners have averred that some amongst them had submitted applications pursuant to the advertisement issued in the year 1996 and all of them are qualified and eligible for the posts in question. But so are the 36,000 candidates who have also submitted similar applications. This Court has no option but to conclude that the petitioners have been hand picked and their appointments constitute a flagrant infringement of the Fundamental Rights under

Articles 14 and 16 of the Constitution of all such eligible persons who have submitted applications for the posts in question. Consequently, the discretion, vested in the authority, not to extend the services of the petitioners cannot be said to have been exercised unreasonably and/or unfairly.

23. Lastly, Mr. Goswami argues that the petitioners being in service and a process of regular appointment having already been initiated which process is likely to be completed within a short time, on grounds of equity and keeping in mind the balance of convenience as also humanitarian aspect of the case, the petitioners may be allowed to continue in service. In support, Goswasmi relies on the decisions of the Apex Court in the case of H.C. Puttaswami v. Hon''ble P.J. Karnataka High Court, reported in 1991 2 SCC 421 ; in the case of Buddhi Nath Chaudhary and Others Etc. Vs. Abahi Kumar and Others, and in the case of Arun Kumar Rout and Others Vs. State of Bihar and Others, In all the aforesaid cases, equitable consideration tilted the balance in favour of continuance of illegal/irregular appointments primarily, in view of the decade long service rendered by such appointees. The writ petitioners cannot claim the benefit of any such equitable relief having been appointed only on 30.3.2001 or at best on 30.12.200.

24. In view of the foregoing reasons, WP(C) Nos. 152/2001, 160/ 2001, 323/2001, 383/2001, 728/2001 and 2381/2001 are dismissed as infructuous; WP(C) No. 634/99 is dismissed on the ground that no legally enforceable right is available to the petitioner to seek the reliefs prayed for and WP(C) No. 3796/2001 is dismissed on consideration of the merits of the claims advanced. However, in view of the totality of the facts and circumstances of the case, there will be no order as to costs.