

(2005) 03 JH CK 0008

In the Jharkhand High Court

Case No : Writ Petition (S) No's. 94 of 2002 and 1504 of 2004 and LPA No. 699 of 2003

Seema Devi

APPELLANT

Vs

State of Jharkhand and Others
 Ram Deo Sah Vs State
of Bihar and Others
 State of Jharkhand and Others Vs
Sumant Kumar and Others

RESPONDENT

Date of Decision : 30-03-2005

Acts Referred:

Bihar Police Manual, 1978 — Rule 661, 662, 663, 664
Constitution of India, 1950 — Article 142

Citation : (2005) 105 FLR 923 : (2005) 2 JCR 338

Hon'ble Judges : Sudhanshu Jyoti Mukhopadhaya, J; Narendra Nath Tiwari, J

Bench : Division Bench

Advocate : Dhananjay Kumar Dubey, Neelam Tiwary, Saurabh Arun and Sameer Saurabh, in LPA 54/2005, for the Appellant; Delip Jerath, Manoj Tandon, S.N. Prasad and Rajesh Kumar, in LPA No. 699 of 2003 and A.K. Sinha, A.G., B.S. Lal, A.A.G., Krishna Shankar, Suresh Kumar and Binodanand Tiwari, J.Cs to A.G. and A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Sudhanshu Jyoti Mukhopadhaya, J.—In these writ petitions and appeals, as common questions of law involved, they were heard together and are being disposed of by this common judgment.

1. WP(S) No. 94/2002 (Seema Devi):

2. This petitioner has challenged the Order No. 1146/2001, as contained in Memo No. 1582, dated 22nd October, 2001 issued by the S.P., Special Branch, Jharkhand, Ranchi, whereby and whereunder, the said respondent while approved the Order No. 2734/2001, contained in Memo No. 7014, dated 16th October, 2001 issued from Special Branch, Bihar, Patna, terminated the services of petitioner on the ground that the initial appointment of her husband was illegal

and that the petitioner was not entitled for compassionate appointment.

The case of the petitioner is that her husband, Late Navin Kumar was appointed as a Constable under the State of Bihar on 10th July, 1996 and died in harness on 6th June, 1999. After his death, on her application, she was appointed as Lady Constable in pursuance of Memo No. 392/P-2, dated 19th January, 2000 issued from Police Headquarters, Patna. Formal Special Branch Order No. 8/2000 was issued and communicated, vide Memo No. 226, dated 13th March, 2000, since when she was functioning as lady Constable.

In the impugned Order No. 1146/2001 bearing Memo No. 1582, dated 22nd October, 2001, the respondents have taken plea that since the Constable (No. 503) -Navin Kumar died on 6th June, 1999, no show cause notice could be given to him relating to his illegal appointment. But his appointment having been found illegal, for not following the procedure, the consequential appointment of widow-petitioner, on his death, is also illegal.

2. WP (S) No. 831/2003 (Kamod Kumar Singh) :

3. This petitioner has challenged the order No. 97/2003 issued by the S.P., Special Branch, Jharkhand as contained in Memo No. 178, dated 18th January, 2003, whereby and whereunder, his services have been terminated on the ground of the same being an illegal appointment.

The case of this petitioner is that he applied for his appointment to the post of Constable in the year 1996 being B.A. (Hons) and a good Volly Ball player having represented Magadh University, his name was recommended by the Director General of Police, Bihar, Patna for appointment to the post of Constable by Memo No. 3181, dated 15th July, 1996. Thereafter, he was appointed as Constable and transferred from one place to another.

While he was posted within the territory of Jharkhand, his services were terminated by the Senior S.P., Patna against which he filed a writ petition, W.P. (S) No. 2361 of 2002 before this Court. A Bench of this Court vide its order dated 25th April, 2002 set aside the order of termination on the ground that the Senior S.P., Patna had no jurisdiction to terminate the services of those posted within the territory of Jharkhand, such as petitioner. The State of Jharkhand was given liberty to decide the issue relating to legality and propriety of his appointment. In this background, the S.P., Special Branch, Jharkhand issued a show cause notice to the petitioner, vide Memo No. 2608, dated 29th October, 2002 and he was asked to show cause as to why his services be not terminated, he having been appointed illegally without following the procedure of appointment. Thereafter, on receipt of show cause reply preferred by petitioner, the S.P., Special Branch, Jharkhand issued the impugned order No. 97/2000, as contained in Memo No. 178, dated 18th January, 2003, cancelling his appointment, as the same being illegal.

3. WP (S) No. 3229/2003 &

4. W.P. (3) No. 4281/2004 (Both preferred by Dhrub Bahadur):

4. This petitioner initially challenged the Order No. 1176 of 2003 issued by the S.P., West Champaran, Bettiah, as contained in Memo No. 1512, dated 30th June, 2003 and a show cause notice issued by S.P., Chatra, as contained in Memo No. 731, dated 7th July 2003. The S.P., Bettiah by order dated 30th June, 2003 held his appointment as illegal having been made without advertisement and without following the procedure for selection S.P. Chatra, thereafter, issued the impugned Show Cause Notice dated 7th July, 2003 and asked the petitioner to show cause as to why his services be not terminated, he having been appointed illegally.

During the pendency of the first writ petition, W.P. (S) No. 3329 of 2003, the petitioner was dismissed from service vide order dated 31st July, 2004 issued by S.P. Chatra. Such order of dismissal dated 31st July, 2004 has been challenged by this petitioner by filing the second writ petition.

W.P. (S) No. 4281 of 2004.

The case of this petitioner is that he having come to know from reliable source that there was a vacancy of Bigular Constable in the district of West Champaran, Bettiah and he being eligible, filed an application before the Director General-cum-Inspector General of Police, Bihar, Patna for his appointment. On his application, the Director General of Police, Bihar, Patna instructed the S.P., West Champaran, Bettiah to find out whether the petitioner was fit for appointment to the post of Bigular Constable. After taking physical and medical test and on being found fit in both the tests, was appointed as Bigular Constable by S.P., West Champaran, Bettiah and he joined the post on 24th March, 1984.

In the year 2003, this petitioner came to know that S.P., West Champaran, Bettiah issued District Order No. 1176 of 2003, as contained in Memo No. 1512, dated 30th June, 2003, whereby and whereunder, the services of number of persons including the petitioner were terminated. The aforesaid orders were communicated to the S.P., Chatra who approved the same, vide Memo No. 731, dated 7th July, 2003.

The petitioner, thereafter moved before this Court in W.P. (S) No. 3329 of 2003, which was heard on 15th July, 2003. A bench of this Court by way of an interim order, directed the S.P., Chatra to act independently and liberty was given to pass appropriate order without being influenced by the order dated 30th June, 2003 passed by S.P., West Champaran, Bettiah (Bihar). Thereafter, S.P., Bettiah vide Memo No 860, dated 14th July, 2003 reinstated him, but S.P., Chatra initiated a proceeding being Departmental Proceeding No. 15 of 2004. A show cause notice was given to him and he was asked as to why his services be not terminated, as he having been appointed illegally without advertisement and without following the procedure for selection. The Enquiry Officer having held the appointment of petitioner illegal, dismissed the petitioner from service by impugned District Order No. 785 of 2004, issued by S.P., Chatra, as contained in Memo No. 1816,

dated 31st July, 2004.

5. WP (S) No. 1504/2004 (Ram Deo Sah) &

6. WP (S) No. 4894/2004 (Jiya Lal Ram] :

5. Both the petitioners in their respective writ petitions have challenged the common C.I.C. Order No. 1297 of 2003, issued vide Memo No. 2343, dated 26th September, 2003 by S.P., (Crime), C.I.D., Bihar, Patna, whereby and whereunder, they have been dismissed from service, giving reference of letter No. 10598, dated 4th September, 2000, issued from Home (Police) Department, Government of Bihar and Memo No. 6324/P-2, dated 20th September, 2000, issued by D.I.G. (Human Rights), Bihar, Patna, The S.Ps., under whom the petitioners were posted, within the territories of Jharkhand i.e. S.P., Garhwa and Senior S.P., Ranchi, were asked to take appropriate steps.

The Senior S.P., Ranchi, thereafter, issued District Order No. 677/2004 dated 27th March, 2004 and approved the dismissal order of petitioner Jiya Lal Ram, which is under challenge.

The case of petitioner-Ram Deo Sah of W.P. (S) No. 1504 of 2004 is that he was appointed as Constable vide C.I.D. Order No. 1582/88 dated 15th August, 1988, issued by S.P. (Crime), C.I.D., Patna and since then he was working as Constable.

Initially, he was appointed at Patna and later on, was transferred to Garhwa which now falls within the territory of State of Jharkhand.

So far as petitioner- Jiya Lal Ram of W.P (S) No. 4894 of 2004 is concerned, according to him, he was initially engaged on dally wage, but he has not given the exact date of engagement. Later on, he was appointed as a Constable by Order No. 252 of 1992, dated 25th February, 1992 issued by S.P. (Crime), CID. Patna.

Subsequently, he was transferred to Ranchi, while posted at Ranchi, by the aforesaid common notice, contained in Memo No. 2188, dated 10th September, 2003, this petitioner was also asked by S.P. (Crime), C.I.D., Bihar, Patna, as to why his services be not terminated, he having been appointed illegally.

Thereafter, by impugned Memo No. 2343, dated 26th September, 2003, he was dismissed from service along with two others.

Case Nos. Name of the party 7. W.P. (S) No. 2469/04; Nagendra Choudhary 8. W.P. (S) No. 2470/04; Samarendra Pratap Singh 9. W.P. (S) No. 2471/04; Anil Kumar Mishra 10. W.P. (S) No. 3911/04; Haridwar Prasad Singh 11. W.P. (S) No. 4831/04; Dilip Kumar Singh 12. W.P. (S) No. 5897/04; Subhash Choudhary. 6. The aforesaid six petitioners have challenged the orders by which they have been dismissed from service after holding departmental proceedings on the ground that they were appointed illegally.

The petitioner, Nagendra Choudhary of W.P. (S) No. 2469 of 2004, has

challenged the Dhanbad District Order No. 723 of 2004, dated 26th April, 2004 issued vide Memo dated 28th April, 2004 passed by the S.P., Dhanbad, whereby he has been dismissed from service.

Petitioner, Samarendra Pratap Singh of W.P. (S) No. 2470 of 2004 has challenged the similar Dhanbad District Order No. 722, dated 26th April, 2004, circulated vide Memo No. 1408, dated 28th April, 2004, issued by S.P., Dhanbad.

Petitioner, Anil Kumar Mishra of W.P. (S) No. 2471 of 2004 has challenged the order of dismissal being Bokaro District Order No. 561 of 2004, circulated by Memo No. 725, dated 14th March, 2004, issued by S.P., Bokaro.

Petitioner, Haridwar Prasad Singh of W.P. (S) No. 3911 of 2004 has challenged the letter No. 786/P, issued from the Office of the Director General-cum-Inspector General of Police, Ranchi, whereby it has been ordered to dismiss him from service, he having been appointed illegally. He has also challenged the show cause notice, contained in Memo No. 2335, dated 22nd July, 2004, whereby he has been asked as to why he be not dismissed from service, on the ground of his appointment, without following the due procedure thereof.

Petitioner, Dilip Kumar Singh of W.P. (S) No. 4831 of 2004 has challenged the District Order No. 710, issued vide Memo No. 1252 dated 23rd August, 2004 by S.P. Garhwa, whereby he has been dismissed from service, his appointment having been found illegal in a departmental proceeding initiated against him.

Petitioner, Subhash Choudhary of W.P. (S) No. 5697 of 2004 has challenged the District Order No. 911 of 2004 issued vide Memo No. 1062, dated 20th July, 2004 by S.P. (Rail), Dhanbad. He has also been dismissed from service after a departmental proceeding initiated against him, his appointment having been found illegal.

7. The cases of these petitioners are almost similar. According to them, in pursuance of Notice given in the Notice Board of the Office of the Zonal I.G., Ranchi, they applied for appointment as Constable. Thereafter, they were asked to appear in an eligibility test followed by physical test, conducted on 25th January, 1990. They having been found fit in both the physical and medical test, were appointed to the post of Constable by different letters dated 29th January, 1990/30th January, 1990 which were issued under the signatures of Zonal I.G. Chhotanagpur Range, Ranchi.

Subsequently, there were transferred and posted at different places, which now fall within the territories of State of Jharkhand.

8. On 25th February, 1997, an order was issued from the Office of Director General of Police, Bihar, Patna, whereby, it was decided to terminate the services of these petitioners and some others, all of whom, were appointed by one Sri Vijay Pratap Singh, the then Zonal I.G., Chhotanagpur Range, Ranchi. It was alleged that all of them were appointed illegally.

9. Many of the petitioners, thereafter along with some others, moved before Ranchi Bench of Patna High Court in C.W.J.C. No. 811 of 1998(R) and C.W.J.C. No. 969 of 1998 (R), challenging the order dated 25th February, 1997.

10. The writ petitions were heard and disposed of by common order dated 6th May, 1998. The learned Single Judge having found the order dated 25th February, 1997 passed in violation of rules of natural justice, set aside the same, but liberty was given to the State Officials to take appropriate action, if there was any valid ground.

11. Thereafter, the names of petitioners were forwarded by the Regional I.G., Ranchi to the S.Ps of Ranchi, Hazaribagh, Bokaro, Singhbhum-Jamshedpur, Saraikela-Kharsawan, Dhanbad and Garhwa, and they were asked to serve show cause notices to petitioners and others alleging illegal appointments.

The order aforesaid, contained in letter dated 23rd October, 2003, issued by D.I.G. (Personnel), Jharkhand, was challenged by Petitioner- Dilip Kumar Singh in W.P. (S) No. 5728 of 2003.

12. A learned Single Judge of this Court, vide dated 2nd December, 2003 held the order illegal, on the ground that the decision was taken to terminate the services, before issuance of a show cause notice.

13. Similar order was passed in the case of Haridwar Prasad Singh and others, in W.P. (S) No. 5299 of 2003, disposed of on 7th November, 2003 and the Civil Review No. 154 of 2003, preferred by said Haridwar Prasad Singh and others, disposed of on 19th December, 2003.

14. It appears that thereafter, the respective S.P.s. initiated departmental proceedings against many of the petitioners and in some cases, show cause notices were given, alleging their appointments as illegal, having been made without any advertisement, without following the procedure of selection and without recommendation of the competent Selection Board. The charges said to have been proved, these petitioners were dismissed from services vide different orders, which are under challenge.

13. W.P (S) No. 4322/03 (Anil Kumar Singh v. State)

With

14. L.P.A. No. 885/03 (Ashok Kr. and Deepak Kr. Sinha)

And

15. L.P.A. No. 699/03 (Anil Kumar Mishra).

15. The writ petitioner and contesting respondents of the appeals, as named above, have challenged similar orders, all dated 26th February, 2002 issued by D.I.G. (Rail), Jharkhand, Ranchi, whereby and whereunder, they have been dismissed from service on the ground of illegal appointment.

16. The petitioner Anil Kumar Singh has been dismissed, vide Memo No. 07/02, dated 26th February, 2002; respondents Ashok Kumar and Deepak Kumar Sinha of L.P.A. No. 885 of 2003, were dismissed by impugned Order Nos. 05/02 and 06/02, both dated 26 February, 2002 and respondents Sumant Kumar, Ashok Kumar and Raj Choudhary of L.P.A. No. 699 of 2003 have been dismissed, vide similar Order Nos. 1/02; 02/02; and 04/02, all dated 26th February, 2002.

17. The case of Ashok Kumar is that his brother, namely, Vyas Thakur who was working as a clerk in the Office of D.I.G. (Rail) Police, Ranchi, filed an application on 3rd May, 1993 to the Assistant (Welfare) of Director General of Police, Bihar, Patna that since he hails from a poor family and was facing difficulty in running the joint family from a meager source of income, therefore, his younger brother i.e. Respondent Ashok Kumar who is having requisite qualification both in terms of education and physical, may be appointed on compassionate ground in the Department. It was forwarded to the DIG (Rail) Police, Ranchi, who vide his letter dated 29th May, 1993 recommended the name of Respondent Ashok Kumar, wherein after, D.I.G. (Rail) Police, Ranchi, vide letter No. 563, dated 19th June, 1993 directed him to remain present on 29th June, 1993 and after due test/examination, he having been found suitable, in both the tests, physical and medical, was recommended by a Selection Board on 30th June, 1993. Thereafter, D.I.G. (Rail) Police, Ranchi vide letter No. 647 dated 10th July 1993 informed the Assistant (Welfare) of D.G.P., Bihar, Patna that Ashok Kumar who hails from Backward Class has been declared medically fit and has been appointed as Constable.

Respondent Ashok Kumar was served with a show cause notice by successor DIG (Rail) Police, Ranchi vide Memo No. 1147, dated 20th October, 1998 wherein it was alleged that he was appointed illegally. Ashok Kumar thereafter submitted his show cause reply, as mentioned above. Some of the officers in their office note opined that his services should not be terminated, he having worked for more than seven years. A departmental enquiry was also conducted after giving notice to him. The DIG, Police, South Chhotanagpur Range, Ranchi-cum-DIG (Rail) Police, Jharkhand, after examination of witnesses and discussing the relevant rules contained in the Bihar Police Manual, held his appointment as illegal and dismissed him from service, vide order contained in Memo No. 05, dated 26th February, 2002.

So far as Respondent Deepak Kumar Sinha is concerned according to him, the DIG (Rail) Police, Ranchi by his letter No. 306, dated 6th April, 1993, informed the Assistant (Administration) of the Director General of Police, Bihar, Patna that since his Office was opened recently and there was no driver and was facing immense difficulty, as such urgent action should be taken for employment of a Driver Constable for posting in his Office for smooth functioning.

His further case is that since he (Deepak Kumar Sinha) was having a Driving Licence as well as enough experience in the field, his application was forwarded to the Department for being appointed as a Driver Constable and, accordingly, he

was called for interview on 26th May, 1993 at 4 p.m. in the Office of Inspector General of Police (Rail), Ranchi. The Selection Board, after due test/examination, found him suitable taking into consideration his educational qualification and physical test, in its meeting held on 27th May, 1993 and declared him fit for the post of Driver- Constable. The DIG (Rail) Police, Ranchi, thereafter, vide letter No. 672, dated 17th July, 1993 informed the Assistant (Administration) of Director General of Police, Bihar, Patna that the Selection Board in its meeting held on 27th May, 1993 found him (Deepak Kumar Sinha) fit for appointment to the post of Driver-Constable and he has been appointed.

In his case also, the successor D.I.G. (Rail) Police, Ranchi vide Memo No. 1148, dated 20th October, 1998 issued a show cause notice and also decided to hold a departmental enquiry questioning legality and propriety of his appointment, it was alleged that the said Deepak Kumar Sinha was appointed illegally.

Deepak Kumar Sinha denied the allegation and submitted reply and brought the facts to the notice of the authorities, as mentioned above.

In the course of enquiry, his appointment having been found illegal, another show cause notice was issued to him, vide Memo No. 539, dated 31st August, 1999 along with a copy of the enquiry report.

In his case also, one of the officers opined that he having worked for more than seven years, his services should not be terminated. The successor DIG Police, South Chhotanagpur Range, Ranchi-cum-DIG (Rail) Police, Ranchi, after due enquiry held the order of appointment of Deepak Kumar Sinha as illegal and invalid and vide Memo No. 6 dated 26th February, 2002 dismissed him from service.

18. The cases of respondents Samant Kumar, Ashok Kumar & Raj Choudhary, of LPA No. 699 of 2003 are almost similar to that of Respondents Deepak Kr. Sinha and Ashok Kumar of LPA No. 885 of 2003.

According to them, in pursuance of notice issued by the Department inviting applications for appointment to the post of Police Constable, they submitted their applications and were selected by a Board headed by the Chairman-cum-DIG (Rail), Police and two other S.Ps. (Rail). A meeting was held on 21st December, 1993 in which Respondents Sumant Kumar and Ashok Kumar were selected and in another meeting held on 3rd February 1993, the respondent Raj Choudhary was selected. They were appointed as Constables in Rail Police and joined the post on 21st December, 1992 (Sumant Kumar and Ashok Kumar) and 4th February, 1993 (Raj Choudhary). In their cases also, show cause notices were issued on 5th February, 1998, wherein it was alleged that they were appointed illegally.

Three separate departmental enquiries were held and the Respondents also submitted show cause reply denying the allegation. Similar stand was taken by them in their reply, as has been taken in the writ petition and mentioned above.

After examination of witnesses and report submitted by the I.O., their order of appointments having been found illegal, they were dismissed from service by Order Nos. 01/02; 02/02; and 04/02, all dated 26th February, 2002.

In the writ petitions preferred by Deepak Kumar Sinha and Ashok Kumar (both respondents of LPA. No. 885/2003) and Sumant Kumar, Ashok Kumar and Raj Kumar (Respondents of LPA No. 699 of 2003), the learned Single Judge held their orders of dismissal as illegal, vide orders dated 2nd September, 2003 and 22nd July, 2003. For the said reason, the State of Jharkhand have preferred the appeals i.e. LPA Nos. 885 of 2003 and 699 of 2003, against the aforesaid judgments passed by the learned Single Judge.

16. L.P.A. No. 54/2005 (Shyam Sunder Singh):

18. The appointment of this appellant was also declared illegal vide Ranchi District Order No. 313/2003, issued by Senior S.P., Ranchi, circulated vide Memo No. 436, dated 10th February, 2003. It was issued after show cause notice to him.

The appeal preferred by the appellant was also rejected by DIG, South Chhotanagpur Range, Ranchi, vide Memo No. 646, dated 29th, March, 2003.

Being aggrieved, he preferred writ petition, W.P. (S) No. 1920 of 2003, but it was dismissed by the learned Single Judge by order dated 4th January, 2004.

According to the appellant, his father was in the services of the State. Before his superannuation, he filed an application on 6th August, 1997 for appointment of his son i.e. appellant Shyam Sunder Singh to the post of Constable. The appellant had earlier shown his extra-ordinary courage, skill and sincerity and as he had helped the Police Department in various public works, his name was recommended by the DIG Police, South Chhotanagpur Division, Ranchi to the Director General of Police, Bihar, Patna, vide Memo No. 957, dated 10th August, 1997. Thereafter, the requisite eligibility of minimum height was relaxed and his name was recommended for appointment vide Memo No. 948, dated 16th March, 1998 in special circumstances. The DIG., Ranchi thereafter issued order contained in Memo No. 359 of 1998, dated 15th April, 1998 and directed the Senior S.P., Ranchi to appoint him. Thereafter the formal order being District Order No. 1234/98, dated 24th April, 1998 was issued appointing him to the post of Constable.

In his case also, a show cause notice was given by the successor DIG, vide Memo No. 2761, dated 12th June, 2002 and he was asked as to why his services be not terminated he having been appointed illegally.

Another show cause notice was issued by the successor DIG, vide Memo No. 17, dated 4th January, 2003 alleging therein his appointment as illegal.

19. The first contention urged on behalf of the writ petitioner/respondents in LPA Nos. 885 of 2003 and 699 of 2003 and appellant in LPA No. 54 of 2005 is that

they having worked for more than 9 to 14 years, their services could not be terminated at this stage and the question of legality and propriety of their appointment should not be raised after such a long period.

20. The said appellant relied on certain decisions, as referred and discussed hereunder :

In the case of *Chattu Das Vs. The State of Bihar and Others*, when the question of regularisation of services of temporary Government servants was considered, it was noticed that their services were terminated after a period of more than 15 years of service. The Supreme Court without going into the question of validity or otherwise of the termination orders, gave directions to regularize the services of respondents of the said case in view of long service put in by the Government servants.

In the case of *Arun Kumar Rout and Others Vs. State of Bihar and Others*, while considering the question of regularisation of service, the Supreme Court noticed that the appointees were appointed illegally without any advertisement or calling names of candidates from Employment Exchange, held that though the services of such candidates could be terminated yet, the human problem deserved sympathetic consideration.

In the case of *Roshni Devi and Others Vs. State of Haryana and Others*, the Supreme Court noticed that the recruitment process through which appointments were made were invalid, but keeping in view that the persons concerned had rendered more than nine years of service, invoke equity and their appointments were saved.

In all the aforesaid cases, the Supreme Court exercised its power under Article 142 of Constitution, applied the principle of equity and saved invalid/illegal appointments.

In the case of *Arun Kumar Rout*, (supra), the Supreme Court held that relief given in view of special facts of the case under Article 142 of the Constitution of India cannot be cited as a precedence.

Therefore, the writ petitioners/respondents of LPA Nos. 885/03 and 699/03/appellant of LPA No. 54/05 cannot derive any benefit of the judgments aforesaid.

In some of the cases, such as writ petitioners/respondents of 885/03 and 699/03 claimed that they were appointed after circulation of notice on the Notice Board. They were called for and appeared in the written test/physical test, but there is no evidence on record in their support. The date of advertisement or Notice on the Notice Board has not been mentioned by any of the individual nor any copy of any interview letter has been enclosed or produced. If no letter of interview was received by any of them, and no notice, in the newspaper was issued, it is not clear as to how one or other petitioner/respondents of appeal, came to know of the date of written test or physical test and appeared in such test.

21. Counsel appearing on behalf of writ petitioners in W.P. (S) Nos. 4322/2003; 1504/2004; 2469/04; 2470/04; 2471/04; 3911/04; 4831/04; 5697/04; 489/04; and respondents of LPA No. 885/2003 and 699/2003, have challenged the validity of the orders of dismissal. It was submitted that their being no misconduct on the part of the writ petitioners/contesting respondents in the aforesaid appeals, orders of dismissal are uncalled for, arbitrary and have been passed by the authorities without application of mind.

22. It is a settled law that no order of punishment such as dismissal, removal or reduction in rank can be passed on a member of service unless he/she has been informed in writing of the grounds on which it is proposed to take action and has been afforded adequate opportunity of defending himself/herself. The grounds on which it is proposed to take action require to be reduced to the form of a definite charge or charges. A delinquent can be punished if in the enquiry, charge is proved amounting to misconduct, dereliction of duty, insubordination etc.

23. So far as illegal appointment is concerned, a charge can be framed against the person who processed the selection or recommended to make selection or selected or appointed illegal appointee as it amounts to misconduct, it can be a charge against a subordinate to the appointing authority, if he fails to bring it to the notice of the higher authority, which may amount to dereliction of duty. In spite of direction of the higher authority, if any illegal appointment is made by a subordinate authority that may amount to insubordination. But so far as the appointee is concerned, in absence of any misconduct or other allegation against him, no such charge of misconduct, dereliction of duty or insubordination etc. is maintainable nor a person can be punished by dismissing or removing him from service.

24. In the aforesaid cases, there is no allegation of any illegal act of omission or commission alleged against the appointees. Therefore, in the matter of their illegal appointment, the charge of misconduct, insubordination and dereliction of duty, as mentioned in their charge sheet are uncalled for. The order of punishment of dismissal from service cannot be upheld.

25. In all these cases, except the case of Seema Devi (WP [S] No. 94 of 2002), there is no dispute that the procedure of appointment was not followed.

26. In cases where enquiry has been conducted, it has been found proved. In other cases, where notices have been given the petitioners/contesting respondents/ appellant could not bring on record any evidence in support of advertisement, interview or selection through of Board.

None of them have given reference of any advertisement published in the newspaper nor copy of any letter of interview has been enclosed or was produced before the Enquiry Officer. There is also no recommendation of any Selection Board on the record.

27. Rules 661(a); (b); (c), 662, 663(a); (b); (c) (d) and 664 of Bihar Police

Manual and Police Order No. 202/88, prescribe the manner in which a Constable/Driver Constable to be selected and appointed.

As per Rule 661 (b), the appointment of a Police Constable can be made by direct recruitment on the basis of recommendation of a Selection Board. Under Rule 661 (c), no appointment can be made through direct recruitment in the Rail Police, Intelligence Department, Special Branch etc., except by deputation of Constables from amongst the Police Force.

28. Rule 663 (d) denotes that the Superintendent of Police to notify the exact number of vacancies and will publish the notice in the newspapers and through Employment Exchange. By police Order No. 202/88, the State Government has given direction that while advertisement will be published in the newspaper, the number of vacancies, roster position, date of selection, time and venue should be mentioned. Admittedly, none of the aforesaid statutory provisions have been followed in the case of the writ petitioners/contesting Respondents/appellant.

29. In the circumstances, if the Court interferes with the orders of dismissal, as challenged in some of the cases, it will amount to revival of the orders of illegal appointments of those persons, which are against the constitutional provisions.

30. Having discussed the materials, on record, and position of law, and after considering the submissions made by the learned counsel for the parties, while I hold that the orders of dismissal from services as passed in some of the cases, are not proper, also hold that appointments of the writ petitioners, except "Seema Devi/contesting respondents of L.P.A. Nos. 885/03 and 699/03 and appellant of LPA No. 54 of 2005, are illegal.

31. Therefore, the orders passed in the cases, as referred to above, are modified to the extent that the "orders of dismissal" shall be treated as order (s) of "termination simpliciter", so that the future employment of the writ petitioners/respondents/appellant of the cases, as referred above, would not be forfeited.

32. There being no merit, all the writ petitions, except W.P. (S) No. 94 of 2002 (Seema Devi), are dismissed. The order dated 4th January, 2004 passed by the learned Single Judge in W.P. (S) No. 1920 of 2003, assailed in LPA No. 54 of 2005 is upheld. There being no merit, LPA No. 54 of 2005 is also dismissed.

33. So far as respondents of LPA Nos. 885 of 2003 and 699 of 2003 are concerned, their initial appointments being illegal, they cannot be allowed to continue in service. Their orders of dismissal having been modified as an order of termination, simpliciter in nature, no further relief can be granted to them. The order passed by the learned Single Judge, as assailed in LPA Nos. 885 of 2003 and 699 of 2003 is set aside, for the reasons as mentioned above.

34. Both the appeals i.e. LPA Nos. 885 of 2003 and 699 of 2003 as preferred by the State of Jharkhand are allowed.

35. So far as petitioner "Seema Devi" of WP (S) No. 94 of 2002 is concerned,

there is no dispute that her husband Late Navin Kumar was in the services of the State Government. In his case also, it was alleged that he was appointed as a Constable without following the procedure, but that issue cannot be determined in absence of Late Navin Kumar.

36. So far as petitioner Seema Devi is concerned, she was appointed on compassionate ground and the Respondent-State has nowhere alleged that in the matter of appointment of petitioner Seema Devi, the procedure of compassionate appointment was not followed. In such circumstances, in absence of such finding and she having been appointed on compassionate ground, it was not open for the respondents to terminate her service on the ground of illegal appointment of her husband.

27. I, accordingly, set aside the order of her terminating being Order No. 1146/2001 issued by the S.P., Special Branch, Jharkhand, Ranchi, as contained in Memo No 1582, dated 22nd October, 2001. She stands reinstated to the post with all consequential benefits. But she will get 50% of the back wages for the period, she was forced to remain out of service. Thus the writ petition, W.P. (S) 94 of 2002, as preferred by petitioner Seema Devi is allowed.

38. However, in the facts and circumstances, there shall be no order, as to costs.

N.N. Tiwari, J.

39. I agree