
(2006) 08 AHC CK 0153

In the Allahabad High Court

Case No : Special Appeal Nos. 491 with 492 of 2003, C.M.W.P. Nos. 5044 and 5046 of 2006

Sunita Singh and Ors.

APPELLANT

Vs

Bal Vikas Pariyojana Adhikari, Mau & Ors.

RESPONDENT

Date of Decision : 18-08-2006

Acts Referred:

Citation : (2006) 08 AHC CK 0153

Hon'ble Judges : S.Rafat Alam, J and Sudhir Agarwal, J

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—These Special appeals arise out of the judgment dated 882003 passed in Writ Petition Nos. 4614 of 1997 and 4396 of 1997 whereby both the writ petitions have been dismissed by Hon'ble Single Judge. Writ Petition Nos. 5044 of 2006 and 5046 of 2006 relate to enforcement of the orders passed during the pendency of the Special Appeals and depends upon the fate of two Special Appeals, hence, are being heard alongwith these appeals. Since the facts and the issues involved in both the appeals and writ petitions are common, hence are being decided together by this common judgment.

2. The Special Appeal No. 491 of 2003 arises out of writ petition No. 4614 of 1997 filed by five petitioner appellants and the facts as disclosed in the writ petition are that the State Government introduced a scheme for establishment of Anganbari Centres in the rural areas for Integrated Child Development and Health Welfare of the Rural Children. The objectives of establishment of Anganbari Centres includes pre school education, looking after health including diet etc. in order to prepare them as better and educated members of society. The said Anganbari centers were to be established at village level having population of 20000. For the purpose of imparting instructions to children, appointment of Anganbari Workers and Attendants is governed by various Government orders issued from time to time which we shall deal with in the judgment later on. It is stated that for appointment of Anganbari Workers in

District Mau, all the petitionerappellants faced interview and after following the procedure prescribed, were appointed vide appointment letters dated 291996, 2571996, 2571996, 2971996 and 2971996 respectively. The terms and conditions of the appointment of the petitionerappellants are similar and one such appointment letter of petitionerappellant No. 1 is quoted as under:

The writ petition was filed challenging the order dated 611997 on the ground of violation of principle of natural justice, arbitrariness, illegal and lack of jurisdiction on the part of the District Magistrate, Mau in directing termination of services of the petitionerappellants.

3. The respondents filed their counteraffidavit stating that to fill up vacancies of Anganbari Workers, selection committee has to be constituted in accordance with G.O. dated 1291995 providing constitution of selection committee as follows:

- (1) District Magistrate/Chief Development Officer Chairman.
- (2) District Programme Officer Member Secretary
- (3) Concerned Bal Vikas Pariyojna Adhikari Member
- (4) One officer belonging to SC/ST community nominated by the District Magistrate, Member
- (5) One officer belonging to other backward class nominated by the District Magistrate, Member
- (6), One officer of minority community nominated by the District Magistrate, Member

4. Further, it is said that neither selection was made by aforesaid Committee nor the procedure for recruitment prescribed in the G.Os. dated 25111991, 27111991 and 25111995 was followed and without following the said procedure, appointments were made on the basis of a note submitted by the then Child Development Project Officer, stating that due to vacancies of Anganbari workers, work is suffering and some of the persons who have applied for such appointments have been considered by him and are being recommended for ad hoc appointment as Anganbari workers in public interest. He also said that the interview in accordance with the previous procedure shall be held subsequently. The District Magistrate approved aforesaid proposal and accordingly appointment letters were issued by Bal Vikas Pariyojna Adhikari, Pardaha, District Mau to all the petitionerappellants. It was clearly mentioned in the aforesaid appointment letters that the incumbents have to appear in the interview which would be held in future and their appointments are liable to be terminated at any time without any prior notice. Thereafter, it appears that a number of complaints were received by the District Magistrate, Mau in respect of the aforesaid appointments and he got the matter enquired through Chief Development Officer, Mau who submitted his report dated 6111996 bringing the following facts to the notice of the District Magistrate :

5. Consequently the District Magistrate decided to initiate proceeding against the then Bal Vikas Pariyojna Adhikari (Child Development Project Officer), Mau who has made such appointment and in the meantime directed to take steps for cancellation of all such appointments and further to take steps for making appointment in accordance with the rules. Consequently, the present Child Development Project Officer, Mau issued orders dated 611997 canceling appointments of the petitioner appellants. It is submitted that the aforesaid appointments were made without following any procedure prescribed under the rules and therefore, the appointments were totally illegal and void abinitio. In any case, the appointments, not in accordance with the terms and conditions contained in the relevant G.Os., are contrary to the procedure prescribed for appointment to the aforesaid post and therefore, there is no illegality in the order passed by respondent No. 1.

6. In Special Appeal No. 492 of 2003 also, which has arisen out of Writ Petition No. 4396 of 1997, there are five petitionerappellants and all other facts are similar to the earlier writ petition except the date of appointment letters, inasmuch as in the latter case, the appointment letters are dated 381996, 1641996, 831996, 381996 and 2971996 respectively.

7. Sri M.D. Singh "Shekhar", learned Counsel for the appellants in both the cases submits that once the petitionerappellants were appointed, their appointments could not have been cancelled and their services could not have been terminated without giving notice and opportunity of hearing to the appellants, and, therefore, the impugned order is illegal and liable to be set aside being in violation of principles of natural justice. He placed reliance on the Apex Court judgment in the case of Basudeo Tiwary v. Sido Kanhu University & Ors., JT 1998 (6) SC 464. He further submits that it was mentioned in the appointment letters that the appellants shall be required to appear in interview and accordingly they were entitled for an opportunity to appear in the interview which having been denied, would itself vitiate the order of Hon'ble the Single Judge for not considering the aforesaid fact while dismissing the writ petitions.

8. The learned Standing Counsel however, has submitted that the petitionerappellants got appointments without undergoing any procedure of selection as provided under the various G.Os., which have force of law laid down for recruitment to the post of Anganbari Workers and Attendants. Their appointments being void abinitio, they were not entitled for any protection under Article 226 of the Constitution of India. Respondent No. 1 without sending requisition to any Employment Exchange or without advertising vacancies, on his own, recommended 11 names, out of which, only 1 was a Scheduled Caste candidate, 1 Other Backward Class and rest were general category candidates. Those appointments were made in utter violation of recruitment procedure prescribed under the relevant G.Os. and also without following the reservation policy of the Government. The matter was enquired by the District Magistrate and finding that the appointments were contrary to the relevant G.Os., the

petitionerappellants have been terminated. He further submitted that the termination being in accordance with the terms and condition of the appointment cannot be said to be arbitrary and the petitionerappellants have no right to continue in service. The appellants have no legal right to challenge the order of termination as their appointment was on honorarium basis and the procedure prescribed for recruitment as contained in relevant G.Os. was not followed at all. In support of the aforesaid submissions, reliance has been placed on behalf of the respondents on the following :

(1) District & Sessions Judge, Baghpath v. Ratnesh Kumar Srivastava & Anr., 2005(1) LBESR 673 (All) : 2005 (1) ESC 724.

(2) Pankaj Gupta & Ors. v. State of J & K & Ors., 2005(1) LBESR 404 (SC) : 2004 (8) SCC 353.

(3) Mahendra Lal Jain v. Indira Development Authority & Ors., 2005 (1) SCC 639.

9. He further submitted since the appointment itself was illegal, made without giving any opportunity of consideration to other eligible persons and without following the procedure prescribed under the relevant G.Os. it was void and conferred no right upon the appellants to continue. As such no opportunity is required to be afforded before cancellation of such appointment or termination of services. The appointment letters speak that their services may be terminated at any time without prior notice and hence the order impugned is according to the term of appointment letter. In support of the aforesaid submission, reliance has been placed on the following :

(1) State of Madhya Pradesh & Ors. v. Shyama Pardi & Ors., 1996 (7) SCC 118.

(2) Sadiq Ali & Ors. v. State of U.P. & Ors., 2001 (3) UPLBEC 2652.

(3) Arvind Kumar Pipal & Ors. v. Commissioner, Trade Tax & Ors., 2004(1) LBESR 1062 (All) : 2004(2) UPLBEC 1473.

10. Lastly relying on Ram Krishna Kamath v. State of Karnataka, 2003 (3) SCC 374, it is contended where the appointments have been made dehorse the rules, even the plea of sympathetic consideration cannot be extended particularly where the incumbents have continued under the interim orders of the Court.

11. After hearing learned Counsel for the parties and perusing the record we find that it is a common fact admitted to both the parties that appointment to the post of Anganbari workers is governed by various G.Os. issued from time to time and in the present case since the appointments were made in 1996, the relevant G.Os. are dated 25111991, 27111991, 751994 and 1291995.

12. Initially the procedure for recruitment to the posts of Anganbari's Workers and Attendants was prescribed vide G.O. dated 721991. Thereafter, by G.O. dated 731991, further recruitment in Government services was banned. However, vide G.O. dated 23111991 the engagement of Anganbari Workers on honorarium basis was exempted from the aforesaid ban and the procedure for

engagement of such Anganbari workers was prescribed vide G.O. dated 25111991. G.O. dated 27111991, however, provides that the selection procedure should be by advertising the vacancies in the prominent local Newspapers. Consequently the procedure as contained in G.O. dated 25111991 was revised and the aforesaid G.O. was superseded vide G.O. dated 751994. The G.O. dated 1271995 however made certain amendments in the procedure prescribed under G.O. dated 751994. The effective provisions as contained in G.Os. dated 751994 and 1291995 which were applicable at the time of the appointments in question i.e. 1996 may thus be summarized as under :

(a) Academic Qualification

Atleast Junior High School for Anganbari workers in the rural area

For Anganbari attendants 5th class pass.

(b) Age

21 45 years.

(c) Selection Committee

(1) District Magistrate/Chief Development Officer, Chairman

(2) District Programme Officer, Member Secretary

(3) Concerned Bal Vikas Pariyojna Adhikari, Member

(4) One officer belonging to SC/ST community nominated by the District Magistrate, Member

(5) One officer belonging to other backward class nominated by the District Magistrate, Member

(6) One officer of minority community nominated by the District Magistrate, Member

(d) Reservation

The reservation of appointment for SC/ST, OBC, Handicapped and dependents of Freedom fighters shall be in accordance with direction of G.Os. issued from time to time in respect of reservation.

(e) Selection Procedure

Selection has to be confined to the particular residents of concerned Niyay Panchayat where Anganbari Centres is situated. On creation of post and when vacancies are available the Bal Vikas Pariyojna Adhikari shall inform all village Pradhans, Niyay Panchayat, Mahila Mandal Dal and Women welfare societies requesting them to send recommendation of formal candidates who are willing and desirous to the scheme for such appointments. The vacancies shall also be notified in the office of the village school, office of Niyay Panchayat and shall be

informed to public at large by local munadi as also through the Mukhya Sewika Gram Sabha. The selection committee shall hold a written test of Hindi and General Knowledge consisting of one common paper of 100 marks and those who have qualified in the written test would face interview that would carry 20 marks. Two members of same family would not be permitted to be appointed as Anganbari workers at the same Anganbari Centre. The preferences are available to social worker and those women who possess leadership quality.

13. The appointment according to the policy of Government has to be made on contract basis liable for extension as well as termination before expiry of the term of the appointment without any prior notice if the workers' performance is not satisfactory. It is specifically provided in ParaChha, of the G.O. dated 751994 that the appointment of Anganbari workers if not in accordance with the prescribed procedure, the Government has right to cancel the same after making enquiry into the matter.

14. Although the petitionerappellants have stated in general terms that the appointments were made after interview and following the full procedure prescribed but there is nothing on record to show that the petitionerappellants were appointed as Anganbari workers after following the procedure prescribed under the aforesaid G.Os. Averments made by the petitioners in para 3 of the writ petition are reproduced as under:

?That a scheme was introduced by the State Government in various Anganbaris in various District of State of U.P. In respect of the District of Mau, interviews took place in respect of all the petitioners alongwith several other persons and after following the full procedure as Prescribed, all the petitioners were issued appointment letters, by the respondent No. 1. The true copies of the appointment letters in respect of the petitioners dated 291996, 2571996, 2571996, 2971996 and 2971996 re annexed herewith and marked as Annexures 1 to 5 to this writ petition respectively.?

15. The averments contained in para 3 of the writ petition have specifically been contradicted and denied in para 5 of the counteraffidavit and it has been stated that the appointment of the petitioners was not made after following the procedure prescribed for such appointments. A bare perusal of AnnexureCA5 which is note submitted by respondent No. 1 earlier to the appointment of the petitionerappellants also shows that neither the procedure prescribed under the G.O. for inviting application from the eligible incumbents was followed nor the names of the petitioners were considered by the selection committee. The note submitted by respondent No. 1 in pursuance whereof the petitionerappellants were appointed is reproduced as under :

16. In view of the aforesaid facts as pleaded in the writ petition and the material available on record, we have no doubt in our mind that the appointment of the petitionerappellants has been made without following the procedure prescribed under the G.Os. In fact only vague averments were made by the appellants in

respect to the procedure but no material has been placed on record to show that the procedure was followed. The appellants have not even made any assertion as to when the vacancies were notified as prescribed under the aforesaid G.O. giving opportunity to other eligible incumbents to apply for the aforesaid vacancies, no date of interview in which the petitionerappellants claim to have appeared, has been mentioned and even this fact has not been said that the appellants have ever appeared before the selection committee for considering them in accordance with the aforesaid G.O.

17. In para 5 of the affidavit filed in support of Stay application in Special Appeal No. 492 of 2003 the appellants have stated that alongwith them many other candidates had also applied for the post of Anganbari workers and the applications made by the appellants and others were scrutinized by the concerned authority and ultimately the appellants were called for interview as per procedures contemplated for appointment of Anganbari workers. No details in support of the aforesaid averment have been given particularly since the aforesaid facts have been seriously disputed by the respondents. Even otherwise the factum that the appellants ever faced interview was belied by term of the appointment letter which clearly provide that appellants shall have to appear in the interview which is likely to be held in future. Therefore, we have no doubt in our mind that no procedure for recruitment to the post of Anganbari workers in the case in hand has been followed and respondent No. 1 after obtaining applications from the petitionerappellants put up note before the District Magistrate and after his approval issued appointment letters giving a complete go by the procedure prescribed under the G.Os. (supra).

18. In these circumstances now the question required to be considered is whether the appellants appointed in flagrant violation of recruitment procedure as required by relevant G.Os., can be terminated without any showcause notice.

19. Engagement of Anganbari Workers and the procedure of their recruitment is governed by the executive orders referable to Article 162 of the Constitution of India. It cannot be doubted that the aforesaid G.Os. have force of law since pertain to recruitment and appointment to a servant funded by the State. We need not to go into the question whether an Anganwari Worker holds a civil post or not, since for the purpose of present appeal, it is sufficient that engagement and appointment of Anganbari Worker is in the service, funded by the State and therefore, involves conferment of certain benefits and rights to the persons who are appointed as Anganbari Workers and results in civil consequences if the said benefit is withdrawn. Whether it is a case of appointment to civil post or conferment of largess of the State and involving monetary and other benefits, Articles 14 and 16, as the case may be, would be attracted in any case. It leads to a conclusion that no benefit can be provided in a back door manner to anyone denying equal right of consideration to other similarly circumstanced. The Apex Court in *Mahendra Lal Jain v. Indira Development Authority & Ors.*, 2005 (1) SCC 639, observed as under :

?The Constitutional scheme which the country has adopted does not contemplate any backdoor appointment. A state before offering public service to a person must comply with the constitutional requirements of Articles 14 and 16 of the Constitution. All actions of the State must conform to the constitutional requirements.?....Para19

20. The principle has been reaffirmed by a Constitution Bench in *State of Karnataka & Ors. v. Umadevi & Ors.*, (2006) 4 SCC 1. Where the post has been filled up without giving opportunity to other eligible persons in consonance with fundamental right of Consideration for public employment enshrined under Article 16 of the Constitution of India, the appointment is illegal and void abinitio particularly when a procedure is prescribed in the rule but the same has not been followed by the concerned authority.

21. In *Dr. Arundhati Ajit Pargaonkar v. State of Maharashtra & Ors.*, AIR 1995 SC 962, the Apex Court held :

?Nor the claim of the appellant, that she having worked as Lecturer without break for nine years on the date the advertisement was issued she should be deemed to have been regularized appears to be well founded. Eligibility and continuous working for howsoever long period should not be permitted to overreach the law. Requirement of rules of selection through Commission cannot be substituted by humane considerations. Law must take its course. Consequently the appellant was not entitled to claim that she should have been deemed to have been regularized as she had been working without break for nine years.?...Para 7.

22. In *Ashok Kumar & Ors. v. Chairman, Banking Service Recruitment Board & Ors.*, 1996(1) LBESR 377 (SC) : AIR 1996 SC 976, the Apex Court held as under :

?Article 14 read with Article 16 (1) of the Constitution enshrine fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant posts arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16 (1) of the Constitution.? Para5

23. Considering similar provisions contained under the statute, the Apex Court in the case of *Kamlesh Kumar Sharma v. Yogesh Kumar Gupta & Ors.*, 1998(2) LBESR 166 (SC) : AIR 1998 SC 1021, held as under :

?As per the scheme of the Act and the aforesaid provisions, for each academic year in question, the management has to intimate the existing vacancies and vacancies likely to be caused by the end of the ensuing academic year in question. Thereafter, the Director shall notify the same to the Commission and the Commission, in turn, will invite applications by giving wide publicity in the State of such vacancies. The vacancies cannot be filled except by following the

procedure as contained therein. Subsection (1) of Section 12 has incorporated in strong words that any appointment made in contravention of the provisions of the Act shall be void. This was to ensure to back door entry but selection only as provided under the said Sections.?. Para21

24. In the case in hand it is not disputed that publication of vacancies to all concerned is clearly provided under the G.O. so that the eligible candidates may have an opportunity to apply. Various modes of wide publication in the local area are specifically mentioned in the G.O. dated 751994. There is nothing on record to show that any such procedure was adopted at all and in what manner the petitionerappellants came to know about existence of vacancies. There were only 11 vacancies and respondent No. 1 considered and recommended only 11 candidates including 10 petitionerappellants in two appeals. It is wellsettled that in the writ petition, it is incumbent upon the petitioners to support their factual averments by means of necessary evidence. In *Bharat Singh v. State of Haryana*, AIR 1988 SC 2181, the Apex Court held as under :

?In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counteraffidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counteraffidavit, as the case may be, the Court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counteraffidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counteraffidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.?. Para13

25. In the case in hand the appellants have not shown any where that the vacancies were duly notified, selection committee was constituted and the written test and selection were held in accordance with the aforesaid G.Os.

26. The application of principle of natural justice knows no exclusion provided the incumbent who complained about denial of opportunity is in a position to show something in his defence. It is not an empty formality and when the incumbent has nothing to say the order cannot be set aside only on the ground of denial of opportunity.

27. In *Karnataka State Road Transport Corporation & Anr. v. S.G. Kotturappa & Anr.*, AIR 2005 SC 1933, the Apex Court held as under :

?The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The

principles of natural justice cannot be applied in vacuum. It cannot be applied in vacuum. It cannot be put in any straight jacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criterias required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with?....Para20

28. In Divisional Manager Plantation Division, Andaman & Nicobar Islands v. Munnu Barrick & Ors., 2005 (2) SCC 237 : AIR 2005 SC 1158, the Apex Court held as under:

?The principles of natural justice cannot be put in a strait jacket formula. It must be viewed with flexibility. In a given case, where a deviation takes place as regard compliance of the principles of natural justice, the Court may insist upon proof of prejudice before setting aside the order impugned before it?....Para17

29. A Division Bench of this Court in Sadiq Ali & Ors. v. State of U.P. & Ors. (supra) held that the principles of natural justice are not applicable where appointments are cancelled on the ground of violation of procedure for recruitment.

30. In State of Madhya Pradesh & Ors. v. Shyama Pardhi & Ors. (supra), the Apex Court held that principles of natural justice are not applicable where the person does not possess the requisite qualification prescribed under the Rules. The same view was taken in Arvind Kumar Pipal & Ors. v. Commissioner, Trade Tax & Ors. (supra).

31. In the case of Basdeo Tiwary, relied upon by learned Counsel for the appellants, para 12 itself says that in order to find out that appointment was not made in accordance with law, an enquiry has to be made as to whether the appointment was made contrary to the provisions of law and in absence of any such exercise, the appointment could not have been terminated. It is also said that while making such an enquiry the concerned employee should also be allowed to participate. In the case in hand, in the appointment letter itself, it was mentioned that the petitionerappellants are liable to be terminated at any time and in future they will have to appear in interview. The appointments having been cancelled in terms and conditions mentioned in the appointment letter, it cannot be said that any of the rights of the petitionerappellants have been affected. No doubt it is true that if appointment would have been terminated arbitrarily or without any reason, the Court has jurisdiction to look into the matter. However, in the present case the respondents in order to repel the contention regarding arbitrariness have disclosed that appointments were made without following the procedure prescribed under the rule and without publication of the vacancies and thus the same has been cancelled with a direction to make fresh appointments in accordance with law. The order of termination passed as per terms of the appointment letter is neither illegal nor it is open to the

appellants to challenge the same on the ground of violation of principle of natural justice. An appointment, purely illegal is liable to be cancelled. In the facts and circumstances of the present case, the law laid down by the Apex Court in the case of Basdeo Tiwary (supra) is not applicable.

32. Lastly it was contended that the petitionerappellants have continued for several years under the interim order passed by this Court, initially in the writ petition and thereafter in the Special Appeal and therefore, dismissal of appeals at this stage would result in serious prejudice to the appellants and considering their length of service they have rendered under the interim order of this Court, a sympathetic view should be taken by this Court and the appellants be allowed to continue. After giving very serious and anxious thoughts to the aforesaid contention with full sympathy, but within four corners of law permitted under the Constitution, we cannot accept the aforesaid contention of the learned Counsel for the appellants for more than one reasons.

33. Recently in Binod Kumar Gupta v. Ram Ashray Mohato & Ors., AIR 2005 SC 2103, the Apex Court held as under :

?Without adequate notice no fair opportunity was given to others who might have applied. Apart from this, it does not appear from the records that there was any selection procedure followed at all. There is no explanation why the Selection Committee had been bypassed nor any acceptable reason why the persons who had applied as far back as in 1986 were ignored. This singular lack of transparency supports the finding of the High Court that the appointments were not made bona fide. The District Judge, who was ultimately responsible for the appointment of class IV staff violated all norms in making the appointments. It is regrettable that the instructions of the High Court were disregarded with impunity and a procedure evolved for appointment which cannot be said to be in any way fair or aboveboard. The submission of the appellants that they had been validly appointed is in the circumstances unacceptable. Nor can we accede to their prayer to continue in service. No doubt, at the time of issuance of the notice on the special leave petition, this Court had restrained the termination of services of the appellants. However, having regard to the facts of the case as have emerged, we are of the opinion that this Court cannot be called upon to sustain such an obvious disregard of the law and principles of conduct according to which every Judge and any one connected with the judicial system are required to function. If we allow the appellants to continue in service merely because they have been working in the posts for the last 15 years we would be guilty of condoning a gross irregularity in their initial appointment. The High Court has been more than generous in allowing the appellants to participate in any fresh selection procedure as may be held and in granting a relaxation of the age limit (emphasis added)...Para13?

34. In Pankaj Gupta & Ors. v. State of J & K & Ors. (supra), the Apex Court held:

?No person illegally appointed or appointed without following the procedure

prescribed under the law, is entitled to claim that he should be continued in service. In this situation, we see no reason to interfere with the impugned order. The appointees have no right to regularisation in the service because of the erroneous procedure adopted by the authority concerned in appointing such persons?...Para6

35. Even in the case of *State of Haryana & Ors. v. Piara Singh & Ors.*, (1992) 4 SCC 118, the Apex Court held:

“The Court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service. The main concern of the Court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16?...Para21

36. Where a person engaged with a clear stipulation in the contract or in the letter of appointment, then his service can be terminated at any time without prior notice. It is also open to the employer to invoke the aforesaid condition of appointment in exercise of its power accordingly. In *State of Punjab & Ors. v. Surindra Kumar & Ors.*, AIR 1992 SC 1593, the Apex Court has held that the Court must seek the adherence to the terms and conditions of the appointment and there is no reason why terms and conditions incorporated in the appointment letter cannot be enforced in a contract of service. This dictum has been followed by a Division Bench of this Court in *District and Sessions Judge, Baghpath v. Ratnesh Kumar Srivastava & Anr.* (supra).

37. Further a person who has continued under the interim order of the Court cannot be allowed to retain the benefit when the writ petition is dismissed. The interim order passed merges with the final order of dismissal as if it was never passed. As long back as in 1968, in *Shyam Lal v. State of U.P.*, AIR 1968 AllD 139, a Division Bench of this Court held that the interim order merges in final order and once the writ petition is dismissed it would take effect as if no order was passed in favour of the litigant. The same view was reiterated in *Sri Ram Charan Das v. Pyare Lal*, AIR 1974 AllD 280, *Shyam Manohar Shukla v. State of U.P.*, 1986 (4) LCD 196 and *M/s. Karoria Chemicals and India Limited v. U.P.S.E.B. & Ors.*, AIR 1994 AllD 273. The aforesaid view has also been approved by a Full Bench of this Court in *Surya Deo Mishra v. State of U.P. & Ors.*, 2006(1) LBESR 270 (All) (FB) : 2006 All. C.J. 117.

38. In such circumstance, any extension of sympathy to such petitioner would negate not only the rule of law but would also cause a permanent prejudice to other side if one party is permitted to continue enjoy and retain a benefit under the interim order. The act of Court shall prejudice none is well recognized principle of law. Therefore, the petitionerappellants cannot claim any benefit merely for continuing on the post on the basis of interim order obtained from this Court. The Apex Court in the *Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur & Anr. v. Sree Kumar Tiwary & Anr.*, AIR 1997 SC

3071, held that a person who has obtained stay order and continued in service, is not serving by virtue of any order of appointment, but continuing in the office under the direction of the Court and in case he fails in the writ petition, his continuance under the order of the Court would not result in any benefit to him. A similar contention has already been negated by this Court in Special Appeal No. 32 of 2006, Lalla Prasad v. State of U.P. & Ors., decided on 12/12/2006.

39. In view of the discussion made above, we do not find any error in the view taken by Hon"ble Single Judge that the writ petitions deserved dismissal. In the result both the Special Appeals fail and hence are dismissed. Consequently the writ petitions also fail and accordingly dismissed. No order as to costs.