

(1999) 08 PAT CK 0121
In the Patna High Court
Case No : C.W.J.C. 3294 of 1999

Vinod Kumar Sriranjana and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 09-08-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 392

Citation : (1999) 3 PLJR 736

Hon'ble Judges : S.J. Jha, J

Bench : Single Bench

Advocate : S.S. Asghar Hussain and Khatim Reza in 3294 and 3296, M/s. S.P. Mukherji and Gyanand Roy in 3031 and 3537, Dr. Sadanand Jha and Anjani Kr. in 3562, M/s. S.P. Mukherji and Mithilesh in 3366, 3450 and 3510, Mr. Satish Chandra Jha in 8118, 1606, 1768, 1809, 2017, 3288, 3515 and 3637, Mr. Phulendra Kumar in 10288, 10730 and 3731, Mr. Jitendra Kr. Roy in 3182, 3243 and 3411, M/s. Ajay Kr. Thakur, Bimal Kumar and Nilesh Kumar in 10089, M/s. Binay Kumar Singh and Vivek Kr. in 3563, M/s. Binoy Kr. Singh, Mukesh Kr. Rana and Shanker Kishore Shah in 3642, M/s. Ramesh Chandra Jha, Ashok Kumar Singh and Arvond Kumar in 1938, for the Appellant; Ganga Prasad Roy and Satish Kumar Sinha for the State, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Jha, J.—The dispute in these 30 writ petitions relates to appointment on the post of Non-Medical Attendant and other class III/IV posts in the Health Department. There are 137 petitioners in all. The relief sought by them is not the same but as the crux of the dispute is one and the same, they have been heard together. The petitioners in CWJC Nos. 10089/98, 1606/99, 3243/98, 3376/98 and 1768/99 seek direction for inclusion of their names in the list of employees to be retained vide memo no. 139 (11) dated 31.3.1998. The petitioners in CWJC Nos. 1809/99 and 2017/99 seek direction for payment of salary. The petitioners in CWJC Nos. 10288 and 10730 of 1998 are aggrieved by the teleprinter message dated 16.11.1998 restraining the local officers from accepting the joining of any person pursuant to memo no. 139(11) dated 31.3.1998 in the light

of the interim order of this Court (passed in a writ petition challenging the validity of the list circulated by the said memo). The remaining writ petitions except CWJC No. 1938/99, are directed against the order contained in memo no. 84(11) dated 8.3.1999 cancelling all appointments made by Dr. Rajendra Prasad, the then State Leprosy Eradication Officer. CWJC No. 1938/99 is a case of its own type. The appointment of the concerned petitioner was cancelled on 18.3.1993 itself. He seeks quashing of the said order and a direction to accept his joining after over five years. All these petitioners seek consequential relief. The cases are peculiar in the sense that besides there being a common dispute as to whether the impugned appointments were valid there is a further dispute inter se as to who were appointed. The factual background of the cases, briefly stated, is as follows:

An advertisement was published on 23.1.1987 in some newspapers of the State under the hand of Dr. Rajendra Prasad, the then State Leprosy Eradication Officer, Swasthya Bhawan, Sultanganj, Patna inviting applications from the candidates registered with the Employment Exchange for the post of Non-medical Attendant. The number of vacancies or the number of posts reserved for the Scheduled Castes/Scheduled Tribes candidates were not indicated. Although the last date for submission of the application was 15.2.1987, Dr. Rajendra Prasad started making appointments from the beginning of January, 1987 itself. Such appointments were made not only on the post of Non-Medical Attendant but also on the post of clerk and Class IV posts which were not mentioned in the advertisement. It is worth stating here that after Dr. Rajendra Prasad was placed under suspension following the detection of the irregularities, his successor found as many as 22858 unopened envelopes containing applications for the posts in the office of the State Leprosy Eradication Officer. After the irregularities came to light, vide memo no. 1386 dated 16.2.1987 and memo no. 86 dated 17.2.1997, the Joint Secretary, Health Department, and the Director-in-Chief, Health Services restrained Dr. Rajendra Prasad from either conducting interview or issuing any appointment letter any more. Curiously, Dr. Prasad continued to make appointments and in this process appointed as many as 467 persons between January, 1987 and June, 1987.

On 8.5.1987, the Chief Minister directed that all appointments made by Dr. Rajendra Prasad be cancelled and an explanation be called for from him. By memo no. 685(18) dated 15.6.1989, the Commissioner-cum-Secretary, Health Department issued direction to all the Regional Deputy Directors and the Civil Surgeons to cancel the appointments. Dr. Rajendra Prasad was placed under suspension and a departmental proceeding was initiated against him. He was directed to produce the list of candidates appointed by him along with the relevant records. It was only in the month of October, 1988 that he finally furnished the list consisting of the names of 467 persons appointed against class III and IV posts. The relevant records, such as applications of the candidates (already appointed), merit list, the minutes of Selection, roster clearance, interview letters etc. were not made available.

2. As it invariably happens that two limbs of the Government work at a tangent, the then Health Minister called for the relevant file and directed that all the 467 appointees be reinstated and the Civil Surgeons be directed to accept their joining. Despite the plea of the Secretary, Health Department to reconsider the decision or obtain orders of the Chief Minister, the Minister Incharge reiterated his earlier order. On 24.4.1989 vide memo no. 379(5), the Director-in-Chief, Health Services sent a list of 467 persons to the Regional Deputy Directors and Civil Surgeons asking them to accept their joining and send the compliance report. Interestingly the list contained 100 new names which did not find place in the list submitted by Dr. Rajendra Prasad. In other words, while the number remained the same, 100 new names were substituted in place of the earlier ones. The persons aggrieved challenged the validity of the list by writ petitions in this Court. When the fact that the list contained interpolation of names came to the knowledge of the department, by wireless message no. 134(DIC) dated 2.5.1989, direction was issued to the Regional Deputy Directors and Civil Surgeons to keep the implementation of the order contained in letter no. 379(5) dated 24.4.1989 in abeyance. Against that order also writ petitions were filed. One such writ petition No. 3761/89 was dismissed by this Court against which the petitioners concerned moved the Supreme Court and the matter was remanded back for fresh consideration. The controversy was further confounded when the relevant files of the department were snatched by some unknown persons on 15.4.1990 and Secretariat RS. Case No. 288/90 u/s 392IPC was instituted in which the police submitted final report. The writ petitions pending in this Court relating to the validity of different orders passed in the matter were disposed of on 15.10.1993. this Court observed that there are sufficient materials on record to raise a strong suspicion that the appointments were not validly made. The court however, directed the Government to make an enquiry. The judgement of this Court is reported in 1994(1) PLJR 388 (Nand Kumar Prasad and others vs. State of Bihar). I shall refer to the relevant part of the judgement later.

3. In compliance of the above direction of this Court, the then Commissioner & Secretary, Health Department, issued a general notice calling upon the persons who claimed to have been appointed by Dr. Rejendra Prasad to submit their show cause as to why their appointments should not be cancelled. A general notice was issued because there was dispute regarding the identity of the persons appointed and the department did not have a complete list of such appointees. In many cases, the persons had directly submitted their joining in the office of the Regional Deputy Directors or the Civil Surgeons. The then Commissioner & Secretary of the Department Sri G.R. Patwardhan submitted his report on 11.10.1995. He came to the conclusion that there had been a gross violation of the norms of recruitment and the constitutional provisions and therefore, appointments were fit to be cancelled. In view of the fact that the very appointment process was vitiated he did not consider it necessary to identify the persons actually appointed. shall refer to his findings again in this judgement.

Somehow the report was not accepted at the Government level. It was felt that the report contained certain mistakes of facts and further examination of the matter was necessary. A fresh general show cause was issued in the newspapers on 15.11.1996. On 24.12.1997 the successor Commissioner & Secretary of the Department Sri C.K. Basu submitted his report. Coming to a different conclusion he prepared a list and recommended that the persons included therein be retained in service. The list was circulated by the Director-in-Chief vide his memo no. 139(ii) dated 31.3.1998. This led to fresh controversy because the list contained the names of 233 persons who were not there in the earlier two lists and thus included for the first time. By order dated 21.4.1998 passed in CWJC No. 2624/98, this Court restrained the respondents from making appointment from the said list. On 18.5.1998, this Court directed the State to bring on record the final decision of the government on the enquiry report. It was obvious that before circulating the said list in terms of the report of Shri C.K. Basu, no decision has been taken at the government level which was the direction of this Court in Nand Kumar Prasad's case (supra). Pursuant to the said order dated 18.5.1998, the State Government took the impugned decision to cancel all appointments made by Dr. Rajendra Prasad vide memo no. 84(ii) dated 8.3.1999.

4. It is this order against which 20 out of 30 writ petitions in hand have been filed. It is, however, obvious that having regard to the nature of the decision/order to cancel all appointments, the petitioners in other writ petitions are as much aggrieved by the order as others. They had approached this Court prior to passing of the order, seeking direction for payment of salary or inclusion of their names in the list circulated by memo no. 139(ii) dated 31.3.1998 or for their joining on the post.

5. Counsel representing the different sets of petitioners made separate submissions. The submissions are as hereunder:

Shri Shyama Prasad Mukherji submitted that on 30.12.1986, the State Government had adopted the National Leprosy Eradication Scheme and it was in order to effectuate the said scheme that advertisement was published on 23.1.87 and appointments were made. He stated that since the process of recruitment was likely to take a long time which could affect the implementation of the scheme, the State Government authorised the State Leprosy Eradication Officer to make provisional appointments. Dr. Rajendra Prasad was thus competent to make the appointments. Shri Mukherji submitted that the fact that the applications were called for only from candidates registered under the Employment exchange shows bonafide of the appointment process. In any view, on the ground that the circumstances in which the appointments were made were suspicious, after lapse of 10 years or so, the selection cannot be questioned. He pointed out that in terms of the judgement of this Court in CWJC No. 103/90 and analogous cases, the enquiry should have been concluded within six months. The matter however, was allowed to linger for about six years. Having allowed the petitioners to remain in employment so long, it would be

unjust to remove them on the basis of mistakes committed in the process of appointment more than 10 years ago and therefore, on equitable considerations they should be allowed to continue. He relied on *Miss Shainda Hasan Vs. State of Uttar Pradesh and others*, , *H.C. Puttaswamy and others Vs. The Hon''ble Chief Justice of Karnataka High Court, Bangalore and others*, , *Union of India and Others Vs. Kishorilal Bablani*, . In support of the plea that provisional appointment could be made, he relied on *Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others*, .

Shri S.S. Asghar Hussain submitted that there is not even a whisper in the respondents' counter affidavit that the petitioners were aware of the illegality. Not being party to the fraud, appointments should not be cancelled. He submitted that the fact that the advertisement was made and pursuant thereto the concerned petitioners submitted applications shows their bonafide. He pointed out that the names of the concerned petitioners (in CWJC No. 3294/99 and 3296/99) figure in all the three lists and therefore, they cannot be said to be "spurious". Alternatively, he submitted that even if the appointments are found to be illegal, they have worked on the post for several years as de facto employees, and in the absence of any complaint as to their working they should be allowed to continue.

Dr. Sadanand Jha submitted that memo dated 24.4.1989 (supra) by which list of 467 candidates was circulated was pursuant to government order and the Director-in-Chief had simply communicated the same. The implementation of the said order could not be kept in abeyance by the department vide wireless message no. 134 (DIC) dated 2.5.1989. Counsel referred to the order of the State Government contained in memo no. 284(2) dated 30.12.1986 to contend that for timely and expeditious implementation of the leprosy eradication scheme, the State Government had delegated power to make provisional appointment in favour of the State Leprosy Eradication Officer. He also highlighted the fact that the petitioners have continued in service for long time on the basis of different orders and their appointments should not be disturbed at this stage. He placed reliance on *Kuseshwar Dubey vs. Bharat Coking Coal Ltd. and others*, 1989 PLJR 1, *H.C. Puttaswamy and others Vs. The Hon''ble Chief Justice of Karnataka High Court, Bangalore and others*, .

Sri Satish Chandra Jha referred to the facts of the individual cases represented by him. I do not wish to refer to the facts of the cases individually. I may only mention that while names of some of the concerned petitioners appear in one or the other list, the names of some do not find mention in any list. In some cases represented by him, salary is allegedly not being paid as the centers were not allotted to them. In some cases, despite order of this Court and representation filed, no decision has been taken for payment of salary for the period in question.

Shri Ajay Kumar Thakur submitted that enquiry was ordered regarding the substitution of the names of 100 persons in the list circulated by memo dated

24.4.1989 but what happened in the enquiry is not known. He relied on the interim order of this Court in CWJC No. 103/90.

Shri Jitendra Kumar Roy submitted that the order dated 15.6.1987 cancelling the appointments already made was never challenged and the matter therefore, should have been treated as final. The right of the concerned petitioners accrued thereafter when they were appointed and therefore, they have a better claim than those appointed earlier i.e. prior to 15.6.1987. He referred to the report of Dr. B.K. Jha, the successor State Leprosy Eradication Officer dated 14.7.1987 with respect to the names of 187 persons including the petitioners. It was stated that the petitioners' names found mention in the original list of Dr. Rajendra Prasad and Dr. B.K. Jha.

Shri Phulendra Kumar adopted the submissions of the other counsel. He submitted that facts may be ascertained from the relevant files.

Shri Ramesh Chandra Sinha appearing in CWJC No. 1938/99 submitted that the appointment of the petitioner was cancelled on 18.3.1993 as being forged without giving any opportunity to him. He stated that as the petitioner remained ill for 5 years he could not challenge the order earlier. After recovering from illness on 20.5.1998 he submitted his joining but the same was not accepted.

.Shri Ganga Prasad Roy, learned Additional Advocate General appearing on behalf of the respondents stated that the relevant facts have been stated in the Counter-affidavit filed in CWJC No. 3294/99. He submitted that the State Leprosy Eradication Officer had no power to make appointment. He pointed out that the government had constituted a Selection Committee of which the State Leprosy Eradication Officer was the Member Secretary. But as found by this Court in Nand Kumar Prasad and others versus State of Bihar (supra), neither the Selection Committee ever met nor any reference was made by Dr. Rajendra Prasad to it before the impugned appointments were made. As regards the letter of the Joint Secretary dated 30.12.86 purporting to delegate the power to the State Leprosy Eradication Officer to make ad hoc appointments, Sri Roy submitted that there is no record of any such letter having been issued by the Health Department and even if it be assumed that the file is missing and in fact the said letter was issued, it would appear that this was done on the request of Dr. Rajendra Prasad himself and on the very next day of the receipt of his letter seeking such delegation, without approval of the Minister, the consent of the Personnel Department or the Finance Department, which was essential under the Rules of Business. He submitted that even for making ad hoc appointments the advertisement is required to be issued and interview etc. held but in the present case, as already held by this Court in Nand Kumar Prasad vs. State of Bihar (supra) the advertisement was not acted upon and over 22 thousand envelopes containing applications remained unopened. Shri Roy also highlighted the fact that there is serious controversy regarding the identity of the persons so appointed by Dr. Rajendra Prasad. He referred to the discrepancies in the list submitted by Dr. Rajendra Prasad, the list circulated by the then Director-in-Chief

on 24.4.1989 and the list prepared by the then Commissioner & Secretary, Health Department Shri C.K. Basu. He stated that the list prepared by Shri C.K. Basu and circulated by memo no. 139(ii) dated 31.3.98 contained names of 233 such persons who were not in any of the earlier lists. Shri Roy submitted that the matter is concluded by the findings recorded in the earlier case of Nand Kumar Prasad vs. State of Bihar (supra) and there is hardly any scope for interference. In support of his contention that the impugned appointments were illegal and void ab initio he placed reliance on Lalan Kumar Singh and Others Vs. The State of Bihar and Others , Ashwani Kumar and Others Vs. State of Bihar and Others, , Bimal Kishore Rai vs. State of Bihar and ors., 1995 (2) PLJR 573, Chandra Shekhar Prasad and Others Vs. State of Bihar and Others and NAGULAPATI LAKSHMAMMA Vs. MUPPARAJU SUBBAIAH., .

6. It is an admitted position that the points involved in the present batch of writ petitions are the same as those involved in the earlier case of Nand Kumar Prasad and others vs. State of Bihar and ors. (supra) relating to the same very appointments. After noticing the facts, which have been mentioned hereinabove in this judgment, the Division Bench concluded:

There is sufficient material on record to raise a very strong suspicion that the appointments have not been validly made. There is also considerable doubt as to who were the 467 persons, who were actually appointed by the appointing authority. There are two lists on record, and though 367 names are common, the remaining 100 names are not common in the two lists. The appointments were made by the State Leprosy Eradication Officer without reference to the Selection Committee constituted for the purpose. The appointing authority had not considered all the applications which had been received and over 22800 application received in response to the advertisement were lying unopened in office of the State Leprosy Eradication Officer. He made the appointments despite the order issued by the State Government prohibiting him from making such appointments. Though only Class III posts were advertised, he also appointed large number of persons against Class IV posts. Though the advertisement was issued for filling up substantive vacancies in a regular manner on the recommendation of the Selection Committee, with a view to avoid the Selection Committee the State Leprosy Eradication Officer made appointments on ad hoc basis bypassing the Selection Committee.

7. Having reached the above conclusion, the Division Bench observed that it was an appropriate case in which the respondents should hold a thorough enquiry into the manner in which the impugned appointments were made. Observing further that the petitioners should be given a fair opportunity of representing their cases the court directed the State Government to publish a general notice in the newspaper calling upon the persons concerned to furnish show cause and decide the matter. The Court clarified that the enquiry should also be made as to who were those 467 persons actually appointed by the State Leprosy Eradication Officer.

8. I wonder, with utmost respect to the learned Judges, what kind of enquiry was to be made in the face of the findings recorded by this Court regarding the circumstances in which appointments were made and the validity and effect of the appointments. In my respectful opinion, after this Court reached the conclusion that the appointments were illegal, and for good reasons, if I may say so, hardly anything remained for the State Government to enquire except fixing responsibility for making such large scale illegal appointments and continuing, the appointees on the posts. No doubt, one of the points at issue also was as to who were the persons actually appointed by Dr. Rajendra Prasad. But in my opinion, if the appointments themselves were illegal and void ab initio, there was hardly any need of making further enquiry to establish the genuineness of the appointees. If the appointments are had and illegal, appointees have no right to continue on the post and therefore, irrespective of the question as to whether they were actually appointed by Dr. Rajendra Prasad or their names were inserted/substituted in the subsequent lists is of little consequence; in either situation they have to go. If the appointments are had the appointees go automatically. This was the view taken by Shri G.R. Patwardhan and I find myself in complete agreement with him.

9. The decision in Nand Kumar Prasad vs. State of Bihar (supra) having been rendered by a Division Bench and therefore binding on me sitting singly, and the same having not been challenged by either the petitioners or the State Government and as a matter of fact, acted upon by the Government, it is not necessary to make any further observations. Pursuant to the direction of this Court a general notice was issued in the newspaper on 5.5.1994 and 22.6.1994, 337 persons appeared and participated in the hearing. Many of them also filed their written show cause. It is interesting to find that when a fresh notice was published in November, 1995, after the State Government rejected the report of Shri G.R. Patwardhan and directed fresh enquiry by the then Commissioner & Secretary Shri C.K. Basu, more than 1300 persons appeared (as against 377 before Shri Patwardhan). Out of said 1300 and odd persons, 379 persons were working. In other words, the rest 900 and odd persons were such who claimed to have been appointed by Dr. Rajendra Prasad, but had never worked on the post during the intervening period of 8 years.

10. I have gone through the report of Shri C.K. Basu, if I may say so, his report merely added to the confusion. The list which he prepared included the names of 233 such persons who were not in the earlier lists and had never worked on the post. Some of the writ petitions in hand, as noted at the outset, have been filed seeking direction to include their names in the said list circulated by memo no. 139(ii) dated 31.3.1998. The report of Shri C.K. Basu is so outrageous that at one stage of the hearing I thought, show cause notice should be issued to him. However, since that would have prolonged the matter, I dropped the idea. Shri C.K. Basu is no more in the Health Department and his report apparently has not been accepted by the State Government. After writ petitions were filed challenging the said report, this Court vide order dated 18.5.1998 in CWJC No.

2624/98 directed the Government to take the final decision. The matter was thereafter again examined by the present Additional Commissioner & Secretary Shri Chintu Nayak whose findings have been accepted by the Government and it is the validity of this order communicated by memo no. 84 (11) dated 8.3.99 which has been challenged in the cases subsequently filed.

11. Shri Chintu Nayak has held that the impugned appointments were made without following the established norms of recruitment and in violation of the government orders. The appointments were to be made by a Selection Committee but Dr. Rajendra Prasad made them on his own, on pick and choose basis, without even caring to open the envelopes containing applications which had been received pursuant to the advertisement. When the irregularities came to the notice of the Government, Dr. Prasad was restrained from making appointment but he continued to do so until June, 1997 when the government decided to cancel the appointments and to place him under suspension and start departmental proceeding against him. The Additional Commissioner has further held that the list finalised by Shri C.K. Basu is not reliable as no records were available in the department or in the office of State Leprosy Eradication Officer and it was not safe to rely on the identification of signatures by Dr. Rajendra Prasad.

12. I wonder, if there is any scope to find fault with the government order accepting the above findings/report of the Additional Commissioner. If I may say so even at the cost of the repetition the dispute is concluded by the findings of the Division Bench of this Court in the case of Nand Kumar Prasad and others vs. State of Bihar (supra). Nothing favourable to the petitioners has come in the course of enquiry. The report rather strengthens those findings and there is hardly any scope for interference.

13. However, as the things stand, after the judgement in Nand Kishore Prasad's case was delivered on 15.10.1993, the persons concerned continued to work on the post for over 5 more years. In view of the said findings/conclusions reached by this Court, the impugned appointments could be terminated outright but the fact that during the intervening period of over 5 years they worked on the post can not be ignored. The situation cannot be said to be the same as it stood in October, 1993. In view of the nature of the illegalities in the appointment, which go to the root of the matter, they may not be entitled to an order allowing them to continue at the same time but it can not be denied that some rights in equity have accrued to them. Some of them may not only be eligible but also quite suitable by virtue of work experience over the period of time. It would, therefore, be proper to evolve a mechanism so that the genuine, eligible and suitable persons are identified and thus, grain is separated from the chaff. It cannot be denied that notwithstanding the manner in which they entered in the service, for which the appointing authority was more to blame compared to the appointee, they must have acquired some proficiency during the intervening period with the passage of time.

14. In the facts and circumstances, I am of the opinion that the appropriate course would be to direct the State Government to make regular appointments against the available sanctioned Class III and Class IV posts under the Leprosy Eradication Scheme and, at the same time to give certain concession to the working employees treating them as a separate class.

15. As indicated above, there is dispute regarding the identity of the persons who were actually appointed by Dr. Rajendra Prasad. Pursuant to the earlier notice 377 persons appeared with their claim, in November, 1995, the number swelled to over 1300: there being dispute about the identity of not only the appointees but also the identity of the claimants, their number being indeterminate. It would not be possible or proper to treat all of them as separate class for giving them the concession. It would be sufficient if the concession is extended only to those whose names figure in any of the lists and have actually worked on the posts for certain period.

16. In the case of Ashwani Kumar and Others Vs. State of Bihar and Others, which related to illegal appointments of Para Medical Staff in the Tuberculosis wing of the Health Department in the State of Bihar, while upholding the decision of the State Government and the High Court regarding the termination of the services of the persons concerned, the Supreme Court gave certain concession as enumerated in paragraph 18 of the Judgement. In another case the Supreme Court earmarked certain percentage of posts to be filled from amongst the appointees whose appointments were terminated. It would be just and proper? not only from the view point of the petitioners but the Department as well?if similar order is passed in the present case.

17. The present case relates to 467 vacancies/posts. The number of vacancies/posts (including these 467 vacancies) might have increased in course of time but it is obvious that the appointees cannot have any claim for appointment against the vacancies which might have occurred later. It would be thus enough if a percentage of 467 vacancies is earmarked for them. Having given my anxious consideration, I am of the view that it would be sufficient if 150 vacancies out of 467 vacancies, which roughly comes to one-third of the total vacancies, are earmarked for them with the rider that only those whose names figure in one of the lists and have worked for a period of five years continuously shall be considered eligible for such vacancies.

18. Following the decision of the Supreme Court, I would therefore, direct the State Government to invite applications for the existing vacancies in Class III and Class IV posts under the Leprosy Eradication Scheme and make regular appointment. Such appointment should be made on the basis of the existing rules or rules as may be framed by the Government. Out of the available sanctioned posts, 150 posts should be earmarked for those whose names find mentioned in any of the three lists and have worked on the post at least for five years continuously. Those found eligible in the final selection, will be given necessary age relaxation. They will also be entitled to count the period of service

already rendered by them on the post for the purpose of retiral benefit but they will not be entitled to claim any inter se seniority over the rest who may be appointed against the remaining vacancies. In the event eligible/suitable candidates are not available, the vacancies shall be filled up from amongst candidates from the open market.

19. The advertisement inviting applications should be published within a period of 2 months of the receipt of copy of this order and the entire exercise should be completed preferably within six months thereafter.

20. As the impugned order dated 8.3.99 does not suffer from any error, during the intervening period, the petitioners will not be allowed to work. If they are allowed to work there may be chance of their continuing in service for indefinite period which would amount to perpetuating a wrong. Therefore, they have to seek appointment like other candidates from open market. It is not possible to grant any further relief than earmarking the vacancies against which they have to compete inter se, and giving the aforementioned concessions.

21. As noted at the outset, the writ petitions have been filed by 137 petitioners in all, while some of them have come for direction for inclusion of their names or for payment of salary (they came prior to 8.3.99), the rest of them have come for quashing the impugned order dated 8.3.99. However, the said order dated 8.3.99 being general in nature cancelling all appointments made by Dr. Rajendra Prasad, it is obvious that the order covers not only the cases of the latter group of petitioners but also the former group and, indeed, also those who have not approached this Court or whose writ petitions might be in the pipeline. The present order, therefore, should cover all such cases, so far as the Department is concerned. It is obvious that those who are not petitioners in these petitions can not be bound by this order. In the result, these writ petitions are dismissed but subject to the observations and directions mentioned above.