Ashwani Kumar and Others

Vs

State of Bihar and Others

Civil Appeals Nos. 10758-59 of 1995 with Nos. 10760-11058, 11062-66 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

16.11.1995

JUDGMENT

K. RAMASWAMY, J. –

1. Leave granted.

2. This bunch of appeals pertains to 1363 employees, viz., Clerks (Class III) and Attendants (Class IV). All the cases arise from judgments of Division Bench of the Patna High Court dated 6-5-1994 in CWJC No. 5163 of 1993 and batch. The principal villain behind the scene is one Dr A.A. Mallick, Deputy Director, Health Department of the Government of Bihar, in charge of Tuberculosis. He was Director of the Tuberculosis Centre at Patna. Eradication of tuberculosis was taken up as a part of 20-Point Programme in Planned Expenditure. The activities in the Tuberculosis Centre at Patna were extended to various districts. Since Mallick happened to be the Director of the Centre, he was made Deputy Director of the Scheme. The Government had also issued directions to the District Medical Officers to abide by the instructions of Mallick in implementation of the programme. He was made the Chairman of the Selection Committee constituted by the Government consisting of himself, Assistant Director of Pilaria and the senior officer representing Scheduled Castes/Scheduled Tribes to recruit 2250 posts of Class III and Class IV employees created to implement the Scheme in addition to around 800 to 900 staff in Patna Centre in all categories. Taking advantage thereof, the undisputed fact is that, he had appointed around 6000 (as found by the Committee) while the Government asserts them to be approximately 7000. Be that as it may, not less than 6000 persons were appointed by Mallick without any written orders. He directed many of them to be adjusted by transfer by District Medical Officers and some of them had produced fabricated appointment orders. He shuffled their payment of salaries like musical chairs by turns. Another device adopted in the sordid episode was to make the employees go on a strike and when some sensitive MLAs raised the question, on the floor of the State Legislative Assembly, of illegal appointments made by Mallick, the Government initially swallowed the appointments to be legal and had justified his action to be valid. Later, when facts themselves proved their faulty admission, they made amends before the Assembly and the Government made an elaborate statement apprising the House that the information furnished earlier was not correct.

3. Due to the agitation, the Director and Joint Secretary to the Government, Health Department had issued directions to regularise the services of daily-rated Class III and Class IV employees. Taking aid thereof, it is claimed that regularisation of many of them including most of the appellants, was made. When alarming bells rang around portals of Patna High Court, filing petitions under Article 226 of the Constitution seeking payment of salaries, the High Court though initially in some cases directed to enquire into the cases and to pay salaries, later found it difficult to cope up with the

situation. So it directed the Government to constitute an enquiry committee to find out whether the appointments made by Mallick were valid and if so, to pay salary to such employees.

4. In the meanwhile, the Government also directed the Vigilance Department to enquire into the matter and on 7-5-1991, the Vigilance Department in its report pointed out that Mallick had violated the rules of recruitment and in collusion with other officers had appointed daily-rated Class III and Class IV employees. Pursuant to the direction of the High Court, a Screening Committee was constituted which sought to serve notice on the employees. When the Deputy Director went to the Centre at Patna to serve the notice on the employees, he was manhandled resulting in an ugly law and order situation. In consequence, notices were published on two different dates in different newspapers inviting submission of the claims by all the employees appointed by Mallick, together with supporting material justifying their appointments. Different dates of hearing by the Committee were staggered. About 987 employees appeared before the Committee and submitted their statements. In the meanwhile, relevant records were burnt out. The High Power Committee in the absence of authentic record was constrained to depend upon the statements made by the employees before it. After hearing them and considering the record placed before it, the Committee found that Mallick did not make any order of appointment of daily-wage basis. It found it difficult to accept even the orders of confirmation. In that view, the Committee found that the initial appointments made by Mallick were in violation of the instructions issued by the Government. Therefore, they were found to be illegal appointments. The Committee also found that Mallick circumvented the rules by making adjustment by transfer without verifying the qualifications, eligibility or disclosing previous places whereat the candidates appointed had worked and dates of their appointment and by transferring them to the respective places by cyclostyled orders. He directed the District Medical Officers to verify their credentials and then to appoint them temporarily. As stated earlier, the Committee also noted that the third category of persons were appointed by producing fabricated orders of appointment. Consequently, it directed to cancel all the appointments made by Mallick. On receipt of the report and on its consideration, the Government found them to be invalid and illegal and all the appointments were cancelled. When their legality was questioned in the writ petitions filed under Article 226, the High Court upheld the government action. Thus these appeals by special leave.

5. The main fervent thrust of Shri Shanti Bhushan, learned Senior Counsel and his colleagues who echoed it with forceful persuasion is that casual appointments are not to any posts. Eradication of tuberculosis was urgently required to be done on war footing which relieved Mallick to dispense with normal procedure of recruitment. Mallick, being the exclusive centralised authority to appoint Class III and Class IV casual employees, he had picked up the candidates who applied for appointment pursuant to notification put up on the office notice board at Patna Centre. They had discharged their duties, many of them meritoriously and were later promoted to higher posts. Security of tenure is a constitutional right and regularisation of service is inherent in it. The Director of Health Department-cum-Joint Secretary to the Government had directed regularisation of all those who had completed three years' service, and of those with less than two years' service regularisation was to be done to the extent of available vacant posts on seniority basis. The procedure for recruitment prescribed in the instructions dated 3-12-1980 and 25-11-1982 does not apply to regularisation. No statutory rules need to exist for initial appointment. The administrative instructions issued by the Government in 1980, 1982, 1983 and 1986 circulars could be modified by further administrative instructions. The instructions and directions contained in letters dated 10-10-1985, 19-1-1986 and 12-2-1987 were special rules, which are exceptions to general directions for regularisation of the services of daily-rated employees. In compliance therewith, their services were duly regularised. The need, therefore, to follow the procedure prescribed in 1980, 1982 and 1983

circulars would not arise. They would by applicable only for regular recruitment to other posts. Since the appointments by Mallick have been made by regularisation of their services, the same were valid. Pursuant to a notice of motion given by MLAs, the Government admitted on the floor of the Legislative Assembly that the appointments made by Mallick were legal and valid. The appellants were in the dark as to whether their appointments were in accordance with the prescribed procedure. Even if the instructions are considered mandatory, when their violation would visit with deprivation of employment to the daily-rated employees, the appellants had no control over the procedure for recruitment or regularisation and so the instructions should be construed to be directory. Having accepted the appointments made by Mallick as valid, it would not be open to the Government to contend that the appointments or regularisations are invalid or in violation of the procedure of inviting the applications by advertisement or calling the names from employment exchanges. The omission to adopt selection process is not invalid. To regularise the services of the appellants and others, the procedure prescribed for initial recruitment does not apply. The respondents were merely required to regularise the services of the appellants and others though the initial appointments were made dehors the rules. The regularisation of the services of the appellants is, therefore, legal and valid which cannot be given a go-by and the Court would not countenance the contention of the Government that either the initial appointments or regularisations are invalid and illegal.

6. Since no notice was served personally on any of the appellants, the procedure of publication of the notice in the daily newspapers informing the appellants to come before the High Power Committee constituted by the Government for scrutiny of the validity of appointments made by Mallick are violative of the principles of natural justice. Many of the employees might not have read the newspapers and nothing prevented the State to have the notice served individually. Under these circumstances, many an appellant could not appear before the Committee. Those persons whose appointments were regularised had weeded out their previous record of appointment and service record. Statutory presumption under Section 114(e) of the Indian Evidence Act that official acts were regularly performed by Mallick proves that the appointments by regularisation were valid. It is for the Government to establish that all the appointments were not made in accordance with the rules which burden the Government had failed to discharge. The appellants cannot be penalised for non-production of the records. They had worked for sufficiently long time which itself creates a right in their favour for regularisation which was done and orders had become final. It is no longer open for the State to contend that the appointments of the appellants were not valid or legal.

7. When regularisation was to be made, the need to publish the vacancies in a newspaper etc. and advertisement in the newspaper or to call names from the employment exchange was obviated lest it would amount to fresh recruitment which was not contemplated under the instructions issued by the Government. When no procedure was prescribed for appointment of casual employees, mere working for long period as found in the muster-rolls would give them right to regularisation. There is no prescribed form for appointment. There was no need to issue letters of appointment. Appellants having worked for 6 to 8 years, their dismissal would amount to inflicting punishment without following the qualified nor found unfit for appointment. Violation of the procedure for appointment does not render the appointments, even assuming they were illegally made, void. At best, they would be curable irregularity. Regularisation cured the defect. The appellants who worked for long period as clerks and peons would acquire vested right for their regularisation. Government can even suo motu regularise their services which does not violate Articles 14 and 16(1) of the Constitution. Those who were awaiting regular recruitment could challenge the procedure for appointment adopted by Mallick to be illegal. But the same would not be a ground for the Government to take such a stand. The indoor management between the Government and its officers

would be known to them and its infraction would be only a ground for the Government to proceed departmentally against erring officers concerned under conduct and discipline rules but the employees should not be penalised nor should the security of service be jeopardised for violation of either the rules or the procedure by the competent officer for making initial appointment or regularisation. Even if rules of reservation were not followed, appropriate directions might be given to follow them and fill the posts reserved for the respective quota of Scheduled Castes, Scheduled Tribes and Backward Classes. The High Court, therefore, had not considered these constitutional perspectives in its judgments in that proper compass before dismissing the writ petitions. Shri P.P. Rao and others while supporting the above contentions, highlighted them with reference to the facts of cases in which they appeared.

8. In two sets of individual cases, the learned counsel, M/s Sharan, L.R. Singh, Ranjit Kumar and Parag P. Tripathi argued with reference to the special facts in their cases. In the first set, it was contended that their initial appointments were in accordance with the procedure followed by a committee constituted for selection. They were later regularised. In support of the contention, they filed charts giving the dates of initial appointments, regularisation as open or reserved candidates and among the latter, the prescribed categories thereof. They have also placed on record certain daily-wage muster registers said to have been maintained by the Department. Shri Tripathi further stated that in writ petitions filed by 63 appellants, the High Court had directed the Government to enquire whether they were regularly and validly appointed and if they were found to be so appointed, directed the Government to pay salary for the period they had worked. Consequent thereto, another officer had enquired and certified that their appointments were validly made. There was, therefore, no need for them to appear before the Committee to justify the validity of their appointments. The Committee or the Government had not gone into this question. Their termination, therefore, is invalid in law. Shri Verma appearing for the State resisted all these contentions. We have given our anxious and deep consideration and carefully scanned the record placed before us.

9. In T. Cajee v. U. Jormanik Siem [[1961] 1 SCR 750 : AIR 1961 SC 276 : (1961) 1 LLJ 652] (SCR at p. 764) a Constitution Bench of this Court held that the Government has the power to carry on the administration including the power to appoint and remove the personnel for carrying on the administration. It is not necessary that there should exist statutory regulations so made or the laws so passed. The authorities concerned would at all relevant times have the power to appoint or remove the personnel under the general power of administration vested in them.

10. In B.N. Nagarajan v. State of Mysore [[1966] 3 SCR 682 : AIR 1966 SC 1942 : (1967) 1 LLJ 698], another Constitution Bench of this Court held that it was not obligatory under proviso to Article 309 of the Constitution to make rules of recruitment etc. before a service could be constituted or a post created or filled. Consequently, the State Government has executive power, in relation to all matters with respect to which the Legislature of the State had power to make laws and its power under Article 162, without a law, was not a breach.

11. In P.C. Sethi v. Union of India [(1975) 4 SCC 67 : 1975 SCC (L&S) 203 : (1975) 3 SCR 201] a three-Judge Bench of this Court held that in the absence of any statutory rules prior to the Central Secretariat Service Rules, 1962, it was open to the Government, in exercise of its executive power, to issue administrative instructions with regard to constitution and reorganisation of the Service as long as there was no violation of Articles 14 and 16 of the Constitution.

12. In Ramesh Prasad Singh v. State of Bihar [(1978) 1 SCC 37 : 1978 SCC (L&S) 23] (SCC at p.

41) a two-Judge Bench of this Court held that in the absence of rules, qualifications for a post can validly be laid down in the selfsame executive order creating the service of post and filling it up according to those qualifications.

13. In Kamal Kanti Dutta v. Union of India [(1980) 4 SCC 38 : 1980 SCC (L&S) 485 : (1980) 3 SCR 811] (SCR at p. 849) yet another Constitution Bench observed that the Government would prescribe procedure to fill up any particular vacancy or vacancies as may be required during any particular period. In State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 (1992) 21 ATC 403] a three-Judge Bench of this Court held in para 21 at p. 134 that

> "creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service."

This Court laid down elaborate procedure for regularisation of ad hoc employees etc.

14. It would thus be settled law that existence of law or statutory rules made under proviso to Article 309 of the Constitution is not a precondition either to create a post or to fill up that post; Government having legislative backing on the subject, has executive power to lay down the conditions of service and prescribe procedure for appointment to the post or vacancies in accordance therewith. Simultaneously, the Government would be entitled to create posts. The instructions and the procedure thus laid down would be subject to law made by the Legislature or rules made under proviso to Article 309. They could be amended by subsequent instructions. They may supplant the rules. But they should be consistent with the rights guaranteed under Articles 14 and 16(1) of the Constitution.

15. The forceful contention of Shri Shanti Bhushan that the casual employees of Class III and Class IV : Clerical and Attendant cadres, are required to be appointed on war footing to eradicate tuberculosis, does not carry conviction for acceptance for the reason that 20-Point Programme was initiated in 1976 while the appointment of casual employees came to be made in 1981 onwards. Therefore, the emphasis on immediacy and war footing like floods lost their forward push. The strong wind of the contention that employment of daily-rated employees is not to a post loses from the sail when we peep into the pleadings of the appellants themselves. In Sateyndra Kumar Singh case, viz., CA @ SLPs Nos. 14009-30 of 1994, in which Shri Shanti Bhushan has appeared, the appellants themselves admitted that they were appointed to the post as casual employees. Similar are the admissions in all the appeals. Therefore, the need to make specific reference is obviated. It is also an admitted position, though sought to be qualified in reply, that no dates were given of creation of existing 2250 Class III and Class IV : Clerical and Attendant posts. As to when they were created was not in issue at any stage. So at this belated stage it is difficult to adjudge as to when the posts were created. So we proceed on the premise that posts in Class III and Class IV did exist when they were filled up by casual employees. Strong reliance was placed by Shri Bhushan on the Constitution Bench decision of this Court in State of Assam v. Kanak Chandra Dutta [(1967) 1 SCR 679 : AIR 1967 SC 884 : (1968) 1 LLJ 288] (SCR at p. 682) where it was held that a post is a service or employment. A person holding a post under a State is a person serving or employed under

the State. A post may be created before appointment or simultaneously with it. A post is an employment but every employment is not a post. A casual labourer is not the holder of the post. A post under State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of the persons appointed to the post. The emphasis was placed by the counsel on the sentence "a casual labourer is not the holder of a post". Shri Verma contended that in Union of India v. Deep Chand Pandey [(1992) 4 SCC 432 : 1993 SCC (L&S) 21 : (1993) 23 ATC 356] under Section 14(1) of the Administrative Tribunals Act, it was contended that a typist engaged on casual basis was not holding any civil post under the Union of India and, therefore, the Administrative Tribunals Act was not attracted. A three-Judge Bench of this Court repelled the contention in para 3 holding that "we do not find any merit in this stand taken on behalf of the respondents". The argument of Shri Shanti Bhushan is that there is no finding therein that the employees were the holders of the civil post but the Court was concerned only with the jurisdiction of the Tribunal who entertained the claims under the Administrative Tribunals Act. In that context, the contention was to be of the power of the Tribunal or the High Court which was negatived. We find no force in the contention of Shri Shanti Bhushan. Unless he is a holder of a post, the power to adjudicate the right to the post by the Tribunal does not arise. The Bench, therefore, arrived at a base finding that he holds a civil post for the purpose of deciding the jurisdiction of the Tribunal.

16. In R.N.A. Britto v. Chief Executive Officer [(1995) 4 SCC 8 : 1995 SCC (L&S) 907 : (1995) 30 ATC 159], Secretaries of Panchayats established under the Karnataka Village and Local Boards Act were held to hold civil posts and were government servants. It is common knowledge that the system of appointing several persons on ad hoc or casual basis to civil posts has been considerably changed. In fact, the PWD Manual prescribes employment of casual labour, muster-roll labour or contingent labour - be it skilled or manual. The Central Public Works Department Manual itself prescribes such a procedure and the wages to them are paid from contingent fund. The power to engage casual labour is conferred on the Executive Engineer when the need exists for six months and if it is for more than six months and less than a year, prior approval would be taken from the Chief Engineer or the Director General concerned, as the case may be. The employment of the employees shall be of those drawn from employment exchange. That is the common feature in all the State Public Works Departments. It is settled law that part-time extra departmental agents are holders of a civil post vide Supdt. of Post Offices v. P.K. Rajamma [(1977) 3 SCC 94 : 1977 SCC (L&S) 374 : (1977) 3 SCR 678]. In Kanak Chandra Dutta case [(1967] 1 SCR 679 : AIR 1967 SC 884 : (1968) 1 LLJ 288] casual labourer appears to have meant with reference to the emergent engagement of casual labourers which do not last for more than six months. This Court had dealt with a catena of cases in which appointments to countless Class III and Class IV posts under the State and Union Government had been made on daily-wage or casual basis. But in none of the cases this Court came across that there were no posts existing or no initial letters of appointment given to the daily-rated or casual employment. We, therefore, need not burden the judgment with copious citation of all the decisions. Only in a few cases, appointments in accordance with Rules but in excess of the sanctioned posts were made. Appointment on casual or ad hoc basis was a phenomenon of last decade for back-door entry into service.

17. When planned expenditure is required to be spent, budgetary sanction is mandatory. We have intrinsic evidence in these cases. When some of the employees were sent for one month training, posts were created and budgetary sanction was obtained. The cases at hand are unique and the device adopted by Mallick is in flagrant violation of all norms of administrative procedure known to law. He had given a decent burial to procedure prescribed by the Government. Abusing the absolute power secured in his hands, he appointed 6000 persons at his whim and waggery. A ceremonial

send-off was given to the procedure for appointment to Class III and Class IV posts and resort was taken to their casual employment without any letters of appointment to fill the existing vacancies.

18. It would, therefore, be difficult to give acceptance to the contention that appointment of Class III and Class IV casual employees was not to a post. It is common knowledge that existence of a post is a condition precedent for appointment whether it is created by statutory rules or under the executive instructions. There cannot be an appointment or employment without pre-existing post. Therefore, we hold that a post is a service or employment under the State and the post may be created before appointment or simultaneously with it. Though, therefore, employment is not a post, the holder must be appointed to a post. A casual labourer who discharges transitory or casual duties for emergent work, therefore, does not hold a post though he may be under the administrative control of the State during the period of his working. We hold that a person appointed, though on casual basis to discharge the duties of the existing post or vacancies, needs to be appointed to the post or vacancy according to rules and, if so, he and he alone is a holder of the post. It is true that Kanak Chandra Dutta case [(1967) 1 SCR 679 : AIR 1967 SC 884 : (1968) 1 LLJ 288] was not brought to the notice of the Bench that decided Deepchand Pandey case [(1992) 4 SCC 432 : 1993 SCC (L&S) 21 : [1993] 23 ATC 356]. The learned Judges appear to have drawn the conclusion in Deepchand Pandey case [(1992) 4 SCC 432 : 1993 SCC (L&S) 21 : (1993) 23 ATC 356] from the experience this Court had gained in deciding several cases of casual or ad hoc employees.

19. The next contention is whether the appointment should be in accordance with the procedure prescribed under the instructions issued by the Government in 1980, 1982, 1983 and 1986. Admittedly, these are administrative instructions and no statutory rules are operating in the field. Therefore, the administrative instructions consistent with the rights guaranteed under Articles 14 and 16(1) of the Constitution should regulate the procedure for appointment to the posts. Admittedly, two circulars issued on 3-12-1980 regulate recruitment to Class III and Class IV employees. They also envisage drawing the names of the candidates from the employment exchange and following the rules of reservation prescribed by the State Government to the Scheduled Casts and Scheduled Tribes and the backward classes. The 25-3-1982 circular prescribed constitution of a committee consisting of the Deputy Director, Tuberculosis, the Assistant Director, Pilaria and a senior officer in the Department belonging to Scheduled Castes or Scheduled Tribes to be its members to select the candidates in the order of merit on the basis of the marks secured in the qualifying examination etc. and that appointments be made by the appointing authority, viz., the Deputy Director from the merit list prepared by the Committee following the roster points. Admittedly, no appointment orders were issued for initial appointment for casual Class III or Class IV employees. In appeals arising out of SLPs (C) Nos. 12934-12935 of 1994, according to the appellants' own case, a committee was constituted and recruitment was made from amongst the candidates who had applied pursuant to the publication of vacancies on the notice board of the office at Patna Centre and the rules were followed. Here itself we would clear one ground, viz., a contention was raised that recruitment was made at different places in the districts and those records were not produced. Pursuant to our direction, and affidavit was filed stating that the appointments were made only at Patna Centre. Thus it fortifies the stand of the State that for appointment to Class III and Class IV posts, the procedure prescribed in the circulars of 3-12-1980 etc. should be followed and any appointment made in violation thereof was clearly in negation of the rules and such action is per se not only arbitrary but defeats the very object of recruitment offending Articles 14 and 16(1) of the Constitution. The contention, therefore, of Shri Shanti Bhushan that the procedure prescribed in the said circulars does not apply for initial recruitment is without any substance and clearly is untenable. Any action taken by Mallick in violation of the procedure prescribed in the aforementioned circulars is not only illegal but also subversive of the discipline.

20. It is true that Illustration (e) of Section 114 of the Indian Evidence Act permits the court to presume that official acts have been regularly performed. But it is only rebuttable presumption. It could be rebutted by adduction of evidence or by attending refutable circumstances. In view of the admitted fact that no letters of appointment were issued to as many as 6000 odd employees by Mallick including all the appellants to fill up 2250 posts, itself is a positive fact which would conclusively establish that he had not kept up vacancy position in mind nor followed the procedure prescribed in the aforementioned circulars. The presumption under Section 114, Illustration (e) does not get attracted to the facts of these cases.

21. Where a statute imposes a public duty and lays down the manner in which the duty shall be performed, injustice or inconvenience resulting from rigid adherence to the statutory prescription to those who have no control over the procedure, may be a relevant factor to hold such prescription as directory. Application of this rule to recruitment for appointment to a post under the State would be fraught with grave danger and would be a field day for flagrant violation of the rules and would seek legitimacy under the carpet of Section 114, Illustration (e) of the Evidence Act.

22. The next question is whether regularisation said to have been made by Mallick is in accordance with the prescribed procedure. We have already noted the contentions. It is settled law that there are two modes of recruitment. One is by direct recruitment and the other by promotion. This Court in J&K Public Service Commission v. Dr Narinder Mohan [(1994) 2 SCC 630 : 1994 SCC (L&S) 723 : (1994) 27 ATC 56 : (1993) 4 Scale 597] considered whether regularisation by Court's direction to Public Service Commission was a mode of recruitment provided under the statutory rules or the Constitution. This Court held that direct recruitment and promotion are the two modes and regularisation by placing the service record of the ad hoc employees before the Public Service Commission and their selection is a hybrid procedure not contemplated under the rules. The contention that the procedure prescribed in the aforementioned circulars would not apply to the regularisation, is also devoid of substance. We can understand that if initial appointments were made in accordance with the procedure prescribed under the rules or instructions following the rule of reservation etc. and posts were filled up with temporary or ad hoc or daily-wage employees and when their services are regularised, the need to follow the selfsame procedure would obviously be redundant. When initial appointments are in violation or in negation of the rules, in other words, in the eyes of law there is no order for appointment, for regularisation also if the procedure prescribed also is not followed, it would be a field day for the appointing authority to buttress his arbitrary, corrupt and illegal acts of appointment without letters or orders of appointments and regularisation would be taken as a shield to cover up illegal or void actions or to perpetrate further corrupt actions. To confer permanency of appointment to the posts by regularisation in violation of the executive instructions or rules is itself subversive of the procedure. It would, therefore, be mandatory that the procedure prescribed in the circulars should be followed for regularisation of the services of the daily-rated employees.

23. The question then is whether the regularisation of the appellants is in accordance with the procedure prescribed under the aforementioned circulars. Though some of the appellants have placed on record charts said to have been signed by three members of the Committee including Mallick, on their own admission, the appellants have prepared those charts on the basis of alleged official record. It is seen that admittedly that part of the Secretariat was burnt out. In consequence, the Government claimed that no authentic record was available. What was the cause of the fire is not material. Another contention raised was that records in the District Offices could have been produced but the same have not been placed on record. The affidavit now filed pursuant to our directions belies that stand. No recruitment at District Headquarters appears to have been made to

fill up these vacancies. It would be a matter for investigation for cause of the fire. No one had raised this contention either before the Screening Committee or before the High Court. It would, therefore, be difficult for us at this stage, to investigate into this factual controversy.

24. Pursuant to the direction issued by this Court, letters of appointments by regularisation have been placed us. A casual look at the contents of the cyclostyled letters clearly shows that there is no reference (1) of the dates on which the candidates were first appointed and the place at which they were working; length of service put in by the candidates, (2) whether the Committee constituted had selected the candidates, and if so, on what date they were regularised, (3) whether those appointments were in furtherance of the regularisation of the Committee. Their suitability was not mentioned. We find an admission therein that the material placed by the candidates was not scrutinised. On the other hand, there is a direction by Mallick to the District Medical Offices to verify the qualifications etc. and if found acceptable, to appoint them on temporary basis. When the regularisation was made in furtherance of the procedure prescribed in the aforementioned circulars, where was the need to appoint them temporarily ? Where would be the need for the District Medical Officer to further scrutinise the record of qualification etc. before appointing them ? Where was the need for further appointment by the District Medical Officer when Mallick himself was the appointing authority ? They should have been regularised on permanent basis. The contents of the order is antithesis of regularisation and was in negation of the procedure prescribed. From this intrinsic evidence and in the absence of any authentic record of the Government, it would be highly difficult and hazardous to countenance the contentions raised by the counsel for the appellants that appointments of the appellants, though initially not in writing, got crystallised into confirmation by regularisation; a right thus got vested in them and cannot be taken away by arbitrary exercise of the power of termination on the solitary ground that all those appointments were made by Mallick.

25. The contention that after the regularisation the appellants must have weeded out their record and the burden of proof to show that regularisation was not in accordance with the rules heavily lies on the State, cannot be given acceptance. It is not the case of any of the appellants that after the regularisation of their services, they had weeded out their previous records. On the other hand, some of them placed it before the Committee and this Court. The presumption that regularisation was in accordance with the procedure and is valid cannot be drawn for the reasons given supra.

26. Admittedly, except putting up the vacancies on the notice board of the Tuberculosis Centre at Patna, no advertisement inviting applications from the open market was made nor were the names called from the employment exchange. In Piara Singh case [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403], this Court reiterated that regularisation should also be in accordance with the procedure prescribed and after calling the names from employment exchange and that the selection should be made by duly constituting a committee or by an open competition. The ad hoc employees should give place to the candidates recruited and appointed from the open market. One ad hoc employee cannot be replaced by another ad hoc employee. Regularisation of the casual labour was also directed to be done in accordance with the procedure prescribed in the circulars issued by the Government. In other words, this Court had not given countenance to any regularisation other than the one done in accordance with the procedure prescribed in the appropriate circulars or executive instructions. The procedure adopted by Mallick in either appointing or directing to appoint persons who had applied for appointment pursuant to the notification of vacancies put up on the notice board was stage-managed by him and is in flagrant breach of Articles 14 and 16(1) of the Constitution.

27. The next question is whether the procedure adopted by the Committee, viz., publication in the

newspapers on two different dates informing all candidates appointed by Mallick to appear before it, is in violation of the principles of natural justice. A few admitted facts, at the cost of repetition, require to be reiterated.

28. More than 6000 persons (7000 as per the respondents' stand) were appointed to hold 2250 posts. The Scrutiny Committee recorded three crucial facts. Initially, no letters of appointments were made on daily-wage basis; secondly, adjustment by transfer did not mention previous place of posting but directed the District Medical Officers to post the candidates after verification of qualification; and thirdly, fabricated orders of appointment were produced. The record in the custody of the Government was found burnt. When the Committee sought to serve the notice on the daily-rated employees at Patna Centre, the Deputy Director, Health Services was manhandled and law and order situation had developed. Resultantly, wide publicity was given in the press. The sittings of the Committee on different dates were staggered to 10 days and large number of employees to whom salaries were not paid had approached the High Court. In other words, the constitution of the Committee and the enquiry made by it into the legality and validity of the appointments made by Mallick were obviously facts widely known to everyone. It is claimed that apart from the centre at Patna, the other centres are situated at the respective District Headquarters. It is, therefore, difficult to accept the appellants' contention that some of them had not seen the newspapers and had thus not appeared before the Committee. Admittedly, only 987 persons had appeared before it. In other words, even many among the appellants did not appear before the Committee. The appellants had an opportunity to place all their records before the High Court when they had challenged their orders of termination issued by the Government in letters dated 30-4-1993 which the High Court was not prepared to accept to be authentic and acted upon.

29. These facts give rise to the question whether the termination orders are violative of the principles of natural justice and if so, what purpose would it serve. With the aid of principles of natural justice, the courts preserve rule of law keeping arbitrary action by the executive or the legislature within the confines of law. Courts have to examine in each case the balance of fairness, whether the violation of the principle of audi alteram partem visits with irremediable civil consequence and its incursion on administration, if action is invalidated. No set rule or standard of universal application can possibly be laid for application to all sets of cases. Court exercise their power of judicial review with circumspection to weigh in balance the fairness of action. Therefore, though the principles of natural justice are omnipervasive, in given circumstances their non-application may also advance cause of justice to prevent misuse or abuse of power or of the judicial process. It is settled law that post-decisional opportunity is valid to cure the illegality complained of. Though beed role of precedents have copiously been cited by the counsel on either side, we are relieved of referring to them in extenso on the ultimate test : what purpose the doctrine of audi alteram partem would ultimately serve to advance the cause of justice. One decision of this Court is of necessity to be referred to. In Bihar School Examination Board v. Subhas Chandra Sinha [(1970) 1 SCC 648 : (1970) 3 SCR 963] (SCR at p. 967) this Court held that when the impugned direction did not concern a single individual but at least large majority of them were involved in adopting unfair means in writing the examinations, the question arose whether cancellation of the examinations without giving an opportunity was in violation of principles of natural justice.

30. It was held that "if it was not the case of charging any one individual with unfair means but to condemn the examination as ineffective for the purpose it was held, must the Board give an opportunity to all the candidates to represent their cases. We think not. It was not necessary for the Board to give an opportunity to the candidates if the examinations as a whole were being cancelled." It is seen that the Committee scrutinised the appointment letters made by Mallick to Class III and

Class IV posts in the Tuberculosis branch of medical science. Individual notices were sought to be served to all the candidates though they were 6000 or more. But when the officer who tried to serve the notices was beaten up, its repetition was obviously avoided by resorting to public notification. Under these circumstances, the Committee had justifiably given up the procedure to serve notices individually on all the daily-rated employees appointed by Mallick. Public notification in the newspapers on two different dates became unavoidable. Opportunity given to the employees to appear before the Committee and to place all the material in support of their claim was fair procedure to prove valid appointments made in their favour by Mallick. In a bizarre situation of this kind and magnitude, it would be a fact known to everyone. An opportunity to defend the right of valid and legal appointments made by Mallick was given and all those who appeared before it, their cases were duly considered. Those who were vigilant enough, appeared and placed their cards before the Committee and they were in fact as many as 987. In other words, all others had chosen to remain absent. In a massive action like the present one, in the backdrop of the situation, extension of the principles of natural justice would place premium on the high-handed action or obstructive tendency on the part of the employees.

31. Notices terminating the services of daily-rated employees were served on all of them. Those who felt aggrieved had approached the High Court and placed before the Court their cards and sought relief on that basis. The High Court did not accept them nor acted upon them. What purpose, thereafter, would it serve to extend the principles of natural justice is the question. In S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379 : AIR 1981 SC 136] (AIR at p. 147) without giving an opportunity, the Municipal Committee was superseded on diverse grounds for violation of the law. While holding that the law was violated as individual notices had not been given to the members, this Court in para 16 held that requirements of natural justice are met only if opportunity to represent is given in view of proposed action. In para 17 of the report it was held that : (SCC p. 392)

> "whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because courts do not issue futile writs."

At p. 147 it was reiterated that "principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed". This Court in several cases applied the rule appropriate to the facts of each case.

32. It is seen that for 2250 posts more than 6000 appointments were made. In other words, for each post at least three persons had been appointed. There are no letters of appointment and we find that the so-called letters of regularisation are obviously illegal. The Government records were destroyed in fire. The materials in the possession of the respective candidates were placed before the Committee and the High Court but the same were not fount acceptable. Under these circumstances, what purpose the direction to issue notice would serve those who did not appear before the Committee. On a deeper consideration of the factual matrix and after giving our most anxious consideration to the respective contentions, we are of the considered view that principles of natural justice were not violated. We are inclined to uphold the view taken by the Committee and accepted by the Government as correct. All the appointments were made in flagrant breach of the procedure and the executive instructions and amounted to blatant abuse of the centralised power had by

Mallick - and subversive of discipline. It is, therefore, futile to issue writs as prayed for.

33. It is next contended that security of service to an employee is a constitutional right, as declared by this Court, in socialistic polity and that regularisation of services of daily-rated employees who have put in at least two years' continuous service, is the law laid down by this Court under Article 141 of the Constitution. Only 1369 appellants as against 2250 posts are before the Court. Therefore, directions may be issued to treat the appellants as regularised government employees. It was stated that they have put in more than 7 to 8 years of service. Shri Shanti Bhushan very fervently has pleaded for justice tempered with mercy to regularise their services. We have given very anxious consideration to the contention of Shri Shanti Bhushan. True, in given circumstances when there existed permanent posts or even temporary posts for long years, an inference could be drawn as to the existence of the need to continue such posts. But whether Court would be justified in directing the Government to regularise the services of the daily-rated or ad hoc employees, in this behalf, it is apposite to recall the pertinent observations made by this Court in Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386], (SCC at pp. 111-12 in para 23) to the following effect :

> "The courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment Exchanges for years. Not all those who gain such back-door entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secure prospects. That is why most of the cases which come to the courts are of employment in government departments, public undertakings or agencies. Ultimately, it is the people who bear the heavy burden of the surplus labour. The other equally injurious effect of indiscriminate regularisation has been that many of the agencies have stopped undertaking casual or temporary works though they are urgent and essential for fear that if those who are employed on such works are required to be continued for 240 or more days they have to be absorbed as regular employees although the works are time-bound and there is no need of the workmen beyond the completion of the works undertaken. The public interests are thus jeopardised on both counts."

34. Mallick who had centralised power in his hands blatantly abused the power and appointed more than three persons to each post and the reasons are not far to seek. Direction to regularise the services of those who approached the Court would generate impetus for others who gain illegal and back-door entry into the service with the connivance of appointing authority and to remain in such employment for considerable period to seek judicial process to legitimatise their illegitimate entry into the government service. They would in turn perpetrate the same corrupt practice more vigorously, jeopardising public service and public interests. Therefore, courts would be circumspect and chary to direct regularisation of the service of casual employees in given circumstances. Each case requires to be examined in the backdrop of its own facts. Mere their approaching the Court and continuing the litigation would not be considered to be a factor to legitimatise the illegal actions. It is true that this Court in Dharwad Distt. P.W.D. Literate Daily Wage Employees' Assn. v. State of Karnataka [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902] while holding that

security of service by regularising casual employee within a reasonable period is an acceptable norm to achieve constitutional goal in socialistic polity, gave directions to the State to absorb all the daily-rated employees in different Departments of the Government who worked for several years. There is no finding that their initial appointments were tainted with illegality or abuse of the power or not according to rules and yet the directions were given. In H.C. Puttaswamy v. Chief Justice of Karnataka High Court [1991 Supp (2) SCC 421 : 1992 SCC (L&S) 53 : (1992) 19 ATC 292 : 1990 Supp (2) SCR 552] this Court directed the excess staff to be regularised. But that was also not a case that there were no letters of initial appointments. The appointments were not tainted with flagrant violation of the rules. Equally in Sardara Singh v. State of Punjab [(1991) 4 SCC 555 : 1991 SCC (L&S) 1357 : (1992) 19 ATC 77] this Court did not approve of putting up on the notice board in the office of the Deputy Collector but yet it was held that the unsuccessful party could not challenge the procedure. The respondent did not suo motu take up the action for cancelling massive illegal appointments. Equally in Prabodh Verma v. State of U.P. [(1984) 4 SCC 251 : 1984 SCC (L&S) 704 : (1985) 1 SCR 216] the U.P. Legislature recognised good service rendered by untrained teachers during the period of strike; law was made treating them as regular employees without the process of selection. Though the High Court declared it to be ultra vires under Articles 14 and 16(1) of the Constitution, this Court upheld the class legislation as valid. But in view of the finding on facts of this case, it is difficult to temper justice with mercy to direct the Government to regularise the services of the appellants on humanitarian ground. We are, therefore, constrained to reject the prayer.

35. In appeals arising out of SLPs Nos. 12934-35, 14050-67 of 1994 and 21949 of 1995, the counsel have placed before us the charts of the initial appointments and the subsequent regularisation stated to be made by following the procedure prescribed in circulars dated 3-12-1980 etc. and also following the rule of reservation and appointments to various categories were said to have been made. Though initially, we were impressed with the argument, on deeper consideration we find it difficult to give acceptance to their contention. It is seen that the documents placed before us except letters of appointments, are only the charts prepared by them. Some of the monthly acquittance registers showing payment of the salary have been placed on record. This Court has come across in some cases, attendance registers placed on record in support of proof of their working on casual basis in Gopal Gunj District Collector's office, Bihar. When this Court summoned the originals of the attendance registers, to its utmost surprise, this Court found the attendance register placed before the Court to be fabricated. In the absence of official record, it is difficult to rely on the material prepared by the appellants and placed before this Court. Under these circumstances, it is also difficult to countenance the contention that their appointments were made in accordance with the prescribed procedure. In appeals arising out of SLPs Nos. 15281-15435 of 1995, for about 63 persons, the High Court had directed the Deputy Director to verify whether appointments were validly made and on recording positive finding, directed the respondents to pay the salary. The learned counsel, Shri Tripathi had placed before us a copy of the report given by the Deputy Director with the finding that they were legally appointed. Their appointments were also cancelled since they had not appeared before the Committee. Though prima facie we are satisfied that the contention of Shri Tripathi is plausible, it is not possible to accept the same since they failed to avail of the opportunity to appear before the Committee which could have got verified and examined the matter on merits. Some of them appeared before the Committee. Now the affidavit filed on behalf of the State shows that there was no record of any such enquiry. We are constrained to hold that it is difficult to give the relief of regularisation of their services.

36. But that is not the end of the journey. The question is what would be the appropriate direction that could be issued, in these given facts and circumstances. Since we have held that all the

appointments or so-called regularisations have been made by Mallick in flagrant breach of the instructions which persuaded us not to accede to the fervent appeals made by Shri Shanti Bhushan and his colleagues to direct the respondents to regularise their services to the extent of the available posts within the limit, we decline to accede to the same. We direct as under :

(i) The respondent-State will publish a notice in all the newspapers inviting applications for direct recruitment as well as to call names from the Employment Exchange concerned;

(ii) If no statutory body composed of high-rank officials for recruitment to Class III and Class IV employees is in vogue, the State is directed to constitute a committee consisting of three members, viz., (a) a member of the Public Service Commission; (b) a senior I.A.S. officer, i.e., the Additional or Joint Secretary of the Health Department; and (c) a senior officer, i.e., the Director or Additional Director of Health Services, to select the candidates;

(iii) The respondent-Government will constitute the Committee within six weeks from the date of the receipt of this order;

(iv) It would be open to all the appellants or all those appointed by Mallick to apply for selection. The Committee would, in their case, as first step verify and satisfy itself of the credentials of such candidates whether they were appointed by Mallick and had worked at least for three years continuously. The Committee would also satisfy itself that such candidate or candidates honestly and meritoriously discharged their duties as Class III and Class IV posts, at least for the said period;

(v) The Committee, if so satisfied as mentioned in clause (iv) above, would allot additional marks to them for each of the three years, 2 marks per year, up to maximum of 6 marks, for each candidate;

(vi) If any of the candidates would happen to be barred by age-limit, condition of age of such candidate would be relaxed appropriately so as to qualify the candidates for selection;

(vii) The State Government would arrange the sitting of the Committee and within two months from the last date prescribed for submitting the applications, preliminary scrutiny would be completed;

(viii) The Committee would select all the candidates on merit following the procedure prescribed in the appropriate circulars and follow rule of reservation as is in vogue and prepare the merit list and should submit it to the Government;

(ix) the Committee will complete the process of selection within six months from the date of its sitting for selection;

(x) Within four months from the date of receipt of the merit list, the appropriate appointing authority or the Government, as the case may be, will appoint the candidates as per roster and the merit list after due verification of the credentials as per its procedure; and

(xi) In the event of selection and appointment of erstwhile daily-rated employee or employees, the entire proved period during which they have worked as daily-wage employees will be computed for purpose of pensionary and other benefits but they would not be entitled to claim any inter se higher seniority in the selection made by the Committee or for any promotion on the basis of their previous service.

37. The appeals are accordingly disposed of in the above terms. In the circumstances, however, there will be no order as to costs.

HANSARIA, J

(dissenting) - I have had the benefit of perusing the judgment of learned brother Ramaswamy, J. in draft. Despite the great respect he commands at my hand, I have not been able to persuade myself to agree with him. According to me, the impugned termination order deserves to be set aside, and not upheld, as opined by learned brother. To sustain my stand, it is stated as below.

39. A wrongdoer, a sinner, has to be punished; so too those who aid, abet or instigate him. But not those regarding whom only a doubt is created. Full care has to be taken to see that while punishing the wrongdoer, the penalty does not visit those who may be innocent, specially when the penalty is such which would hit hard so much so as to take away livelihood of the persons concerned.

40. This prologue sums up the core question which we are called upon to decide in this batch of cases, which involve the fate of 1363 appellants inasmuch as we have to decide whether the services of this number of persons have been duly and legally terminated or not. The enormity itself calls for a cautious approach. This is more so because Article 21 of the Constitution would require us to tread the path avoiding pitfalls, whose number is significant in these cases.

41. The prima donna (villain of the piece) is one Dr A.A. Mallick, who at the relevant time was holding the post of Deputy Director (Tuberculosis) Bihar, and had come to be vested with almost absolute powers to see that the targets fixed by the Government of India in implementing a scheme relating to Anti-Tuberculosis Programme are achieved. When it came to the notice of the State Government in the Health Department that some centres were not working as per the directions of Dr Mallick, all concerned were asked by the Government to do so. The saying "Power corrupts, and absolute power corrupts absolutely" became true inasmuch as Dr Mallick started either appointing himself or giving directions right and left to appoint large number of persons as class III/IV employees. It was ultimately found that as against 2500 sanctioned posts the number of persons to be so appointed shot up to 6000. Questions relating to this came to be asked even on the floor of the Assembly by 1987 when the Minister concerned stated that the appointments had been given after following all procedures. The matter did not rest there and various persons not getting their salary, though appointed, approached the High Court of Judicature at Patna - the number of such writ applications ultimately came to be around 250. The High Court observed at one stage that it saw no reason as to why the State should not proceed against officers concerned who benefited themselves illegally, and disposed of the writ petitions with the direction that an enquiry into the matter shall be held and upon consideration of the individual cases appropriate orders shall be passed for payment of salary for the period the persons concerned had actually worked, subject to the condition that it was found that they had fulfilled criteria for obtaining salary. Pursuant to these observations, a high-powered Committee came to be formed, consisting of (1) Director-in-Chief, Health Services; (2) Deputy Director (Administration) Health Services; (3) Deputy Director (Planning) Health Services; and (4) Deputy Director (Tuberculosis). The Committee issued a general notice through newspapers

to all concerned and directed them to appear before the Committee for personal hearing between 17-8-1992 to 29-9-1992. Personal hearing continued to be given till 22-10-1992. A report was submitted subsequently, pursuant to which a blanket order came to be issued on 30-4-1993, terminating the services of all the employees.

42. The same came to be challenged again before the High Court. Long arguments were advanced by both the sides and after applying its mind to various point of fact and law, a Division Bench of the High Court dismissed virtually all the writ petitions by its order dated 6-5-1994. The main order of dismissal was passed in CWJC No. 4942 of 1993 and batch. This was followed by other benches of the High Court in analogous matters. The affected employees have filed these appeals under Article 136 of the Constitution.

43. We were also addressed at length by various counsel appearing for the appellants; so too by the State counsel. Shri Shanti Bhushan appearing for some of the appellants covered most of the ground, which came to be supplemented by others. Shri Verma replied on behalf of the State.

44. Disposal of the appeals, requires determination of the following :

(1) Whether the initial appointments of the appellants were in accordance with law ?

(2) Whether the services of the appellants were duly regularised ? and

(3) Whether natural justice had been complied with before their services were terminated ?

I would consider these aspects seriatim.

Whether the initial appointment of the appellants were in accordance with law ?

45. The controversy qua this facet of the case is whether the appellants were required to be initially appointed in accordance with the procedure of appointment to Class III/IV posts as contained in the Office Memorandum (OM) of even number issued on 3-12-1980 by the Department of Personnel and Administrative Reforms of the State Government ? There is no dispute from the side of the appellants that the procedure had not been followed. Question is whether it was required to be so done ?

46. Shri Shanti Bhushan was emphatic in his contention that this OM having been meant for appointment to 'posts' had no application to the initial appointment inasmuch as the appellants had been appointed on daily-wage basis to implement the crash programme of eradication of tuberculosis from the State - the urgency in the matter being apparent from the fact that the State Government was issuing orders to all concerned to comply with the orders or directions given by Dr Mallick so as to achieve the target. The appointments were thus not to any 'posts', as such appointments can be made only if sanctioned posts be available, which is not required to be so in case of daily-rated workers, who are appointed as and when needed and in such number as would meet the exigency of the situation. This was sought to be brought home by contending that an urgent need for employing such persons may arise, say, when there is a sudden flood or earthquake, when employment would not brook delay and financial rules of the Government would permit employment of required number of persons, whose wages could be paid out of Contingent Fund. This submission is countered by Shri Verma for the State, according to whom, even while making initial appointment the procedure laid down in the aforesaid OM was required to be followed.

47. To support his contention, Shri Shanti Bhushan brought to my notice a Constitution Bench decision of this Court in State of Assam v. Kanak Chandra Dutta [(1967) 1 SCR 679 : AIR 1967 SC 884 : (1968) 1 LLJ 288], at p. 683 of which it has been stated that "post may be created before the appointment or simultaneously with it. A post is an appointment, but every appointment is not a post. A casual labourer is not the holder of a post." Shri Verma on the other hand has sought to rely on a three-Judge Bench decision in Union of India v. Deepchand Pandey [(1992) 4 SCC 432 : 1993 SCC (L&S) 21 : (1993) 23 ATC 356]. As to this decision, Shri Shanti Bhushan's contention is that it has not held that persons employed on casual basis would be holders of posts.

48. The observation in the Constitution Bench case is unambiguous inasmuch as the statement is that a casual labourer is not the holder of a post. As to Deepchand Pandey case [(1992) 4 SCC 432 : 1993 SCC (L&S) 21 : (1993) 23 ATC 356] it may first be mentioned that it has not taken note of the Constitution Bench decision. This apart, a perusal of the judgment shows that it dealt with the question as to whether a Central Administrative Tribunal, constituted under the Administrative Tribunals Act, 1985, which was passed pursuant to Article 323-A of the Constitution, was vested with the jurisdiction to entertain and decide the claim of the respondents as against the appellant (Union of India) and its officers in Railway Department. This question came up for determination because the respondents, who had been engaged as casual typists on daily wages in railway offices, challenged the order of their termination before the High Court, which allowed the same. The Union of India contended that the High Court had no jurisdiction in view of the provisions in the aforesaid Act. To decide this question, the Bench noted the case of the respondents and then referred to the scope of Article 323-A and held that as the respondents were claiming the right to continue in the employment of the Union of India as before, with additional claim of temporary status, it was idle to suggest that such claim was not covered by the Act. It was, therefore, concluded that the remedy of the respondents was before the Central Administrative Tribunal and not the High Court.

49. The judgment in Deepchand Pandey [(1992) 4 SCC 432 : 1993 SCC (L&S) 21 : (1993) 23 ATC 356] cannot, therefore, be said to have laid down that even casual workers on daily wages are holders of posts. In fact, this question had not arisen for decision in this form in that case. This being the position and the Constitution Bench observation being unambiguous. I hold that the appointments of the appellants initially were not to any posts, and so, the procedure mentioned in the aforesaid OM was not required to be followed.

Whether the services of the appellants were duly regularised ?

50. The aforesaid question would need answering of the following :

(i) Was the procedure mentioned in OM of 3-12-1980 required to be followed ?

(ii) Whether non-advertisement of the posts introduced any infirmity ?

(iii) Whether non-information to the employment exchange for filling up the posts caused any dent to the appointments ?

(iv) Was there non-reservation of posts for Scheduled Castes/Scheduled Tribes ? If so, whether the same introduced any illegality in the appointments of general candidates ?

(v) Whether the regularisation had been made pursuant to recommendation of the Selection Committee visualised by the aforesaid OM ?

(vi) Whether any panel was prepared by the Selection Committee ? If not, does this provide a good ground to regard the appointments as violative of the prescribed procedure ?

51. I propose to discuss these contentions in the order noted above. It would be apposite to mention that the aforesaid are the grounds mentioned in the blanket order of termination.

Was the procedure mentioned in OM of 3-12-1980 required to be followed ?

52. The thrust of Shri Shanti Bhushan's argument in this regard is that regularisation of an ad hoc/temporary employee is a constitutionally protected right, as pointed out by this Court in Dharwad case [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902]. Therefore, this right should not be hedged with any such procedure which should defeat it.

53. This submission calls for an examination of the law relating to regularisation, as spelt out by this Court in its various decisions. There is no need to refer to different pronouncements on this point inasmuch as the law came to be summed up by a three-Judge Bench in State of Haryana v. Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403]. Indeed, the learned counsel of both the sides sought to rely on what has been stated in this decision in support of their contentions.

54. The Piara Singh [(1992] 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] Bench after referring to a large number of earlier decisions on the point, which include Dharwad case [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902], summarised the law in paras 45 to 53 which read as below : (SCC pp. 152-53)

> "45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.

46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.

48. An unqualified person ought to be appointed only when qualified persons are not available through the above processes.

49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

50. The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

51. So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years - a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6-4-1990 referred to hereinbefore) both in relation to work-charged employees as well as casual labour.

52. We must also say that the orders issued by the Governments of Punjab and Haryana providing for regularisation of ad hoc/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by anyone.

53. These are but a few observations which we thought it necessary to make, impelled by the facts of this case, and the spate of litigation by such employees. They are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein."

55. The only other case which I propose to note, in view of strong reliance on it by Shri Verma, is Delhi Development Horticulture Employees' Union v. Delhi Admn. [(1992) 4 SCC 99 : 1992 SCC (L&S) 805 : (1992) 21 ATC 386]. Shri Verma drew my attention to the general observations made by the Bench in para 23 in which a mention was made about the common practice to ignore employment exchanges and to employ and get employed persons who are either not registered with the employment exchange or who, though registered, are lower in the waiting list in the employment register. The Bench stated that such employment is sought and given for "various illegal considerations including money". The motivating force to do so is to get the benefit of regularisation after one has continued to work for 240 days or more, knowing about the judicial trend that those who have completed 240 days or more are directed to be automatically regularised. It was also observed that this has led to development of "good deal of illegal employment market resulting in a new source of corruption and frustration of those who are waiting in the employment exchange for years".

56. I would examine the question relating to regularisation of the appellants keeping the aforesaid in mind. Shri Shanti Bhushan submits that what was stated in para 11 of Dharwad case [(1990) 2 SCC 396 : 1990 SCC (L&S) 274 : (1990) 12 ATC 902] about regularisation within a reasonable period

being a constitutional goal has been accepted in Piara Singh case [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] also inasmuch as it has been stated in para 51 that security of tenure is necessary which requires adoption of positive approach coupled with empathy for the person, because of which the view taken was that if a casual labourer continued for a fairly long spell - say 2 or 3 years - a presumption may arise that there is a regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of this regularisation.

57. The learned counsel further contends, that it was, as if to fulfil the constitutional obligation, that on the question of regularisation of employees like the appellants being taken up with the Government, it was stated by the Director of Health Services to all concerned in his letter of 25-11-1982 that casual labourers who had been appointed after 1974 and were serving continuously for 3 years be absorbed against the regularised posts. As to those working for less than 3 years, this letter stated that they should also be absorbed against the vacant sanctioned posts. It is, therefore, urged that no procedure at all was required to regularise those who had served for 3 years or more after 1974.

58. I would not agree with Shri Shanti Bhushan that no procedure at all was required to be followed, in view of the law as mentioned in Piara Singh case [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403], according to which, the ad hoc/temporary employees have also to get selected, along with others, to get regularised, which apparently means that they must undergo a selection process which has to be according to a settled procedure. And the procedure for the cases at hand is the one mentioned in the aforesaid OM. It is, therefore, to be seen whether there are materials to show qua the appellants that the procedure mentioned in the OM of 3rd December was not followed while regularising them.

59. As to this facet of the case, Shri Shanti Bhushan has sought to rely strongly on the statement made by the Minister concerned on the floor of the Assembly on two occasions. The first was on 14-7-1987, when in reply to the question "(w)hether it is a fact that from the year 1985 to March 1987 about 200 persons were appointed in Class III and IV posts in different TB Institutes by the In-charge, Deputy Director, TB, without publication of interview. If yes, does the Government propose to make an inquiry into this ? If yes, why has it not been made till date ?", Minister of Health and Family Welfare Department stated that the appointments were made "after following all procedure" which was contained in letters dated 17-2-1983, 25-3-1983, 24-7-1984, 17-10-1984, 31-12-1986 and 31-1-1987. The matter again came before the Assembly on 21-7-1987, when another MLA desired to know from the Minister of Health and Family Welfare whether about 800 employees had been appointed against different Class III and IV posts illegally by the Director, TB, Dr A. Mallick, between 1977 and 1987. The further question was if this were to be a fact "does the Government propose to hold an inquiry against Dr Mallick for making illegal appointments and illegal accumulation of wealth. If not, why ?" The reply of the Minister was that appointment had been made "in regular manner against created sanctioned vacant posts". The Minister further stated that, therefore, "question of illegal appointments does not arise".

60. Shri Verma would not like us to place much reliance on what was stated on the floor of the Assembly, because the question had been answered, as per the State's case put up in counter-affidavit filed here, on the information furnished by Dr A.A. Mallick himself. However, as on subsequent inquiry it was found that all informations furnished by Dr Mallick were false, a fresh communication was addressed by the Department to the Assembly.

61. I would not accept this stance taken in the counter-affidavit for various reasons. The first is that it is beyond comprehension that a question relating to alleged illegal activities of Dr Mallick would be answered by a Minister on the floor of the House on the basis of information supplied by none else that Dr Mallick. Secondly, the counter-affidavit has been sworn on behalf of the State by Director (Administration), Health Services, whereas an affidavit on behalf of the State is to be sworn by an officer of the Secretariat. Thirdly, there is nothing on record to satisfy that the fresh information collected on subsequent inquiry had really been furnished by the Department to the Assembly.

62. The aforesaid contention of Shri Shanti Bhushan was buttressed by other learned counsel appearing for the appellants by drawing by attention, inter alia, to a writ proceeding before the Patna High Court which shows that on a direction being given by the Court to pay to the writ petitioners in question their wages, if they had been regularly appointed, the High Court was informed that, on enquiry being made, it was found that the writ petitioners had been regularly appointed.

63. There are also on record of some cases minutes of Selection Committee consisting of Deputy Director, Health Service (TB), Assistant Director (Philoria Control); and Seniormost SC/ST officer working under the TB programme. This is the composition of the Selection Committee meant for making regular appointments to Class III and IV posts under Tuberculosis Control Programme, as would appear from the Government communication of 25-3-1983, which is one of the letters mentioned by the Minister on 14-7-1987 when he answered the Assembly question. It is, of course, true, as pointed out by Shri Verma, that in the papers as filed, at the place of signatures "Sd/-" appears. The explanation of the counsel concerned is that this had happened because the signatures of the person concerned were not legible. It is also urged that the appellants, having had no custody of the original records, could lay their hands on a document of this nature only. The original of the document not being available to us, which may be because of the burning of all records in the fire which took place in the State Secretariat, it cannot be held that the persons concerned were regularised after proper selection. But then, in some cases Selection Committee did examine the candidature of persons concerned and they had come to be regularised pursuant to the recommendation of the Selection Committee.

64. In the aforesaid premises, I would not accept the contention advanced on behalf of the State that the procedure visualised by the OM of 3-12-1980 was not followed at all while regularising the appellants. Of course, the materials on record do not permit to say that the procedure had been followed in case of all the appellants.

Whether non-advertisement of the posts introduced any infirmity ?

65. Shri Shanti Bhushan contends that as per the law summed up in Piara Singh case [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403], advertisement is not a must. Shri Verma submits that unless the posts are advertised, eligible persons would not know about the availability of post, and so, it has to be there. Para 47 of Piara Singh [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 : (1992) 21 ATC 403] makes this position clear, as it states that a notice must be published in this regard in appropriate manner. This publication could be, in appropriate cases, on notice boards also, according to me.

66. The aforesaid being the position, I am satisfied that the posts were required to be advertised. This, however, is an ordinary requirement, which would be apparent from the word 'ordinarily'

finding place in para 47. This apart, it would appear that the news was published on the notice board of some offices. I would accept this as sufficient in the facts and circumstances of the present case. The non-advertisement of the posts in newspapers had, therefore, caused no infirmity to the regularisation.

Whether non-information to the employment exchange for filling up the posts caused any dent to the appointments ?

67. Para 47 of Piara Singh case [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 (1992) 21 ATC 403] states that where an ad hoc or temporary employment is necessitated on account of exigency of administration, the incumbent should be drawn from the employment exchange. This requirement has a rider namely, "unless it cannot brook delay". As already stated, there was a pressing cause here, which is almost writ large on the face of the record. The non-information to the employment exchange had, therefore, caused no dent to the appointments.

Was there non-reservation of posts for Scheduled Castes/Scheduled Tribes ? If so, whether the same introduced any legality in the appointment of general category candidates ?

68. The facts as unfolded in the present appeals show that posts had in fact been reserved. In one TB Centre, 16 Scheduled Castes, 5 Scheduled Tribes, 16 Backward I, and 14 Backward II came to be appointed, along with 16 general category candidates. This tabulation is at p. 143 of the paper-book in SLPs (C) Nos. 12934-35 of 1994. A perusal of the paper-book in SLPs (C) Nos. 13203-13 of 1994 shows that Scheduled Caste/Scheduled Tribe candidates were appointed to the posts of BCG Technicians. The annexure at p. 116 gives the names of such candidates, and the list at pp. 117 to 119 shows that there were many Backward Class I and Backward Class II appointees also. This shows that there was not only reservation for Scheduled Castes and Scheduled Tribes but appointments too had been given. That this was the position in all the centres cannot, however, be known from material on record. The appellants' counsel are justified in saying that they could not have produced documents to show as to how this requirement was satisfied in all the centres. The burden of proving this conclusively cannot be thrown on the appellants, as after all it is the State which had terminated their services, inter alia, on this ground, and so, the burden has really to be discharged by the State, to do which virtually nothing has been done, maybe because the Secretariat records having been burnt, nothing is available. It may, however, be that the District Records could have perhaps thrown some light, but they were shown no light.

69. The materials available show there was reservation for SC/ST candidates. The question of illegality in appointment of general candidates on the ground of non-reservation does not, therefore, arise.

Whether the regularisation had been made pursuant to recommendation of the Selection Committee visualised by the aforesaid OM ?

70. This aspect had already been dealt above. To reiterate, there are materials on record to show that in some cases regularisation was pursuant to the recommendation of a properly constituted Selection Committee. I am conscious that one swallow does not make a summer. But then, to have required the appellants to bring on record the proceedings of other Selection Committees, if there were any, would have placed an unjustified burden on them. What has been stated above about the State's burden applies qua this question also.

Whether non-preparation of any panel by the Selection Committee provided a good ground to regard the appointments as violative of the prescribed procedure ?

71. A perusal of the OM of 3-12-1980 does show that the Selection Committee was required to prepare a merit list. That such a merit list/panel was prepared in some cases would be evident from a perusal of the paper-book in SLPs (C) Nos. 13203-13 of 1994. But then, it cannot be said that this was done in all cases. Even so, for the reasons already alluded which would apply proprio vigore to this aspect also, there is no justification in finding infirmity in all the appointments because of lack of materials on record to show that the appointments had been made without preparation of merit list/panel.

Whether natural justice had been complied with before termination of the services of the appellants ?

72. What are the requirements of natural justice cannot be laid down in any strait-jacket. This is a well-settled position in law. The facts and circumstances of the case in question would alone provide the answer whether natural justice has been complied with or not. This is so well-settled position by now that I do not propose to advert to any case law on this subject.

73. It is equally well-settled that where adverse civil consequences follow pursuant to an order of an authority, natural justice has to be complied with ordinarily. Law, however, permits exclusion of natural justice in some cases, like urgency. Shri Verma submits that present is a case where natural justice got excluded because of adoption of unfair means while seeking appointments. In support of this contention, strong reliance is placed on the decision of this Court in Bihar School Examination Board v. Subhas Chandra Sinha [(1970) 1 SCC 648 : (1970) 3 SCR 963]. According to Shri Shanti Bhushan, this decision has not said anything contrary to the well-settled principle that where adverse civil consequences follow natural justice has to be complied with.

74. Let it be seen which of the aforesaid contentions merits acceptance. In the aforesaid case this Court examined the question whether notice to the respondents was necessary before cancellation of their examination because of adoption of unfair means at an examination centre. The question of giving notice required examination, as it was contended that natural justice required the same. On the facts of that case it was held that notice was not necessary. This view was taken because the Court was satisfied about adoption of unfair means, relating to which an independent enquiry had been held by Unfair Means Committee of the appellant Board. Shri Verma states that as in the present case also the appellant has adopted unfair means, no notice was required to be given.

75. A close perusal of the judgment shows that that was not a case of any particular individual being charged with adoption of unfair means, but of the conduct of all the examinees or a vast majority of them at a particular centre. The Court raised a poser that as the question was not of charging any one individual with unfair means but to condemn the examination as ineffective for the purpose it was held, must the Board have given an opportunity to all the candidates to represent their cases ? The Court thought it was not necessary, because the examination as a whole was being cancelled. It was further observed that as the Board had not charged any one with unfair means so that he could claim to defend himself. It was, therefore, concluded that it would be wrong to insist that the Board must hold a detailed enquiry into the matter and examine each case to satisfy itself which of the candidates had not adopted unfair means.

76. The facts of the present case are poles apart. Here the allegation is undoubtedly against each

appellant. Even if it were to be that some among them had adopted unfair means, the appointments of others could not be set aside because of that. It was not a question of some illegality of a general nature like adoption of a wrong procedure in selection, like fixing of very high percentage marks for viva voce. It may be that a case where such illegality is committed, individual notice would not be necessary. I, therefore, do not think if the ratio in Subhas Chandra case [(1970) 1 SCC 648 : (1970) 3 SCR 963] could assist the State to contend that individual notice was not necessary.

77. I may deal with another decision pressed into service by Shri Verma in this context. The same is Ex Capt. K. Balasubramanian v. State of T.N. [(1991) 2 SCC 708 : 1991 SCC (L&S) 792 : (1991) 16 ATC 925]. The learned counsel has read out to me from this decision para 9 at pp. 713 and 714 and contended that because of what has been stated therein, it could be said that even if an order is invalid, there would be no question of affording an opportunity of hearing. I am afraid that the learned counsel has misunderstood the purport of what has been stated therein. I have said so because a perusal of that para shows that this Court had said about no question of affording an opportunity of hearing to the petitioners before passing the impugned order dated 3-3-1980, because the Court found that that order was founded on government orders dated 16-11-1976 and 15-6-1977, which were invalid according to the Court as those orders had altered the principle of fixation of seniority contained in Rule 35 of the General Rules, which could have been done only by suitably amending the Rule, and not by issuing administrative instructions. Having found that the order in favour of the petitioners dated 3-3-1980 was founded on untenable principle of fixation of seniority, the Court said, and with respect rightly, that no opportunity was required to be given to the petitioners who sought to support their seniority position on the principles as embodied in the orders dated 16-11-1976 and 15-6-1977. The foundation of the order dated 3-3-1980 having fallen to the ground, no opportunity was necessary to be given to sustain the order dated 3-3-1980, as that order was founded on wrong principles of seniority. This being the position, I would indeed say that Shri Verma may not have advanced this contention.

78. Having held that natural justice was not excluded, let it be known what was done to satisfy this in the present cases, Materials on record show that at first attempt was made to serve individual notices, whereupon the serving persons were even manhandled; so, recourse was taken to newspaper publication. This was done in some Hindi local newspapers. It is on record that pursuant to the notice so given good number of persons likely to be affected had appeared before the aforesaid Committee. It may be that some persons did not appear before the Screening Committee, despite knowledge of the same. From the materials on record, we are not in a position to know what is the total number of such persons.

79. To satisfy whether newspaper publication substantially complied with the requirement of natural justice, we had desired to know from Shri Verma which were these newspapers, what was their circulation and at which places the newspapers had circulation. Shri Verma could not throw any light on these aspects. His contention was that as some of the affected persons had known about the publication, we may presume that they must have informed their colleagues, and the news must have spread like a wild fire. I would demur to accept these contentions. It has also been noted that some of the incumbents had read only up to Class IV, which would show that they are not literate and enlightened enough to read newspapers as a habit.

80. So, despite my being satisfied that a case for newspaper publication was made out, as an effort being made to serve individual notices, there was manhandling of serving persons, the publication of the type undertaken did not, however, satisfy the call of natural justice. As no fetish should be made about natural justice, it should not be allowed to become a farce also. The giving of

opportunity to show cause in the present cases having been made known through newspapers, I do think that the opportunity given was not adequate and reasonable. Even so, I have not felt inclined to set aside the termination order on this ground, as we ourselves heard the appellants, which can be taken as a sort of post-decisional opportunity, which could be said to have met the requirement of natural justice.

Conclusion

81. Having expressed my views on the questions of law and fact I would conclude as below.

82. Broadly stated, the position is that Dr Mallick had undoubtedly outstepped confines of his powers and had betrayed the confidence reposed in him. I have said so because it is clear that as against about 2500 sanctioned posts, he was instrumental in giving/directing appointments to about 6000 persons. But I am clear in my mind that all the persons so employed had not aided, abetted or instigated Dr Mallick in doing so. The difficulty is that we are not in a position to find out who the aiders/abettors were. If the State could have made efforts to find this aspect, with reference to the records which should have been available at the District Headquarters/TB Centres, it should have been possible to find out, who among the 6000 and odd persons, had been legally or validly appointed. This has, however, not been done. The question is whether despite this inaction or non-action, there is justification in taking the view that the 1363 appellants before us were among those who were illegally appointed. The State counsel submits that we should hold so; Shri Shanti Bhushan contends that there is no basis to hold so.

83. I have given my considered thought to this all-important aspect of the case and, according to me, as about 2500 persons could have been appointed by Dr Mallick, and as there are materials on record to show that regular appointments had also been made (how many, we do not know) and as it is not possible to know who the regularly appointed persons were, facts permit to say that the appellants before us, whose number is 1363, may be among those who were regularly appointed. I have thought it fit to take view because of the mandate in Article 21 of the Constitution, which would not permit taking away livelihood of so many of the incumbents unless satisfied that they were among the persons who had not been legally and validly appointed. It deserves to be pointed out that as the State has taken away the rights which had come to inhere in the appellants, the primary burden is on the State to establish that illegality had been committed in giving appointments to the appellants. This burden the State has undoubtedly failed to discharge qua the appellants. The benefit of the same has to be made available to them.

84. I would further say that in such matters there is (some) justification to keep human consideration also in mind, as urged by Shri Shanti Bhushan by referring to H.C. Puttaswamy v. Hon'ble the Chief Justice, Karnataka High Court [1991 Supp (2) SCC 421 : 1992 SCC (L&C) 53 : (1992) 19 ATC 292 : 1990 Supp (2) SCR 552]. In that case this Court, despite having regarded the impugned appointment as invalid, refused to recognise the consequence which would have involved uprooting of the appellants, because of which it adopted a humanitarian approach, as it was felt that the appellants "seem to deserve justice ruled by mercy". Not only this, the Court went to the extent of giving all the benefits of past service after stating that the appellants shall be treated to have been regularly appointed. The learned counsel prays that we may view the cases at hand also similarly, as any adverse order would uproot 1363 families inasmuch as virtually all the appellants are from poorer section of society and it may well be that the families concerned have no other bread-earner. I have felt inclined to bear this aspect also in mind, albeit tangentially. Having noted that materials on record do not permit to hold that the appellants were among those who were appointed beyond

the sanctioned strength, my conscience does not permit to punish them for the wrong or sin which might have been committed by others.

85. According to me, therefore, the legal, just, fair and reasonable order to be passed in these appeals would be to say that all the 1363 appellants would be deemed to have been regularly appointed and I would, therefore, set aside the termination order qua them. It is made clear that this order would not in any way be taken advantage of by anybody except 1363 appellants before us.

86. The appeals are, therefore, allowed by setting aside the termination order qua the appellants alone and directing the reinstatement of all of them. Appropriate orders in this regard would be passed within two months from today. The appellants would not, however, be paid any amount towards back wages/salaries, but they would get other service benefits.

87. Before parting, I would observe that nothing stated by me relating to the appellants would enure to the benefit of Dr Mallick in the ongoing inquiry against him. It would be concluded as per the materials collected or to be collected and the inquiry against him would take its own course. Not only this, I would desire the conclusion of the inquiry against Dr Mallick most expeditiously.

ORDER OF THE COURT

88. In view of disagreement, we direct the Registry to place all the matters before a Bench of three Judges for decision.