[2025] 3 S.C.R. 24 : 2025 INSC 176

Amrit Yadav
v.
The State of Jharkhand and Ors.

(Civil Appeal No(s). 13950-13951 of 2024)

10 February 2025

[Pankaj Mithal and Sandeep Mehta,* JJ.]

Issue for Consideration

The core issues presented for adjudication before this Court in these appeals are:- (1) Whether the advertisement dated 29.07.2010 issued by respondent no. 4 and appointment process carried out in pursuance thereof, was valid in the eyes of law; (2) Whether the direction issued by the High Court vide order dated 12.09.2018 was justified considering the fact that the candidates earlier appointed to the subject posts were neither impleaded as party nor were heard before the issuance of a direction that adversely affected their service.

Headnotes†

Constitution of India – Arts. 14 and 16 – Validity of the advertisement dated 29.07.2010 issued by respondent no.4:

Held: It is settled that any appointment in violation of the mandate of Articles 14 and 16 of the Constitution of India is not only irregular but also illegal and cannot be sustained – It is a trite law that a valid advertisement inviting applications for public employment must include the total number of seats, the ratio of reserved and unreserved seats, minimum qualification for the posts and procedural clarity with respect to the type and manner of selection stages, i.e., written, oral examination and interviews – Further, the position of law is settled that though there is no fundamental right to claim reservation as Articles 16(4) and (4-A) of the Constitution of India are in the nature of enabling provisions only and do not mandate the State or its instrumentalities to provide reservation in every selection process but inspite thereof, the State's decision to not provide reservation has to be based on some quantifiable data and valid reasoning – In the present case, the advertisement

* Author

dated 29.07.2010, issued by respondent no. 4 is completely silent on the aspect of total number of posts and the number of reserved quota and general quota posts – This Court is of the view that if the State chooses not to provide reservation, that decision must also be conveyed through the advertisement along with the lists of inclusions – Any appointment made in violation of the statutory rules as well as the mandate of Articles 14 and 16 of the Constitution would be a nullity in law – Thus, the entire recruitment process initiated for the subject posts, in furtherance of the advertisement dated 29.07.2010, is in violation of both the legal precedents and settled law – Therefore, the advertisement dated 29.07.2010, issued by respondent No. 4 was not a valid advertisement inviting applications for public employment and is thus, a nullity in law. [Paras 19, 20, 23, 24]

Principle of Natural Justice – On 12.09.2018, the Single Judge of the High Court had directed the respondent-State to make a fresh panel for appointment to the post of Class-IV employees as per the conditions stipulated in the advertisement dated 29.07.2010 – Same was upheld by the Division Bench of High Court – The candidates earlier appointed to the subject posts were neither impleaded as party nor were heard – Whether the Division Bench of the High Court was correct in directing the respondent-State to prepare fresh panel of selected candidates without giving an opportunity of hearing to the candidates who were likely to get affected by such direction:

Held: The position of law is crystallized on the aspect of compliance with the principles of natural justice in both administrative spheres as well as judicial decisions – It is trite law that the principles of natural justice cannot be applied in any straitjacket formula and it is imperative to understand that there are certain exceptions to their applicability – In the present case, the Division Bench in the first impugned order dated 07.11.2019, had confirmed the directions passed by the Single Judge to the respondent-State to prepare a fresh panel of selected candidates without affording any opportunity of hearing to the candidates, who were earlier declared successful by the respondent-State and were holding the subject posts – Subsequently, the respondent-State relieved the appellant-employee and other candidates selected de hors the rules and terminated their services vide order dated 07.12.2020 – In view of this Court, since the very selection and appointment of the appellant-employee was a nullity in the eyes of law, the

Single Judge committed no error in directing the respondent-State to prepare fresh panel of selected candidates without hearing the candidates who were likely to get affected – In view of the factual scenario, it is clear that if the subject appointments were ab-initio nullity in the eyes of law, it was not incumbent on the Single Judge to pass the order after hearing all the parties that were likely to be affected by such decision, i.e., the candidates who were already appointed on the subject posts including the appellant-employee. [Paras 29, 30, 32]

Case Law Cited

Renu v. District and Sessions Judge, Tis Hazari Courts, Delhi **[2014] 2 SCR 537 : (2014) 14 SCC 50;** *Mukesh Kumar v. State of Uttarakhand* **(2020) 3 SCC 1;** *Dharampal Satyapal Ltd. v. CCE* **[2015] 6 SCR 437 : (2015) 8 SCC 519;** *Union of India v. Raghuwar Pal Singh* **[2018] 4 SCR 1012 : (2018) 15 SCC 463;** *M.P. State Coop. Bank Ltd. v. Nanuram Yadav* **[2007] 10 SCR 307 : (2007) 8 SCC 264;** *State of U.P. v. U.P. State Law Officers' Assn.* **[1994] 1 SCR 348 : (1994) 2 SCC 204 – relied on.**

State of Karnataka v. Umadevi **[2006] 3 SCR 953 : (2006) 4 SCC 1 – referred to.**

List of Acts

Constitution of India.

List of Keywords

Article 14 of Constitution; Article 16 of the Constitution; Validity of advertisement; Appointment process; Opportunity of hearing; Violation of the statutory rules; Principle of Natural Justice.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 13950-13951 of 2024

From the Judgment and Order dated 24.11.2022 and 07.11.2019 of the High Court of Jharkhand at Ranchi in LPA No. 305 of 2022 and LPA No. 26 of 2019 respectively

With

Civil Appeal Nos. 13952, 13955, 13953 and 13954 of 2024

Appearances for Parties

Dr. Rajiv Nanda, Sr. Adv., Brajesh Pandey, Sandeep, Samindra Kumar Tripathi, Sunil Kumar, Manish Kumar Vickkey, Kanchan Kumar Jha, Rajeev Kumar Shrivastava, Paramhans Sahani, M/s. Brajesh Pandey & Associates, Anilendra Pandey, Advs. for the Appellant.

Jayant Mohan, Karma Dorjee, Ms. Adya Shree Dutta, Ms. Pallavi Langar, Ms. Pragya Baghel, Sujeet Kumar Chaubey, Anilendra Pandey, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

Mehta, J.

CIVIL APPEALS NO(S). 13950-13951 OF 2024

1. The present appeals by special leave, are preferred by the appellant,[1] assailing the following two judgments rendered by the Division Bench of the High Court of Jharkhand at Ranchi[2]: -

   i) Judgment dated 7th November, 2019 in LPA No. 26 of 2019, whereby the learned Division Bench dismissed the intra-court appeal preferred by the respondent-State against the common judgment of learned Single Judge in WP(S) No. 6709 of 2017 and other connected petitions,[3] who *vide* order dated 12th September, 2018, had directed the respondent-State to make a fresh panel for appointment to the post of Class-IV employees as per the conditions stipulated in the advertisement dated 29th July, 2010. (Hereinafter, referred to as "**first impugned order**").

   ii) Judgment dated 24th November, 2022 in batch of Letter Patent Appeals,[4] whereby, the learned Division Bench dismissed the intra-court appeals (one amongst them filed by the appellant-

1 Hereinafter, referred to as "appellant-employee".

2 Hereinafter referred to as "High Court".

3 WP (S) Nos. 789 of 2018, 1257 of 2018, 1278 of 2018, 1342 of 2018, 1638 of 2018, 1757 of 2018, 544 of 2018, 1007 of 2018, 1915 of 2018, 1926 of 2018, 1893 of 2018 and 7047 of 2017.

4 LPA Nos. 305 of 2022, 197 of 2022, 185 of 2022, 186 of 2022 and 201 of 2022.

employee) against the judgment dated 9th March, 2022 passed by the learned Single Judge who *vide* common order passed in batch of writ petitions,[5] had refused to interfere with the order of termination issued by respondent-State. (Hereinafter, referred to as "**second impugned order**").

Factual Matrix: -

2. The Deputy Commissioner, Palamu[6] published an advertisement dated 29th July, 2010, inviting applications for appointment to the post of Class IV employees.[7] The language of said advertisement is germane to the controversy at hand and the same is extracted below: -

"Date: 29 July 2010 (Ranchi)
Last Date of application
submission 21/8/2010

OFFICE OF THE DISTRICT MAGISTRATE PALAMU DISTRICT, NAZARAT BRANCH

Collectorate Palamu

(Information related to making the fourth panel)
Instructions for appointment to the post of class IV employee
Advertisement Number 1

Vacancy for the grade IV post - the eligible and interested candidates are invited to apply in subscribed application form to the vacant posts of Class IV category by sending application to the appropriate offices of the State Government in Palamu District on schedule date.

It will be mandatory to the candidate in list of the category to submit the certificate along with the application in printed form before the District Nazarat Branch, Palamu Collectorate till the last date for submission of application.

5 WP(S) Nos. 4440 of 2020, 187 of 2021, 4132 of 2020, 2219 of 2021, 4358 of 2020, 4363 of 2020, 4405 of 2020, 4407 of 2020 and 2244 of 2021.

6 Hereinafter referred to as "respondent no. 4".

7 For short "subject posts".

After the last date, the application will not be considered without the eligible proof of deprivation.

Applicants are instructed to appear in the examination on the basis of admission eligibility, the cycling test of the qualified candidate will be held on schedule to qualify in compulsory basis. The date of examination will be announced later.

The complete details with terms and conditions to apply for the post in application are as follows.

1. Name of the post - IV Grade

2. Educational Qualification - VIII Passed

3. The candidate should must be eligible in cycling (there the cycle test should be organized to qualify on compulsory basis)

4. The candidate should be in sound health (should be compulsory to submit the medical fitness certificate obtained within last 6 months)

5. The candidate over to the maximum age should not be consider to apply.

6. The applicant for general category is eligible to apply other than the candidate in schedule caste and schedule tribe cast in age relaxation in between 18 to 27 years and for backward class / extremely backward class should be eligible to apply in age of 18 to 28 years and for female candidate in unreserved and other backward and scheduled and Scheduled Tribe Caste should apply with age relaxation 18 to 40 years.

7. The candidate belong from the local areas should be given to preference, will be eligible to apply and the candidate working in government offices should be in preference to apply from the date of publication of the advertisement in status of weightage calculation. For which weightage will be given for service. It will be mandatory for the daily wage to submit the certificate obtained or from the employer.

8. Preference will be given to local applicants.

9. No traveling allowance will be given to the candidates appearing in the final examination.

10. The emplacement will be effective for one year from the date of publication.

11. It is only related to the preparation of advertisement panels.

12. Instructions given from time to time to the district by the Jharkhand Government in this context should be applicable.

13. Information will be provided in the Devanagari script prescribed letter form and educational and other qualification proofs, eligible age certificate, reservation certificate, caste certificate issued by the employment office, disability certificate issued by the civil surgeon of the district (if the applicant is disabled) and residence certificate, caste proof issued by the eligible sub divisional officer / appropriate office by the Government of Jharkhand, It is mandatory for the candidate to attach the photocopy of the certificate (issued within six months) from the concerned authority including two passport size photographs should must be submit.

14. It will be mandatory to attach a bank draft of Rs.100 in the name of Deputy Collector, Palamu Secretariat along with 10x10 size envelope.

15. The decision of the District Selection Committee regarding panel creation will be final.

16. The entire recruitment process will be completely transparent. And all action will be taken according to the rules of the government. Therefore, under the public interest, even in your own interest, the broker should not come under the influence of the middleman. The candidate is warned to do not approach or recommend at any level. If any such attempt is detected, the form will automatically be canceled and legal action will be taken against the candidate.

Sd/-

The Deputy Commissioner Palamu"

3. Pursuant to the issuance of the above advertisement, an examination was conducted on 5th November, 2017. Subsequently, respondent No. 4 issued a press release[8] dated 9th November, 2017, stating that before the final panel of selected candidates is prepared, the candidates would be required to remain present in the District Establishment Section, Palamu for the purpose of counselling. Upon completion of the counselling process, the District Education Officer[9] *vide* office order[10] dated 9th March, 2018, issued appointment letter to the successful candidates, including the appellant herein. Meanwhile, an FIR[11] came to be registered at Police Station Daltonganj Town, District Palamu alleging rampant corruption and mass scale cheating in the examination conducted for the subject posts on 5th November, 2017.

4. Aggrieved by the publication of the list of successful candidates, some non-selected candidates preferred writ petitions[12] before the High Court which came to be allowed *vide* order dated 12th September, 2018, directing the respondent-State to prepare a fresh merit list as per the marks obtained in the written examination conducted on 5th November, 2017, without counting the marks awarded to the candidates in interview. The learned Single Judge opined that the appointment was not carried out in accordance with the stipulations made in the advertisement dated 29th July, 2010, as there was admittedly, no provision for interview in the advertisement which was conducted by the respondent-State. The learned Single Judge further observed that the respondent-State had acted *de hors* the rules and regulations while preparing the merit list by taking into account the cumulative marks obtained by the candidates in written examination as well as the interview.

5. Aggrieved, the respondent-State preferred an intra-court appeal[13] assailing the aforesaid order of the learned Single Judge. The Division Bench *vide* first impugned order dated 7th November, 2019, dismissed the appeal and upheld the order dated 12th September, 2018, passed by the learned Single Judge. Pursuant to the aforesaid

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8 Memorandum No. 842 of 2017.

9 Hereinafter, referred to as "respondent no. 5".

10 Memo no. 399.

11 FIR No. 382 of 2017.

12 *Supra* note 3.

13 LPA No. 26 of 2019.

direction of learned Single Judge, respondent No. 5 *vide* office order dated 7th December, 2020, relieved the appellant-employee and other candidates who were purportedly selected *de hors* the rules and terminated their service.

6. The appellant-employee and other similarly aggrieved candidates assailed their termination order by preferring writ petitions[14] before the High Court seeking issuance of a writ to reinstate them in service. The learned Single Judge *vide* order dated 9th March, 2022, dismissed the batch of writ petitions, holding that no case for interference was made out as admittedly, the respondent-State had changed the rules of the game by introducing the interview round in the selection process after the ball had been set rolling. The learned Single Judge further held that the respondent-State had prepared the fresh panel of selected candidates in compliance with the direction of the High Court in WP (S) No. 6709 of 2017 and other analogous petitions,[15] which stood affirmed in the first impugned order and hence, the termination orders were valid in the eyes of law.

7. Aggrieved, the appellant-employee and other similarly situated candidates preferred a batch of intra-court appeals[16] assailing the order dated 9th March, 2022, passed by the learned Single Judge. The learned Division Bench, *vide* order dated 24th November, 2022, dismissed these appeals and held that as the decision with respect to preparation of fresh panel of selected candidates had attained finality in view of the judgment of the Coordinate Bench, the respondent-State was justified in issuing the order terminating the services of the appellant-employee and other similarly situated candidates for being less meritorious.

8. Aggrieved, the appellant-employee has approached this Court by way of these appeals by special leave assailing the impugned orders passed by the learned Division Bench of the High Court.

Submissions on behalf of the appellant-employee: -

9. Learned senior counsel appearing for the appellant-employee strenuously contended that the appellant-employee was duly selected

14 *Supra* note 5.

15 *Supra* note 3.

16 *Supra* note 4.

and has been appointed to the subject posts, purely on merit, *vide* Memorandum No. 399 dated 9th March, 2018, issued by the competent authority. There was no allegation of fraud or misrepresentation on the part of the appellant-employee while seeking the appointment on the post in question.

10. It was submitted that pursuant to the valid appointment of the appellant-employee, he has satisfactorily served the respondent-State for two and a half years and has also completed his probation period. Further, the learned counsel urged that as the appellant-employee has become over-age for other Government jobs, a sympathetic view ought to be taken by setting aside the termination order dated 7th December, 2020 issued by respondent No. 5.

11. He further contended that the Division Bench grossly erred in issuing a direction to the respondent-State to prepare a fresh panel of selected candidates without impleading the affected persons, such as the appellant-employee, as a party in the proceedings and thus, violated the principles of natural justice. The non-selected candidates who had filed the writ petitions had voluntarily refrained from appearing in the counselling process, and hence, they lacked *locus* to challenge the recruitment process.

12. Learned counsel concluded his submissions by imploring this Court to take a sympathetic view and to accept the appeals, set aside the impugned judgments, quash the termination order dated 7th December, 2020, and direct the respondent-State to reinstate the appellant-employee in service.

Submissions on behalf of the respondent-State: -

13. *Per contra*, learned counsel appearing on behalf of the respondent-State contended that the impugned judgments do not suffer from any infirmity or illegality. He contended that the fresh panel of selected candidates, was prepared by the respondent-State in compliance with the direction of the High Court *vide* order dated 12th September, 2018. Once the appointment of the appellant-employee was found to be *de hors* the law, he cannot claim a preferential right of continuing in service as against the candidates who were admittedly higher in merit.

14. Learned standing counsel further contended that the case of the appellant-employee suffers from gross delay which remains

unexplained as he is laying challenge to judgment[17] of the Division Bench dated 7th November, 2019 after a period of more than 3 years. As such, the appellant-employee is not entitled to any relief. On these grounds, the learned Counsel for the respondent-State implored this Court to dismiss the appeals and affirm the impugned judgments.

Issues: -

15. We have given our thoughtful consideration to the submissions advanced at bar and have carefully gone through the impugned judgments and the material placed on record.

16. The core issues presented for adjudication before this Court in these appeals are: -

    (1) Whether the advertisement dated 29th July, 2010 issued by respondent No. 4 and appointment process carried out in pursuance thereof, was valid in the eyes of law?

    (2) Whether the direction issued by the High Court *vide* order dated 12th September, 2018 was justified considering the fact that the candidates earlier appointed to the subject posts were neither impleaded as party nor were heard before the issuance of a direction that adversely affected their service?

Discussion and Analysis: -

Issue No. 1: Whether the advertisement dated 29th July, 2010 by respondent No. 4 and appointment process carried out in pursuance thereof was valid in the eyes of law?

17. To adjudge the validity of the recruitment process and the appointments made thereunder for the subject posts, we deem it fit to consider the terms and conditions of the advertisement dated 29th July, 2010, issued by respondent No. 4 on the touchstone of the precedents of this Court so as to find out whether the same was in conformity with law or not.

17 First impugned order.

18. A three-Judge Bench of this Court in ***Renu v. District and Sessions Judge, Tis Hazari Courts, Delhi***,[18] discussed in detail the requirements of a valid advertisement and observed thus:-

> **"16.** Another important requirement of public appointment is that of transparency. **Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others."**
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> (emphasis supplied)

19. Thus, the advertisements which fail to mention the number of posts available for selection are invalid and illegal due to lack of transparency. This Court further expounded in ***Renu***(*supra*) that any appointment in violation of the mandate of Articles 14 and 16 of the Constitution of India is not only irregular but also illegal and cannot be sustained. It is a trite law that a valid advertisement inviting applications for public employment must include the total number of seats, the ratio of reserved and unreserved seats, minimum qualification for the posts and procedural clarity with respect to the type and manner of selection stages, *i.e.*, written, oral examination and interviews.

20. Further, the position of law is settled that though there is no fundamental right to claim reservation as Articles 16(4) and (4-A) of the Constitution of India are in the nature of enabling provisions only and do not mandate the State or its instrumentalities to provide reservation in every selection process but inspite thereof, the State's decision to not provide reservation has to be based on some quantifiable data and valid reasoning.

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18 (2014) 14 SCC 50.

21. Reference in this regard may be made to this Court's decision in ***Mukesh Kumar v. State of Uttarakhand***,[19] wherein, it was held that:-

> **"12. Articles 16(4) and 16(4-A) do not confer fundamental right to claim reservations in promotion [*Ajit Singh (2) v. State of Punjab*, (1999) 7 SCC 209]. By relying upon earlier judgments of this Court, it was held in *Ajit Singh (2)* [*Ajit Singh (2) v. State of Punjab*, (1999) 7 SCC 209] that Articles 16(4) and 16(4-A) are in the nature of enabling provisions, vesting a discretion on the State Government to consider providing reservations, if the circumstances so warrant. It is settled law that the State Government cannot be directed to provide reservations for appointment in public posts** [*C.A. Rajendran v. Union of India*, AIR 1968 SC 507]. Similarly, the State is not bound to make reservation for Scheduled Castes and Scheduled Tribes in matters of promotions. However, if they wish to exercise their discretion and make such provision, the State has to collect quantifiable data showing inadequacy of representation of that class in public services. If the decision of the State Government to provide reservations in promotion is challenged, the State concerned shall have to place before the Court the requisite quantifiable data and satisfy the Court that such reservations became necessary on account of inadequacy of representation of Scheduled Castes and Scheduled Tribes in a particular class or classes of posts without affecting general efficiency of administration as mandated by Article 335 of the Constitution. [*M. Nagaraj v. Union of India*, (2006) 8 SCC 212]
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> **13.** Articles 16(4) and 16(4-A) empower the State to make reservation in matters of appointment and promotion in favour of the Scheduled Castes and Scheduled Tribes "*if in the opinion of the State they are not adequately represented in the services of the State*". **It is for the State Government to decide whether reservations are required in the matter of appointment and promotions**

19 (2020) 3 SCC 1.

> **to public posts. The language in clauses (4) and (4-A) of Article 16 is clear, according to which, the inadequacy of representation is a matter within the subjective satisfaction of the State. The State can form its own opinion on the basis of the material it has in its possession already or it may gather such material through a Commission/ Committee, person or authority. All that is required is that there must be some material on the basis of which the opinion is formed**. The Court should show due deference to the opinion of the State which does not, however, mean that the opinion formed is beyond judicial scrutiny altogether. The scope and reach of judicial scrutiny in matters within the subjective satisfaction of the executive are extensively stated in *Barium Chemicals Ltd.* v. *Company Law Board* [*Barium Chemicals Ltd.* v. *Company Law Board*, AIR 1967 SC 295], which need not be reiterated. [*Indra Sawhney* v. *Union of India*, 1992 Supp (3) SCC 217]"
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> (emphasis supplied)

22. Thus, it is imperative that the State must specifically mention in the advertisement the total number of reserved and unreserved seats. However, if the State does not intend to provide reservation, in view of the quantifiable data indicating adequacy of representation, this aspect must also be specifically mentioned in the advertisement.

23. In the present case, the advertisement dated 29th July, 2010, issued by respondent No. 4 is completely silent on the aspect of total number of posts and the number of reserved quota and general quota posts. We are of the view that if the State chooses not to provide reservation, that decision must also be conveyed through the advertisement along with the afore-mentioned lists of inclusions. This Court in the case of ***State of Karnataka v. Umadevi***,[20] observed that any appointment made in violation of the statutory rules as well as the mandate of Articles 14 and 16 of the Constitution would be a nullity in law.

24. In the wake of the afore-mentioned judicial precedents, we are of the view that the entire recruitment process initiated for the subject

20 (2006) 4 SCC 1.

posts, in furtherance of the advertisement dated 29th July, 2010, is in violation of both the legal precedents and settled law. Therefore, we hold that the advertisement dated 29th July, 2010, issued by respondent No. 4 was not a valid advertisement inviting applications for public employment and is thus, a nullity in law.

Issue No. 2: Whether the direction issued by the High Court *vide* order dated 12th September, 2018, was justified considering the fact that the candidates earlier appointed to the subject posts were neither impleaded as party nor were heard before the issuance of a direction that adversely affected their service?

25. Before answering this issue, we deem it fit to discuss the background of this case. The respondent-State had issued the advertisement dated 29th July, 2010, in complete disregard to the precedents of this Court as well as in sheer contravention of the mandate of Articles 14 and 16 of the Constitution of India as discussed in the first issue. In pursuance of this advertisement, the respondent-State has carried out the entire recruitment process. The limited ground of challenge in the legal proceedings from which the first impugned order emanates was that the petitioners therein had pleaded foul-play on the part of the respondent-State, and contended that the rules of the game had been changed by respondent-State by awarding marks to some candidates in the interview round. The High Court in this regard was justified in ordering preparation of a fresh panel of selected candidates on the basis of the marks secured in the written examination, conducted on 5th November, 2017. This decision has been upheld by the Division Bench in the first impugned order dated 7th November, 2019 which has now attained finality as no further challenge thereto was laid by either the respondent-State or the appellant-employee at that time.

26. Subsequently, the respondent-State prepared fresh panel of selected candidates. However, the name of the appellant-employee was not included in the fresh panel, for being lower in merit and his services were terminated by order dated 7th December, 2020. It is then that fresh writ petitions[21] came to be preferred by the appellant-employee and other similarly situated candidates laying challenge to order

21 *Supra* note 5.

whereby their services were terminated. In our view, the appellant-employee was precluded from invoking the jurisdiction of the learned Single Judge who could not have interfered with the decision which had attained finality after being upheld by the Division Bench in the first impugned order. Until and unless, a review petition was filed against the first impugned order, it provided finality with respect to the present advertisement.

27. Hence, the learned Single Judge rightly dismissed the writ petitions filed by the appellant-employee and other similarly situated candidates against their termination order. No error whatsoever was committed by the learned Division Bench in dismissing the appeal as it had clearly stated that the appellants therein failed to lay challenge to the decision of the Coordinate Bench in the first impugned order dated 7th November, 2019. The Division Bench in a fresh round of litigation could not have reviewed the orders passed by a Coordinate Bench in relation to the same controversy.

28. It is before this Court, for the first time, that the appellant-employee has laid challenge to the first impugned order dated 7th November, 2019, thus, the only controversy that demands our attention is whether the Division Bench was correct in directing the respondent-State to prepare fresh panel of selected candidates without giving an opportunity of hearing to the candidates who were likely to get affected by such direction.

29. The position of law is crystallized on the aspect of compliance with the principles of natural justice in both administrative spheres as well as judicial decisions. It is trite law that the principles of natural justice cannot be applied in any straitjacket formula and it is imperative to understand that there are certain exceptions to their applicability. Reference in this regard may be made to the decision of this Court in ***Dharampal Satyapal Ltd. v. CCE***,[22] wherein it was held thus: -

> **"38.** But that is not the end of the matter. **While the law on the principle of *audi alteram partem* has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles.**

22 (2015) 8 SCC 519.

They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. **Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on**.

…

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the courts. **Even if it is found by the court that there is a violation of principles of natural justice, the courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that the order passed is always null and void**. The validity of the order has to be decided on the touchstone

> of "*prejudice*". The ultimate test is always the same viz. the test of prejudice or the test of fair hearing.**"**
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> (emphasis supplied)

30. In the present case, the Division Bench in the first impugned order dated 7th November, 2019, had confirmed the directions passed by the learned Single Judge to the respondent-State to prepare a fresh panel of selected candidates without affording any opportunity of hearing to the candidates, who were earlier declared successful by the respondent-State and were holding the subject posts. Subsequently, the respondent-State relieved the appellant-employee and other candidates selected *de hors* the rules and terminated their services *vide* order dated 7th December, 2020.

31. In our view, since the very selection and appointment of the appellant-employee was a nullity in the eyes of law, the learned Single Judge committed no error in directing the respondent-State to prepare fresh panel of selected candidates without hearing the candidates who were likely to get affected. In this regard, we are benefitted by the decision of this Court in ***Union of India v. Raghuwar Pal Singh***,[23] wherein, it was held that when the appointment of the candidates is a nullity in law making them disentitled to hold the posts, the principles of natural justice were not required to be complied with, particularly when the same would be nothing short of an exercise in futility. The relevant portion is extracted hereinbelow: -

> **"20.** For taking this contention forward, we may assume, for the time being, that the then Director Incharge H.S. Rathore, Agriculture Officer had the authority to issue a letter of appointment. Nevertheless, he could do so only upon obtaining prior written approval of the competent authority. No case has been made out in the original application that due approval was granted by the competent authority before issuance of the letter of appointment to the respondent. Thus, it is indisputable that no prior approval of the competent authority was given for the appointment of the respondent. **In such a case, the next logical issue that arises for consideration is : whether the**

23 (2018) 15 SCC 463.

> **appointment letter issued to the respondent, would be a case of nullity or a mere irregularity? If it is a case of nullity, affording opportunity to the incumbent would be a mere formality and non-grant of opportunity may not vitiate the final decision of termination of his services**. The Tribunal has rightly held that in absence of prior approval of the competent authority, the Director Incharge could not have hastened issuance of the appointment letter. The act of commission and omission of the then Director Incharge would, therefore, suffer from the vice of lack of authority and nullity in law.
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> …
>
> **23.** In ***State of Manipur*** [State of Manipur v. Y. Token Singh, (2007) 5 SCC 65 : (2007) 2 SCC (L&S) 107] , the appointment letters were cancelled on the ground that the same were issued without the knowledge of the department of the State. **The Court after adverting to the reported decisions concluded that the candidates were not entitled to hold the posts and in a case of such nature, principles of natural justice were not required to be complied with, particularly when the same would result in futility.** …"
>
> (emphasis supplied)

32. Hence, in view of the above principle and the factual scenario in the case at hand, it is clear that if the subject appointments were *ab-initio* nullity in the eyes of law, it was not incumbent on the learned Single Judge to pass the order after hearing all the parties that were likely to be affected by such decision, *i.e.*, the candidates who were already appointed on the subject posts including the appellant-employee.

33. Therefore, we are of the view that the learned Single Judge did not commit any error while issuing a direction *vide* order dated 12th September, 2018, for preparation of fresh panel of selected candidates in consonance with the statutory rules and procedure prescribed in the advertisement as it is clearly discernible from our discussion in the first issue that the recruitment process was void *ab-initio* and *ultra vires* the Constitution of India. Therefore, there was no need to comply with the principles of natural justice as that would be nothing,

but an exercise in futility and the appellant-employee thus, cannot be allowed to claim prejudice from the fact that he was neither impleaded nor heard before the issuance of a direction affecting his service.

34. With respect to the power of cancellation of the entire selection process, this Court in ***M.P. State Coop. Bank Ltd. v. Nanuram Yadav***,[24] held thus:-

> "24. It is clear that *in the matter of public appointments*, the following principles are to be followed:
>
> (*1*) The appointments made without following the appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.
>
> (*2*) Regularisation cannot be a mode of appointment.
>
> (*3*) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation.
>
> (*4*) Those who come by back door should go through that door.
>
> (*5*) No regularisation is permissible in exercise of the statutory power conferred under Article 162 of the Constitution of India if the appointments have been made in contravention of the statutory rules.
>
> (*6*) **The court should not exercise its jurisdiction on misplaced sympathy**.
>
> (*7*) **If the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each**

24 (2007) 8 SCC 264.

> **selectee. The only way out would be to cancel the whole selection**.
>
> (*8*) **When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside**."
>
> (emphasis supplied)

35. Thus, it is clear that once the appointment process is declared to be a nullity in law, every action taken in furtherance of such appointment process is also illegal, and, therefore, the constitutional courts have jurisdiction to set aside such appointments wholly and *ab-initio*. This power of the Court is not curtailed even in a situation where a third-party right has been created in those who have been offered appointment or have even joined the service.

36. This Court in ***State of U.P. v. U.P. State Law Officers' Assn.***,[25] while dealing with the back-door entries in public appointment observed as under: -

> "19. … The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointments made will not be on considerations other than merit. **In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so those who come to be appointed by such arbitrary procedure can hardly complain if the termination of their appointment is equally arbitrary. Those who come by the back door have to go by the same door**. This is more so when the order of appointment itself stipulates that the appointment is terminable at any time without assigning any reason. Such appointments are made, accepted and understood by both sides to be purely

25 (1994) 2 SCC 204.

> professional engagements till they last. The fact that they are made by public bodies cannot vest them with additional sanctity. Every appointment made to a public office, howsoever made, is not necessarily vested with public sanctity. There is, therefore, no public interest involved in saving all appointments irrespective of their mode. From the inception some engagements and contracts may be the product of the operation of the spoils system. There need be no legal anxiety to save them."
>
> (emphasis supplied)

37. It is, therefore, clear that a beneficiary of a back-door procedure cannot claim proper treatment as per law when they come at the receiving end.

38. In the present case, the appellant-employee, who had been appointed under the advertisement dated 29th July, 2010, does not have any right on the subject posts once it is concluded that the advertisement is itself void and is declared illegal and unconstitutional. The candidates' right to continue on such posts is contingent upon the legality of the advertisement and the recruitment process conducted in pursuance thereof.

39. At this juncture, before parting, we deem it fit to note that public employment is a duty entrusted by the Constitution of India with the State. Therefore, it becomes imperative that the rigours of Articles 14 and 16 are not ignored by the State in relation to the matter concerning public employment. Arbitrariness in public employment goes to the very root of the fundamental right to equality. While no person can claim a fundamental right to appointment, it does not mean that the State can be allowed to act in an arbitrary or capricious manner. The State is accountable to the public at large as well as the Constitution of India, which guarantees equal and fair treatment to each person. Public employment process thus, must always be fair, transparent, impartial and within the bounds of the Constitution of India. Every citizen has a fundamental right to be treated fairly and impartially, which is an appendage of right to equality under Article 14 of the Constitution of India. A violation of this guarantee is liable to judicial scrutiny as well as criticism.

Conclusion: -

40. In view of the peculiar facts of this case and discussion made hereinabove, we do not deem it fit to delve into the observations made in the impugned judgments as the subject matter dealt therein is different. The question with respect to the illegality of the recruitment process was not raised in any of the proceedings before the Courts below. On the other hand, it was here, for the first time, before this Court, that the appellant-employee have laid challenge to the first impugned order.

41. Resultantly, the appeals stand disposed of with the following directions: -

    i. The advertisement dated 29th July, 2010, issued by respondent No. 4 and all the consequential proceedings conducted in pursuance thereof are hereby quashed for being violative of Articles 14 and 16 and judicial precedents of this Court.

    ii. All the appointments made in furtherance of the direction of the High Court dated 12th September, 2018, with respect to the subject posts are quashed.

    iii. The respondent-State shall issue a fresh advertisement, compliant with the constitutional mandate and in accordance with the extant Rules and the observations made hereinabove. Thereafter, the recruitment process shall be re-conducted in accordance with law for the subject posts.

    iv. In the interest of justice, we direct that the fresh notification shall be issued in terms of our direction(*supra*) within six months from today and will specifically provide suitable age relaxation in order to accommodate all such aspirants, who would have in the supervening period and during the pendency of the present litigation crossed the age limit for selection on the subject posts.

42. Parties are directed to bear their own costs.

43. Pending application(s), if any, shall stand disposed of.

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44. In these appeals, the appellants have laid challenge only to the second impugned order of the High Court dated 24th November, 2022. As we have quashed the advertisement dated 29th July, 2010 and the consequential selection process thereto in Civil Appeal No(s). 13950-13951 of 2024, the question involved in these appeals has become academic and therefore, does not merit our interference.

45. The appeals are accordingly dismissed. No costs.

46. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals dismissed.

†*Headnotes prepared by:* Ankit Gyan