State Of Bihar vs Upendra Narayan Singh & Ors on 20 March, 2009

Equivalent citations: AIRONLINE 2009 SC 343

Author: G.S. Singhvi

Bench: G.S. Singhvi, Markandey Katju

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1741 OF 2009
(Arising out of S.L.P. (C) 16871 of 2007)

State of Bihar ... Appellant

Versus

Upendra Narayan Singh & others ... Respondents

JUDGMENT

G.S. SINGHVI, J.

1. Leave granted

2. After taking cognizance of the fact that large number of ad hoc appointments were being made in different departments without complying with the relevant rules and procedure, the Government of Bihar vide its Circular No.7260 dated 27.4.1979 which was followed by another Circular No.3001 dated 16.3.1982 imposed ban on such appointments. Notwithstanding this, ad hoc appointments continued to be made in violation of the rules and relevant instructions. This compelled the State Government to pass order dated 10.3.1985 for cancellation of ad hoc appointments and for filling the vacancies in accordance with the rules. After one year, the issue relating to large scale illegalities committed in the making of ad hoc appointments was raised in the Bihar Legislative Assembly and members expressed concern over such appointments. In the backdrop of this development, Chief Secretary, Government of Bihar vide his letter dated 11.6.1986 made it clear to all the Secretaries to the Government, Heads of Departments, Divisional Commissioners and District Magistrates that they will be personally responsible for the compliance of the rules and instructions in the making of ad hoc appointments. It, however, appears that the ban imposed by the State Government was relaxed qua Animal Husbandry Department and vide letter dated 4.7.1987, Under Secretary to the

Government informed the Director, Animal Husbandry that for implementation of the schemes being operated by the department, appointments may be made on Class IV posts by committees comprising of Regional Director, Animal Husbandry as Chairman, Regional Joint Director, Animal Husbandry/Assistant Director, Animal Husbandry as Secretary and one officer belonging to Scheduled Castes/Scheduled Tribes.

3. By taking advantage of letter dated 4.7.1987, Dr. Darogi Razak, the then Regional Director, Animal Husbandry, Gaya, made a number of appointments on Class III and Class IV posts without issuing any advertisement or sending requisition to the employment exchange and without making selection of any sort. The respondents were also beneficiaries of the largess doled out by Dr. Darogi Razak in violation of instructions issued by the Chief Secretary and the Animal Husbandry Department. They were appointed as Class IV employees on 9.10.1991 (respondent no.1), 24.10.1991 (respondent no.2) and 27.10.1991 (respondent nos. 3, 4 and 5). Copies of the orders of appointment of the respondents have been placed on record along with affidavit dated 8.9.2008 of Dr. Ram Narayan Singh, Joint Director (HQ), Animal Husbandry, Animal Husbandry and Fisheries Resources Department, Bihar. For the sake of reference, the relevant extracts of English translation of order passed in the case of respondent no.1 - Upendra Narayan Singh are reproduced below:

> "OFFICE OF REGIONAL DIRECTOR, ANIMAL HUSBANDRY, MAGADH RANGE, GAYA ORDER In exercising the power given by letter no.5094 dated

04.07.1987 and letter no.3430 dated 14.12.1977 of Deputy Secretary, Department of Animal Husbandry and Cooperative, the adhoc appointments of the following persons on the class IV posts in the scale Rs.775-12-955-14-1025 are made.

Their services can be terminated without any prior notice.

Health certificate from Civil Surgeon will have to be produced at the time of joining.

No TA/DA is admissible at the time of joining.

Sl.No.	Name and Address	Post
1.	Sri Upendra Narayan Singh S/o Sri Awdhesh Singh Vill + P.O. Kunda Distt Aurangabad	Class IV

Sd/-
Regional Director
Animal Husbandry
Magadh Range, Gaya

Memo no 1467 (CON) Dated 09.10.1991

Copy to Serial no.1 for information."

4. On receipt of complaints that ad hoc appointments had been made in the department for extraneous considerations, Secretary to the Government, Animal Husbandry and Fisheries Department issued circular dated 28.10.1991 whereby instructions contained in letter dated 4.7.1987 were superseded and it was directed that such appointments should be made strictly in accordance with the instructions issued by the Chief Secretary. However, no step appears to have been taken in the matter of illegal/irregular appointments already made, till the issue of letter dated 16.4.1996 by the Secretary of the department to the Director that in view of the institution of criminal case against the then Regional Director, Animal Husbandry, Gaya, payment of salary to those appointed by him should be stopped.

5. On receipt of communication from the Secretary, Director, Animal Husbandry got conducted an inquiry into the appointments made by the then Regional Director, Animal Husbandry, Gaya. In that inquiry, it was found that about 5 dozen appointments were made without sanctioned posts and without following the procedure prescribed vide circular dated 4.7.1987. Thereafter, notices dated 3.5.2001 were issued to the respondents requiring them to show cause against the proposed termination of their services. In their replies, the respondents claimed that the Regional Director had appointed them after due selection and that the enquiry got conducted by the Director, Animal Husbandry cannot be made basis for terminating their services after a gap of almost 10 years. After considering their replies, the competent authority passed orders dated 23.5.2001 terminating the services of the respondents, who challenged the same by filing a petition under Article 226 of the Constitution of India, which was registered as CWJC No. 7816 of 2001. The respondents pleaded that the action taken against them was vitiated due to violation of the rules of natural justice and arbitrary exercise of power because the concerned authority did not give them the effective opportunity of hearing and the instruction contained in memorandum dated 16.4.1996 could not have been applied to their case because they had been appointed prior to cut off date specified therein i.e. 28.10.1991. The appellant herein contested the writ petition by asserting that the services of the writ petitioners were terminated because their initial appointments were illegal.

6. The learned Single Judge relied upon the order passed in CWJC No.5140 of 1998 and quashed the termination of the respondents' services with a direction that they be reinstated with consequential benefits. Letters Patent Appeal No.61 of 2007 filed by the appellant was dismissed by the Division Bench on the ground that similar appeals filed in the cases of Arun Kumar and others and Arjun Chaudhary had already been dismissed. In the opinion of the Division Bench, a different view could not be taken in the case of the respondents because that would give rise to an anomalous situation.

7. Learned counsel for the appellant argued that the High Court committed serious error by ordering reinstatement of the respondents ignoring that their initial appointments were ex facie illegal inasmuch as the concerned authority did not follow any procedure consistent with the doctrine of equality enshrined in Articles 14 and 16 of the Constitution as also the instructions issued by the

Government for making ad hoc appointments. Learned counsel emphasized that even while making ad hoc appointment, the competent authority is required to advertise the posts or at least send requisition to the employment exchange and make selection from amongst the eligible persons, but no such procedure was followed by the then Regional Director, Animal Husbandry, Gaya, before appointing the respondents. Shri Nagendra Rai, learned senior counsel appearing for the respondents submitted that the directions given for reinstatement of his clients may not be disturbed because other similarly situated persons have already been reinstated pursuant to the directions given by the High Court. To buttress this submission, the learned senior counsel invited the Court's attention to the orders passed in CWJC No.13328/1992 - Rangosh Sharma and others v. State of Bihar, CWJC No.15571/2001 - Arjun Choudhary v. State of Bihar and others, CWJC No.6554/2000 - Birendra Kumar Singh v. State of Bihar and others, LPA No.325/2000 - State of Bihar and others v. Arun Kumar and others and LPA No. 47/2006 - State of Bihar and others v. Arjun Choudhary. Shri Rai then referred to the averments contained in paragraph 4 of the counter-affidavit to the Special Leave Petition to show that services of the respondents were regularized in 1992 and argued that the concerned authority illegally terminated their services by assuming that they were ad hoc appointees.

8. We have given serious thought to the entire matter and also gone through the statement furnished by learned counsel for the appellant during the course of arguments. Equality of opportunity to all irrespective of their caste, colour, creed, race, religion and place of birth which constitutes one of the core values of the Universal Declaration of Human Rights also forms part of preamble to the Constitution of India, which reads as under:-

> "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:
>
> JUSTICE, social, economic and political;
>
> LIBERTY of thought, expression, belief, faith and worship;
>
> EQUALITY of status and of opportunity;
>
> and to promote among them all;
>
> FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
>
> IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

9. For achieving various goals set out in the preamble, framers of the Constitution included a set of provisions in Part III with the title "Fundamental Rights" and another set of provisions in Part IV with the title "Directive Principles of State Policy". The provisions contained in Part III of the

Constitution by and large contain negative injunctions against State's interference with the fundamental rights of individuals and group of individuals and also provide for remedy against violation of such rights by direct access to the highest Court of the country. Part IV enumerates State's obligation to make policies and enact laws for ensuring that weaker segments (have nots) of the society are provided with opportunities to come up to a level where they can compete with others (haves).

10. The inclusion of a set of fundamental rights in India's Constitution had its genesis in the forces that operated in the national struggle during British rule. Some essential rights like personal freedom, protection of one's life and limb and of one's good name, derived from the common law and the principles of British jurisprudence, were well accepted and theoretically recognized by various British enactments. By way of illustration, reference can be made to Section 87 of the Charter Act of 1883 wherein it was laid down that no native of the British India shall by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office or employment under the Company. The substance of this provision was incorporated in Section 96 of the Government of India Act, 1915. In the Government of India Act, 1935, the guarantee against discrimination was reiterated and given extended meaning. However, in pre-independence period there was no chapter of fundamental rights of a justiciable nature and even the safeguards provided under various statutes could be taken away by the British Parliament or a legislative authority in India (The Framing of India's Constitution, Vol. II, edited by B. Shiva Rao).

11. The Constituent Assembly which prepared draft of the Constitution extensively debated on the necessity of having a separate chapter relating to fundamental rights. The principle of guaranteeing to every person equality before the law and the equal protection of the laws, was first included in the drafts submitted to the Sub-Committee on Fundamental Rights by Shri K.M. Munshi and Dr. B.R. Ambedkar. After discussing the matter and considering the suggestions made by Shri B.N. Rau, Alladi Krishnaswami Ayyar, Shri K.M. Munshi and others, the final draft of Article 14 was adopted, which now reads as under:

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

The principle of non-discrimination on grounds of religion, race, colour, caste or language in the matter of public employment was contained in the drafts submitted by Shri K.M. Munshi and Dr. B.R. Ambedkar. Shri K.T. Shah and Shri Harnam Singh also incorporated this basic principle in clauses 2 and 8 of their respective drafts. When the Sub-Committee on Fundamental Rights discussed the subject, Shri K.T. Shah pressed his view that the Constitution should guarantee non-discrimination, not only in "public employment" but also in "employment in any enterprise aided or assisted by the State". However, his suggestion was not accepted by the Sub-Committee. The issue was then debated in the context of demand for incorporation of a clause enabling the State to provide for reservation in favour of backward classes, etc. and ultimately the draft was adopted (The Framing of India's Constitution, Vol. II, edited by B. Shiva Rao). Clauses (4A) and (4B) were added to Article 16 by the Constitution (77th Amendment) Act, 1995. Article 16 in its present form reads as

under:

> "16. Equality of opportunity in matters of public employment. -
>
> (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
>
> (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
>
> (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
>
> (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
>
> (4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.
>
> (4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent reservation on total number of that year.
>
> (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

12. In E.P. Royappa v. State of Tamil Nadu and others [(1974) 4 SCC 3], the Constitution Bench negatived the appellant's challenge to his transfer from the post of Chief Secretary of the State to that of Officer on Special Duty. P.N. Bhagwati, J. (as His Lordship then was) speaking for himself,

Y.V. Chandrachud and V.R. Krishna Iyer, JJ. considered the ambit and reach of Articles 14 and 16 and observed :

> "Article 14 is the genus while Article 16 is one of its species. Article 14 declares that the State shall not deny any person equality before the law or equal protection of the laws within the territory of India. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. No citizen shall be ineligible for or discriminated against irrespective of any employment or office under the State on the grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. Though, enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined"

within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

13. The equality clause enshrined in Article 16 mandates that every appointment to public posts or office should be made by open advertisement so as to enable all eligible persons to compete for selection on merit - Umesh Kumar Nagpal v. State of Haryana and others [(1994) 4 SCC 138], Union Public Service Commission v. Girish Jayanti Lal Vaghela [(2006) 2 SCC 482], State of Manipur and others v. Y. Token Singh and others [(2007) 5 SCC 65] and Commissioner, Municipal Corporation, Hyderabad and others v. P. Mary Manoranjani and another [(2008) 2 SCC 758]. Although, the Courts have carved out some exceptions to this rule, for example, compassionate appointment of the dependent of deceased employees, for the purpose of this case it is not necessary to elaborate that aspect.

14. In Girish Jayanti Lal Vaghela's case, this Court, while reversing an order passed by the Central Administrative Tribunal which had directed the Union Public Service Commission to relax the age requirement in the respondent's case, elucidated the meaning of the expression "equality of

opportunity for all citizens in matters relating to public employment" in the following words:

> "Article 16 which finds place in Part III of the Constitution relating to fundamental rights provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. The main object of Article 16 is to create a constitutional right to equality of opportunity and employment in public offices. The words `employment' or `appointment' cover not merely the initial appointment but also other attributes of service like promotion and age of superannuation, etc. The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."

15. For ensuring that equality of opportunity in matters relating to employment becomes a reality for all, Parliament enacted the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short `the 1959 Act'). Section 4 of that Act casts a duty on the employer in every establishment in public sector in the State or a part thereof to notify every vacancy to the employment exchange before filling up the same. In Union of India and others v. N. Hargopal and others [(1987) 3 SCC 308], a two-Judge Bench of this Court considered the question whether persons not sponsored by the employment exchange could be appointed to the existing vacancies. The High Court of Andhra Pradesh had ruled that the provisions of 1959 Act are not applicable to Government establishment; that the Act does not cast duty either on the public sector establishment or on the private sector establishment to make the appointments from among candidates sponsored by the employment exchanges only, and that instructions issued by the Government of India that candidates sponsored by the employment exchanges alone should be appointed are contrary to Articles 14 and 16. This Court referred to Sections 3 and 4 of the 1959 Act, adverted to the reasons enumerated in the counter-affidavit filed on behalf of the Union of India before the High Court to justify the appointments only from among the candidates sponsored by the employment exchange and held:

> "..... The object of recruitment to any service or post is to secure the most suitable person who answers the demands of the requirements of the job. In the case of public employment, it is necessary to eliminate arbitrariness and favouritism and introduce uniformity of standards and orderliness in the matter of employment. There has to be an element of procedural fairness in recruitment. If a public employer chooses to

> receive applications for employment where and when he pleases, and chooses to make appointments as he likes, a grave element of arbitrariness is certainly introduced. This must necessarily be avoided if Articles 14 and 16 have to be given any meaning. We, therefore, consider that insistence on recruitment through Employment Exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. The submission that Employment Exchanges do not reach everywhere applies equally to whatever method of advertising vacancies is adopted. Advertisement in the daily press, for example, is also equally ineffective as it does not reach everyone desiring employment. In the absence of a better method of recruitment, we think that any restriction that employment in government departments should be through the medium of employment exchanges does not offend Articles 14 and

16 of the Constitution."

In Excise Superintendent, Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao and others [(1996) 6 SCC 216], a three-Judge Bench while reiterating that the requisitioning authority/establishment must send intimation to the employment exchange and the latter should sponsor the names of candidates, observed:

> "…. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates."

The same principle was reiterated in Arun Kumar Nayak v. Union of India and others [(2006) 8 SCC 111] in the following words:

> "This Court in Visweshwara Rao, therefore, held that intimation to the employment exchange about the vacancy and candidates sponsored from the employment exchange is mandatory. This Court also held that in addition and consistent with the principle of fair play, justice and equal opportunity, the appropriate department or

> establishment should also call for the names by publication in the newspapers having wider circulation, announcement on radio, television and employment news bulletins and consider all the candidates who have applied. This view was taken to afford equal opportunity to all the eligible candidates in the matter of employment. The rationale behind such direction is also consistent with the sound public policy that wider the opportunity of the notice of vacancy by wider publication in the newspapers, radio, television and employment news bulletin, the better candidates with better qualifications are attracted, so that adequate choices are made available and the best candidates would be selected and appointed to subserve the public interest better."

16. The ratio of the above noted three judgments is that in terms of Section 4 of the 1959 Act, every public employer is duty bound to notify the vacancies to the concerned employment exchange so as to enable it to sponsor the names of eligible candidates and also advertise the same in the newspapers having wider circulation, employment news bulletins, get announcement made on radio and television and consider all eligible candidates whose names may be forwarded by the concerned employment exchange and/or who may apply pursuant to the advertisement published in the newspapers or announcements made on radio/television.

17. Notwithstanding the basic mandate of Article 16 that there shall be equality of opportunity for all citizens in matters relating to employment for appointment to any office under the State, the spoil system which prevailed in America in 17th and 18th centuries has spread its tentacles in various segments of public employment apparatus and a huge illegal employment market has developed in the country adversely affecting the legal and constitutional rights of lakhs of meritorious members of younger generation of the country who are forced to seek intervention of the court and wait for justice for years together. SPOIL SYSTEM - A BIRD'S EYE VIEW:

18. In 17th and 18th centuries a peculiar system of employment prevailed in America. Under that system, leaders of the political party which came to power considered it to be their prerogative to appoint their faithful followers to public offices and remove those who did not support the party. The system was developed in New York and Pennsylvania more than elsewhere, largely because of the existence in those States of a large body of apathetic non-English voters. In New York, the ill-devised council of appointment had much to do with the growth of this system. In the Federal Government, Jefferson implemented this system to a large extent. The prescription of a four year term for various offices considerably increased appointment of political faithfuls to public offices and positions. The politicians who surrounded Jackson brought this system to its full development as an engine of party warfare. Since then it became a regular feature in every administration. The phrase `spoil system' was derived from the statement of Senator W L Marcy of New York, in a speech in the Senate in 1832. Speaking of the New York politicians, he said: `They see nothing wrong in the rule that to the victor belong the spoils of the enemy'. By 1840, the spoil system was widely used in Local, State and Federal governments. As a result of this, America fell far behind other nations in civil service standards of ability and rectitude. When William Henry Harrison became President in 1841, the practice of appointing political followers reached its pinnacle. Between 30,000 and 40,000 office-seekers converged on the capital to scramble for 23,700 jobs which then comprised the federal service. Numerous persons hired through the spoil system were

untrained for their work and indifferent to it. In the early days, government work was simple. However, as government grew, a serious need for qualified workers developed. After Civil War, pressure started building up for reforms in recruitment to civil services. The gross scandals of President Ulysses S. Grant's administration lent credence to the efforts of reformers George W. Curtis, Dorman B. Eaton and Carl Schurz. In 1871, Congress authorized the President to make regulations for appointment to public services and to constitute Civil Service Commission for that purpose. However, this merit system ended in 1875 because the Congress failed to provide funds for the same. Nevertheless, the experiment proved the merit system to be both functional and supportive. President Rutherford B. Hayes was enamored of reform and began to use competitive examinations as a basis for appointments. In 1881, a spurned office-seeker shot and killed President James A. Garfield. His death provoked further public outcry for civil service reform and paved way for passage of a bill introduced by Sen. George H. Pendleton of Ohio. His bill became the Civil Service Act of 1883 and re-established the Civil Service Commission. The Act rendered it unlawful to fill various federal offices by the spoil system. Since then, much has been done to avoid the evils of the system. Federal civil service legislation has been greatly expanded. Many municipalities and states have made training and experience as a condition precedent for appointment to public offices. In the territories of India ruled by Britishers also a large chunk of jobs went to the faithfuls of Britishers who were considered fit for serving British interest.

19. With a view to insulate the public employment apparatus in independent India from the virus of spoil system, the framers of the Constitution not only made equal opportunity in the matter of public employment as an integral part of the fundamental rights guaranteed to every citizen but also enacted a separate part, i.e., Part XIV with the title "Services under the Union and the States". Article 309 which finds place in Chapter I of this part envisages enactment of laws by the Parliament and the State Legislatures for regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Proviso to this Article empowers the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and the Governor of a State or such person as he may direct in the case of services and posts and in connection with the affairs of State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts till the enactment of law by the appropriate legislature. Article 311 which also finds place in the same chapter gives protection to the holders of civil posts against dismissal, removal or reduction in rank by an authority subordinate to the one by which they are appointed. This Article also provides that an order of dismissal, removal or reduction in rank can be passed only after holding an inquiry and giving reasonable opportunity of hearing to the affected person. The provisions contained in Chapter II of Part XIV relate to Public Service Commissions. Article 315 mandates that there shall be a Public Service Commission for the Union and a Public Service Commission for each State. Article 320(1) casts a duty on the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the State respectively. Clause 3 of Article 320 makes consultation with Union Public Service Commission, or the State Public Service Commission, as the case may be mandatory on all matters relating to methods of recruitment to civil services and for civil posts, on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or

transfers, on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters, on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State, on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award. This clause also casts a duty on the Public Service Commissions to advise on any matter referred to them by the President or the Governor.

20. However, the hope and expectation of the framers of the Constitution that after independence every citizen will get equal opportunity in the matter of employment or appointment to any office under the State and members of civil services would remain committed to the Constitution and honestly serve the people of this country have been belied by what has actually happened in last four decades. The Public Service Commissions which have been given the status of Constitutional Authorities and which are supposed to be totally independent and impartial while discharging their function in terms of Article 320 have become victims of spoil system. In the beginning, people with the distinction in different fields of administration and social life were appointed as Chairman and members of the Public Service Commissions but with the passage of time appointment to these high offices became personal prerogatives of the political head of the Government and men with questionable background have been appointed to these coveted positions. Such appointees have, instead of making selections for appointment to higher echelons of services on merit, indulged in exhibition of faithfulness to their mentors totally unmindful of their Constitutional responsibility. This is one of several reasons why most meritorious in the academics opt for private employment and ventures. The scenario is worst when it comes to appointment to lower strata of the civil services. Those who have been bestowed with the power to make appointment on Class III and Class IV posts have by and large misused and abused the same by violating relevant rules and instructions and have indulged in favouritism and nepotism with impunity resulting in total negation of the equality clause enshrined in Article 16 of the Constitution. Thousands of cases have been filed in the Courts by aggrieved persons with the complaints that appointment to Class III and Class IV posts have been made without issuing any advertisement or sending requisition to the employment exchange as per the requirement of the 1959 Act and those who have links with the party in power or political leaders or who could pull strings in the power corridors get the cake of employment. Cases have also been filed with the complaints that recruitment to the higher strata of civil services made by the Public Service Commissions have been affected by the virus of spoil system in different dimensions and selections have been made for considerations other than merit.

21. Unfortunately, some orders passed by the Courts have also contributed to the spread of spoil system in this country. The judgments of 1980s and early 1990s show that this Court gave expanded meaning to the equality clause enshrined in Articles 14 and 16 and issued directions for treating temporary/ad hoc/daily wage employees at par with regular employees in the matter of payment of

salaries etc. The schemes framed by the Governments and public bodies for regularization of illegally appointed temporary/ad hoc/daily wage/casual employees got approval of the Courts. In some cases, the Courts also directed the State and its instrumentalities/agencies to frame schemes for regularization of the services of such employees. In State of Haryana v. Piara Singh [(1992) 4 SCC 118], this Court reiterated that appointment to the public posts should ordinarily be made by regular recruitment through the prescribed agency and that even where ad hoc or temporary employment is necessitated on account of the exigencies of administration, the candidate should be drawn from the employment exchange and that if no candidate is available or sponsored by the employment exchange, some method consistent with the requirements of Article 14 of the Constitution should be followed by publishing notice in appropriate manner calling for applications and all those who apply in response thereto should be considered fairly, but proceeded to observe that if an ad hoc or temporary employee is continued for a fairly long spell, the authorities are duty bound to consider his case for regularization subject to his fulfilling the conditions of eligibility and the requirement of satisfactory service. The propositions laid down in Piara Singh's case (supra) were followed by almost all High Courts for directing the concerned State Governments and public authorities to regularize the services of ad hoc/temporary/daily wage employees only on the ground that they have continued for a particular length of time. In some cases, the schemes framed for regularization of the services of the backdoor entrants were also approved. As a result of this, beneficiaries of spoil system and corruption garnered substantial share of Class III and Class IV posts and thereby caused irreparable damage to the service structure at the lower levels. Those appointed by backdoor methods or as a result of favoritism, nepotism or corruption do not show any commitment to their duty as public servant. Not only this, majority of them are found to be totally incompetent or inefficient.

22. In Delhi Development Horticulture Employees Union v. Delhi Administration, Delhi and others [(1992) 4 SCC 99], the Court took cognizance of the illegal employment market which has developed in the country and observed:

> "Apart from the fact that the petitioners cannot be directed to be regularised for the reasons given above, we may take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is an Employment Exchange Act which requires recruitment on the basis of registration in the Employment Exchange, it has become a common practice to ignore the Employment Exchange and the persons registered in the Employment Exchanges, and to employ and get employed directly those who are either not registered with the Employment Exchange or who though registered are lower in the long waiting list in the Employment Register. 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 regularization knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularized. 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 backdoor entry in the employment are in need of the particular jobs. Though already employed elsewhere, they join the jobs for better and secured 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 regularization 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."

(emphasis added)

23. In State of U.P. and others v. U.P. State Law Officers Association and others [(1994) 2 SCC 204], this Court examined the correctness of an order passed by Allahabad High Court quashing the termination of the services of 26 law officers and appointment of new law officers. After noticing the provisions of Legal Remembrancer's Manual which regulate appointment of Government counsel in the State of U.P. and the manner in which the respondents were appointed, this Court reversed the order of the High Court and observed:

> "It would be evident from Chapter V of the said Manual that to appoint the Chief Standing Counsel, the Standing Counsel and the Government Advocate, Additional Government Advocate, Deputy Government Advocate and Assistant Government Advocate, the State Government is under no obligation to consult even its Advocate-General much less the Chief Justice or any of the judges of the High Court or to take into consideration, the views of any committee that "may" be constituted for the purpose. The State Government has a discretion. It may or may not ascertain the views of any of them while making the said appointments. Even where it chooses to consult them, their views are not binding on it. 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 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 added]

24. Notwithstanding the critical observations made in Delhi Development Horticulture Employees Union vs. Delhi Administration, Delhi and others (supra) and State of U.P. and others v. U.P. State Law Officers Association and others (supra), illegal employment market continued to grow in the country and those entrusted with the power of making appointment and those who could pull strings in the corridors of power manipulated the system to ensure that their favourites get employment in complete and contemptuous disregard of the equality clause enshrined in Article 16 of the Constitution and Section 4 of the 1959 Act. However, the Courts gradually realized that unwarranted sympathy shown to the progenies of spoil system has eaten into the vitals of service structure of the State and public bodies and this is the reason why relief of reinstatement and/or regularization of service has been denied to illegal appointees/backdoor entrants in large number of cases - Director, Institute of Management Development, U.P. v. Pushpa Srivastava [(1992) 4 SCC 33], Dr. M.A. Haque and others v. Union of India and others [(1993) 2 SCC 213], J & K Public Service Commission and others v. Dr. Narinder Mohan and others [(1994) 2 SCC 630], Dr. Arundhati Ajit Pargaonkar v. State of Maharashtra and others [1994 Suppl. (3) SCC 380], Union of India and others v. Kishan Gopal Vyas [(1996) 7 SCC 134], Union of India v. Moti Lal [(1996) 7 SCC 481], Hindustan Shipyard Ltd. and others v. Dr. P. Sambasiva Rao and others [(1996) 7 SCC 499], State of H.P. v. Suresh Kumar Verma and another [(1996) 7 SCC 562], Dr. Surinder Singh Jamwal and another v. State of J&K and others [(1996) 9 SCC 619], E. Ramakrishnan and others v. State of Kerala and others [(1996) 10 SCC 565], Union of India and others vs. Bishambar Dutt [1996 (11) SCC 341], Union of India and others v. Mahender Singh and others [1997 (1) SCC 245], P. Ravindran and others v. Union Territory of Pondicherry and others [1997 (1) SCC 350], Ashwani Kumar and others v. State of Bihar and others [1997 (2) SCC 1], Santosh Kumar Verma and others v. State of Bihar and others [(1997) 2 SCC 713], State of U.P. and others vs. Ajay Kumar [(1997) 4 SCC 88], Patna University and another v. Dr. Amita Tiwari [(1997) 7 SCC 198] and Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and others [(2005) 5 SCC 122].

25. In A. Umarani v. Registrar, Coop. Societies and others [(2004) 7 SCC 112], a three-Judge Bench held that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularised by the State and that the State cannot invoke its power under Article 162 of the Constitution to regularise such appointments. The Court further held that regularisation is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution or any body or authority governed by a statutory Act or the rules framed thereunder and the fact that some persons had been working for a long time would not mean that they had acquired a right for regularisation.

26. In Secretary, State of Karnataka vs. Uma Devi [2006 (4) SCC 1], the Constitution Bench considered different facets of the issue relating to regularization of services of ad hoc/temporary/daily wage employees and unequivocally ruled that such appointees are not entitled to claim regularization of service as of right. After taking cognizance of large scale irregularities committed in appointment at the lower rungs of the services and noticing several earlier decisions, the Constitution Bench observed:

> "The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over. It is time that the courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The passing of orders for continuance tends to defeat the very constitutional scheme of public employment. It has to be emphasised that this is not the role envisaged for the High Courts in the scheme of things and their wide powers under Article 226 of the Constitution are not intended to be used for the purpose of perpetuating illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment. Its role as the sentinel and as the guardian of equal rights protection should not be forgotten."

> "This Court has also on occasions issued directions which could not be said to be consistent with the constitutional scheme of public employment. Such directions are issued presumably on the basis of equitable considerations or individualisation of justice. The question arises, equity to whom? Equity for the handful of people who have approached the court with a claim, or equity for the teeming millions of this country seeking employment and seeking a fair opportunity for competing for

> employment? When one side of the coin is considered, the other side of the coin has also to be considered and the way open to any court of law or justice, is to adhere to the law as laid down by the Constitution and not to make directions, which at times, even if do not run counter to the constitutional scheme, certainly tend to water down the constitutional requirements. It is this conflict that is reflected in these cases referred to the Constitution Bench."

While repelling the argument based on equity, the Constitution Bench observed:

> ".....But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognised and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for the Courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.
>
> What is sought to be pitted against this approach, is the so-called equity arising out of giving of temporary employment or engagement on daily wages and the continuance of such persons in the engaged work for a certain length of time. Such considerations can have only a limited role to play, when every qualified citizen has a right to apply for appointment, the adoption of the concept of rule of law and the scheme of the Constitution for appointment to posts. It cannot also be forgotten that it is not the role of the courts to ignore, encourage or approve appointments made or engagements given outside the constitutional scheme. In effect, orders based on such sentiments or approach would result in perpetuating illegalities and in the jettisoning of the scheme of public employment adopted by us while adopting the Constitution. The approving of such acts also results in depriving many of their opportunity to compete for public employment. We have, therefore, to consider the question objectively and based on the constitutional and statutory provisions."

[emphasis added] The Constitution Bench then considered whether in exercise of power under Article 226 of the Constitution, the High Court could entertain claim for regularization and/or continuance in service made by those appointed without following the procedure prescribed in the rules or who are beneficiaries of illegal employment market and held:

> "Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the

scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. The High Courts acting under Article 226 of the Constitution, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because an employee had continued under cover of an order of the court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

It is contended that the State action in not regularising the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the manner we have indicated earlier. In most of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to be enforced. Considered in the light of the very clear

constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 14 and 16 of the Constitution.

The argument that the right to life protected by Article 21 of the Constitution would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the backdoor. The obligation cast on the State under Article 39(a) of the Constitution is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognise that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognised by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualising justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The directive principles of State policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution."

27. In the light of above, we shall now consider whether the High Court was justified in directing reinstatement of the respondents with consequential benefits. In the writ petition filed by them, the respondents herein made a bald assertion that they were appointed by the competent authority after following the prescribed procedure and pleaded that their services could not have been terminated in the garb of implementing the policy contained in letter dated 16.4.1996 overlooking the fact that they had been appointed prior to the cut off date, i.e., 28.10.1991 and the fact that they had continuously worked for almost 10 years. On behalf of the appellants herein, it was submitted that the writ petitioners should not be granted any relief because their initial appointments were per se illegal inasmuch as the concerned Regional Director had neither advertised the posts nor any requisition was sent to the employment exchange and there was no consideration of the competing claims of eligible persons.

28. In view of the contradictory assertions made by the parties on the issue of legality of the respondents' initial appointment, the minimum which the learned Single Judge should have done was to call upon the respondents to produce copies of the advertisement issued by the competent authority and/or requisition sent to the employment exchange and letters of interview, if any, issued

to them to prove that they were appointed by following a fair procedure and after considering the claims of all eligible persons. However, without making any endeavour to find out whether the appointments of the respondents were made after following some procedure consistent with the doctrine of equality, the learned Single Judge quashed the termination of their services simply by relying upon the order passed in another case and by observing that the writ petitioners (respondents herein) had been appointed before the cut off date i.e. 28.10.1991 specified in letter dated 16.4.1996 and they had worked for almost 10 years.

29. In the Letters Patent Appeal filed by them, the appellants reiterated that the respondents had been appointed without following any procedure and without any selection. They also contended that even though vacant posts were not available, the then Regional Director, Gaya made large number of illegal appointments and this fact was established in the enquiry got conducted by the department. However, the Division Bench did not deal with the issues raised in the appeal and dismissed the same by making reference to the orders passed in LPA No.325/2000, Civil Review No.279/2000 and LPA No.47/2005 and observing that taking different view in the case of the respondents could lead to an anomalous position inasmuch as some persons would get back into service on the strength of the court's order while others will be thrown out.

30. At the hearing of this appeal, we asked the learned senior counsel appearing for the respondents to show that before appointing his clients on ad hoc basis, the then Regional Director, Gaya had issued an advertisement and/or sent requisition to the employment exchange and made selection after considering competing claims of the eligible candidates but he could not draw our attention to any document from which it could be inferred that the respondents were appointed after advertising the posts or by adopting some other method which could enable other eligible persons to at least apply for being considered for appointment. He, however, submitted that issue relating to legality of the initial appointments of the respondents has become purely academic and this Court need not go into the same because their services had been regularised by the competent authority in 1992.

31. In our opinion, there is no merit in the submission of the learned senior counsel. If the initial appointments of the respondents are found to be illegal per se, the direction given by the High Court for their reinstatement with consequential benefits cannot be approved by relying upon the so-called regularization of their services. Had the respondents been appointed by the competent authority after issuing an advertisement or sending requisition to the employment exchange so as to enable the latter to sponsor the names of eligible persons then they would have certainly produced the relevant documents before the High Court or at least before this Court. However, the fact of the matter is that none of the documents which could give a semblance of legitimacy to the appointments of the respondents was produced before the High Court and none has been produced before this Court. The report of enquiry held against Dr. Darogi Razak, the then Regional Director, Gaya (a copy of the report has been placed before this Court in the form of additional document) bears ample testimony of manipulations made by the officer in making appointment on Class III and Class IV posts. So much so, with a view to remove every trace of the illegality committed by him, Dr. Darogi Razak ensured disappearance of all the papers relating to appointment from his office. A reading of the enquiry report shows that in all the following five charges were leveled against Dr. Darogi Razak:

"Charge No.1: You while working as Regional Director, Animal Husbandry, Gaya had made irregular appointments of 61 persons on 23 Class-3 posts and 61 Class-4 posts. As such, the State Funds were misused/wasted on salary, allowances, etc. of the personnel appointed irregularly.

Charge No.2: You while working as Regional Director, Animal Husbandry, Gaya, made appointments on Sate Level posts (such as Milk Recorder (Dugadh Abhilekhak), Poultry Attendant (Kukkoot Sahayak), Statistics Teller (Sankhiyaki Ganak), Progress Assistant (Pragati Sahayak, etc.) whereas Regional Directors had no power to make such appointments. Director, Animal Husbandy is only competent to make appointments to such posts.

Charge No.3: You adopted the practice of appointment of four or less than four persons at one go for which it is not necessary to give advertisement in the newspapers, but as per Roster, requisition to call for names from Employment Exchange is mandatory. However, you have not complied with this rule.

Charge No.4: You also appointed persons in excess of sanctioned strength.

Charge No.5: The relevant records regarding appointments are not available in the office. In this connection, this fact has come to notice that these records have been removed/misplaced at your level."

The Officer who conducted the enquiry considered the documents produced by the departmental representative and the charged officer, arguments advanced by them, analyzed the entire evidence and concluded that charge No. 1 is partly proved, charges No. 2 and 3 are fully proved, charge No. 4 is not proved and charge No. 5 is partly proved. The analysis of charges No. 1 to 3 and charge No. 5 made by the Inquiry Officer is worth noticing. The same reads as under:

"Charges No. 1 to 3:- In the analyses of three charges under consideration, firstly it was seen that how much proof has been made available by the department regarding appointments made by the charged officer. As has been shown in detail under heading `evidence' hereinabove, number of appointment letters issued by the charged officers comes near around 54 and it may vary by two three less or more. Practical problems were faced in working out exact number of appointment letters because many appointment letters were not readable to such extent that no clear conclusion could be arrived at as to whether this is second copy of some other appointment letter or it contain any other order. These appointment letters were casually perused. Some important facts emerged from such perusal. The details of appointment letters issued with No.M.Camp were found as under:

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S. No.	Letter No.	Date	Name of person	Category

			appointed	
1.	14/M. Camp, Nabada	9.5.89	Raj Kumar Rajak	Class-4
2.	12/M. Camp, Nabada	9.5.89	Ashok Kumar Rajak	Class-4
3.	15/M. Camp, Nabada	9.5.89	Illeg.	Class-4
4.	21/M. Camp, Nabada	3.5.90	Sunil Prasad	Class-4
5.	16/M. Camp, Nabada	19.3.90	Kailash Rajak	Class-4
6.	95/Camp, Jahanabad	26.5.90	Onkar Kumar Singh	Class-4
7.	266/Camp, Aurangabad	17.2.90	Arun Kumar Singh	Class-4

The following appointment letters have been issued with Issue No."Con.", which is normally used for confidential correspondence, and use of the same in normal course in the office is not desired in the interest of work. Using such issue No. for appointment letter has practically no justification.

1. 3/Con. 30.4.91 Raj Kishore Gupta Class-4

2. 5/Con. 10.6.91 Madhuri Ram Class-4

3. 26/Con. 27.10.91 Shyam Pyare Singh Class-4

4. 25/Con. 27.10.91 Upender KumarClass-4 Singh Prasannjeet Kumar Singh

5. 22/Con. 27.10.91 Sanjay Kumar Singh Class-4

6. 16/Con. 25.10.91 Satrughan Sah Class-4 Sahender Prasad Singh

7. 15/Con. 24.10.91 Ramji Ravi Das Class-4 Anil Kumar Singh

8. 6/Con. 2.7.91 Raj Kishore Singh Class-4

9. 8/Con. 19.12.90 Ram Pyare Singh lass-4 C

10. 7/Con. 10.12.90 Ram Bachan Singh Class-4 Pawan Kumar

11. 11/Con. 1.2.89 Ganesh Rajak Class-3

12. 13/Con. 2.2.89 Ajay Prakash Diwakar

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Appointment letter not made available but this appointment has been referred to in a letter No.28/Con. Dated illeg. August, 89 issued by charged officer.

13. 3/Con. 12.2.92 Vinah Sharma Class-3

14. 18/Con. 26.10.91 Virender Kumar Singh Class-4 Pawan Kumar

15. 8/Con. 25.10.91 Bodh Narain Singh Class-4

16. 8/Con. 11.10.88 Narain Tiwari Class-4

17. 14/Con. 7.4.89 Uma Shankar Sharma Class-4

18. 2/Con. 30.4.91 Leela Kumari Class-3

19. 10/Con. 23.10.91 Vijender Mandal lass-3 C

20. 5/Con. 9.11.90 Ajay Kumar Class-4

21. 11/Con. 23.10.91 Lakhan Lal Mandal Class-3

22. 2/Con. 23.01.92 Pawan Kumar Class-3

23. 9/Con. 2.11.88 Brij Kishore Singh Class-3

24. 20/Con. 31.5.89 Ravinder Sharma Class-4 Following appointment letters were found which have been issued putting both i.e. "Con." And "Camp":-

1. 7/Con./Camp- 21.8.90 Raghvendra Narain Class-4 Sadar, Gaya Vijay Kumar Class-4

2. 3/Con./Camp- 3.1.90 Pandey Class-4 Sadar, Gaya Amar Kumar

3. 6/Con./Camp- 3.8.90 Mithlesh KumarClass-4 Suman Sadar,Gaya Ashok Kumar Abhay Class-4

4. 8/Con./Camp- 2.9.90 Mahender Kumar Yadav Class-4 Sadar, Gaya Pankaj Kumar Class-4 In the following appointment letters, there does not appear any relation between Issue Nos. and Date, for example, Issue No. like 1,2,3 have been put in ninth and tenth month of the year:-

1. 1 18.9.91 Anand Class-4 Mohan Singh

2. 2 18.9.91 Gaya Prasad Class-4

3. 3 22.10.91 Sudama Class-4 Singh The specific feature of all the above seven appointment letters is that in all these the charged officer has this or that way ordered to one Clerk of Sadar, Gaya named Shri Avadesh Prasad that issue these from the Confidential Issue Register of Sub Divisional Animal Husbandry Officer, Sadar, Gaya. There is strong possibility arises from this that naturally no one was interested to issue such letters otherwise such a senior officer would have not faced such a situation of giving such written order to a clerk only for issue of letters.

The importance of above letters is more clear on perusal of some of the remaining letters because as an exception, some letters have also been issued with Nos. as given below:-

1. 423 Illeg. 1. Illeg. Class-3

2. Illeg. Class-3

2. 978 4.7.91 Girija Yadav Class-3

3. 913 Illeg. Jan Vikas Kumar Class-3 Chaudhary

4. 1616 15.11.91 Mahender Prasad Class-4 Singh

5. 1467 9.10.91 Upender Narain Class-4 Singh

6. 1432 1.10.91 Sunil Kumar Class-4 Bharat Kumar Singh Class-4

7. 221 28.6.89 Munender Class-4 Kumar Bharti

8. 1365 11.9.91 Megh Nath Sah Class-4 It remains a matter of surprise that when some letters could be shown to have been issued from office in a normal routine manner, then what is the need of issuing other appointment letters in huge numbers by sometime putting "Confidential", sometime putting "Mukhya (Hq.)" and sometime putting "Camp" and sometime by both "Camp" and "Confidential" contradictory and un-matched Nos. No satisfactory reply to this is found anywhere during the course of hearing.

In some cases, it also appears to be very unnatural that charged officer was Regional Director and his headquarter was also Gaya but showing office of Animal Husbandry Officer of Sadar Sub. Division, Gaya as "Camp", letters were got issued from there. Any need of getting issued letters using "Camp" is not understandable. When the office of charged officer was itself in Gaya, and when any letter whatsoever was to be got issued, there would have been no difficulty for him to get it issued from his own office itself. Merely for the reason that he is not sitting in Officer chamber and in fact is present in the officer of Sub Divisional Animal Husbandry Officer, justification of issue of letter from camp is difficult to understand.

Regarding letters issued from "Camp", this is also another issue for consideration that such letters are normally issued under such circumstances wherein it is necessary to issue the letter immediately. Any such emergent situation could not have been in appointment like matters. There is no reason to think that if charged officer had got the appointment letter issued even after returning to his office, the work would have suffered immensely. Nature of letters is not such that the subject matter could be considered to be fit for issue from "camp".

It can also be easily understood with regard to letters issued by putting different Issue Nos. that for some reasons the charged officer had considered it not proper to allow those letters pass through many hands in the office, hence separate Serial No. used for getting those issued. Even on seeing the available Nos. it is clear that no other particular correspondence used to be done by using this "Con." Issue Register from which only these appointment letters have been issued, because Issue Nos. are of very less units/digits. In very few instances/examples, the No. has come in double digit. A question mark arises on Year-wise maintenance of such Register - which is natural.

Now this question also arises that had charged officer had taken all the actions as per rules, then why such situation cropped up that unnatural Issue Nos. had to be put on the appointment letters which are generally used for keeping those letters out of the sight of office. Charged Officer even otherwise has been merely giving his statement regarding following procedure of appointment that he had done such and such. During the course of following procedure, many records and correspondence/files are created/originated such as calling for information of vacancies, taking decision on the requirement for appointments, preparing reservation roster and maintenance of the same in the Roster Register, classification of available appointments as per Roster, notifying the vacancies to the employment exchange or newspapers, inviting applications, following procedure for registration of applications, thereafter examination of applications as per qualifications, holding meetings of Selection Committee, issue of minutes and issue of appointment letters after completion of work. All these documents going missing appear to be impossible. By merely saying that he followed procedure does not become clear proof that he had done so. In fact, contrary position appears to be more reliable from the statements given by his successors and officials of his office. There are sufficient grounds to hold that the charged officer has not followed the procedure in appointment.

Charge No. (5): - Here position is not such in which any file related to appointment was ever seen by anyone. No one has made such admission in his statement. The appointment letters issued by the charged officer himself do not bear any File No. It is correct for the charged officer to state that it is the duty of the office and concerned clerk to maintain File Record Register etc. If charged officer take shelter of this technical argument, then he shall also be bound to take this responsibility that he should have seen that other files submitted to him with other documents related to appointment bear file No. and that at the time of issuing fair copy of letters, File Nos. are mentioned on the letters issued from that file. Normally, an officer who depends and rely on such defence is also supposed to take much more care and vigil.

During the course of analyses under charge No.1 to 3, many such letters have been referred in which some unnatural type of Issue Nos. have been given. There are number of such letters on which Issue

No. "Con." has been given. The charged officer cannot naturally put liability on his office for whatever file maintained for issue of such letters. This question is altogether different that why letters were got issued by putting Issue No. "Con." treating the subject like appointment as confidential.

The argument of charged officer in defence also does not clear this fact that why many appointment letters had been issued with Issue Nos."Camp". As charged officer states - Files were maintained and office is responsible for safe "custody" of the same, then it is difficult to understand this fact that how the letters issued with No."Camp" had come in the files maintained by the office. If came, then how office can be responsible for this.

> "Camp" are also of different types. "Camp" order has been got issued from Gaya itself by sitting from Sadar Sub Divisional Office and for this purpose some clerk has also been given written order. Such papers do not have any concern with maintenance of file. Some "Camp" orders have also been issued from Nabada- Aurangabad and other places also. Which file could be submitted before him at those places on which letter had been issued from Nabada or Aurangabad itself and responsibility of the same was of the office of Regional Director, Gaya - it is also difficult to understand.
>
> As such, the explanation of charged officer is totally one sided. The matter is not confined to Issue No. only. When the charged officer in his defence claim of completing all the formalities, then all such actions such as assessing the vacancies, calling names from employment exchange or giving advertisement, making list of candidates, following selection process for the same, holding meeting of committee and preparing minutes and getting it approved are required to be taken. It is also difficult to accept that all such documents had gone missing at the same time. Merely by saying that safe custody of records was the responsibility of the office is neither complete in itself but credibility of this statement also suffers in view of nature of letters issued.
>
> Now question arises is that whether charged officer had removed the files/records of appointments made during his tenure or had taken away by him or somehow destroyed these records. All these three possibilities arise only when such records had been maintained. The type of appointment letters shown from which the fourth possibility also arises that no record has at all been maintained anywhere. As such, there is also no need to remove or take away any document. It is merely a possibility for which charged officer would have needed cooperation and participation of other persons to whom employees were being sent after appointment.
>
> It is not possible to finally decide from the evidences produced in this departmental inquiry that out of above three or fourth possibilities, which one is correct. One thing is though clear that charged officer had not left any of the papers related to appointment in his office and the manner in which he adopted the working system of appointments, this strong possibility arises that even if documents were maintained,

these were not maintained at office level. In such a case, the charged officer shall himself be responsible for non-availability of documents, irrespective of following the method of removing those documents or not maintaining any documents. As such, this charge is held to be proved to this extent."

[emphasis added]

32. The so-called regularization of the services of the respondents on which heavy reliance was placed by the learned senior counsel appearing on their behalf in the context of averments contained in paragraph 4 of the counter affidavit filed before this Court by Shri Prasannjeet Kumar Singh (respondent no.3 herein) is a proof of nepotism practiced by the officer and deserves to be ignored. For the reasons best known to them, the respondents have not produced copy of the order by which their services were regularised. Perhaps none exists. The statement furnished by counsel for the appellant, which is accompanied by documents marked `A' and `B', shows that in less than 7 months of the respondents appointment (except respondent no.1 who is said to have been appointed with effect from 9.10.1991), Dr. Darogi Razak is said to have written confidential memorandum bearing no.20 dated 11.5.1992 (Annexure `A') to District Animal Husbandry Officer, Aurongabad, Gaya that ad hoc appointments made vide Memorandum No.1467 dated 9.10.1991 are being regularized temporarily by the local appointments committee constituted on 11.5.1992. What is most amazing to notice is that the local appointments committee was constituted on 11.5.1992, the committee met on the same day and regularised the ad hoc appointments and on that very day the Regional Director sent confidential letter to his subordinate, i.e., the District Animal Husbandry Officer informing him about the regularization of ad hoc appointments. No rule or policy has been brought to our notice which empowers the appointing authority to regularize ad hoc appointments within a period of less than 7 months. Therefore, we have no hesitation to hold that the exercise undertaken by Dr. Darogi Razak for showing that appointments of the respondents were regularized by the local appointments committee on 11.5.1992 was a farce.

33. In view of the above discussion, we hold that the initial appointments of the respondents were made in gross violation of the doctrine of equality enshrined in Articles 14 and 16 and the provisions of the 1959 Act and the learned Single Judge gravely erred by directing their reinstatement with consequential benefits.

34. The issue which remains to be considered is whether the Division Bench of the High Court was justified in refusing to examine legality and legitimacy of the initial appointments of the respondents only on the ground that the State had not challenged the dismissal of Letters Patent Appeals filed in other cases. In our view, the approach adopted by the Division Bench was clearly erroneous. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity or illegality or for passing wrong order - Chandigarh Administration and another v. Jagjit Singh and another [(1995) 1 SCC 745], Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain and others [(1997) 1 SCC 35], Union of India

[Railway Board] and others v. J.V. Subhaiah and others [(1996) 2 SCC 258], Gursharan Singh v. New Delhi Municipal Committee [(1996) 2 SCC 459], State of Haryana v. Ram Kumar Mann [(1997) 1 SCC 35], Faridabad CT Scan Centre v. D.G. Health Services and others [(1997) 7 SCC 752], Style (Dress Land) v. Union Territory, Chandigarh and another [(1999) 7 SCC 89] and State of Bihar and others v. Kameshwar Prasad Singh and another [(2000) 9 SCC 94], Union of India and another v. International Trading Co. and another [(2003) 5 SCC 437] and Directorate of Film Festivals and others v. Gaurav Ashwin Jain and others [(2007) 4 SCC 737] .

35. The facts of Jagjit Singh's case were that the respondents who had given the highest bid for 338 square yards plot in Sector 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court which was allowed only on the ground that in another case pertaining to Smt. Prakash Rani, Administrator had restored the plot even after her writ petition was dismissed by the High Court. While reversing the order of the High Court, this Court observed:

> "Generally speaking, the mere fact that the respondent Authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent Authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent Authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law--indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law--but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent Authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal

> order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course--barring exceptional situations--would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles."

In Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain (supra) this Court held:

> "The illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor the Court can countenance that benefit had from infraction of law and must be allowed to be retained. One illegality cannot be compounded by permitting similar illegal or illegitimate or ultra vires acts."

In Union of India [Railway Board] and others v. J.V. Subhaiah and others (supra), a three-Judge Bench held as under:

> "The principle of equality enshrined under Article 14 of the Constitution, as contended for the respondents, does not apply since we have already held that the order of the CAT, Madras Bench is clearly unsustainable in law and illegal which can never form basis to hold that the other employees are invidiously discriminated offending Article 14. The employees covered by the order of the Madras Bench may

> be dealt with by the Railway Administration appropriately but that could not form foundation to plead discrimination violating Article 14 of the Constitution."

In Gursharan Singh v. New Delhi Municipal Committee (supra), this Court declined to invoke Article 14 of the Constitution for giving relief to the appellant and observed:

> "There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court, that the same irregularity or illegality be committed by the State ... so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

In Faridabad CT. Scan Centre v. D.G. Health Services (supra), a three-Judge Bench overruled the earlier decision of a two Judge Bench in Mediwell Hospital & Health Care (P) Ltd. v. Union of India and others [(1997) 1 SCC 759] and held:

> "Article 14 cannot be invoked in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and that, therefore, there will be discrimination against others if correct orders are passed against them. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others."

The above principles were extended to the judgment of the Court in State of Bihar v. Kameshwar Prasad Singh (supra) wherein this Court held as under:

> "The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or

> group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits."

[emphasis added] In State of Haryana v. Ram Kumar Mann (supra), this Court ruled that the High Court was not right in issuing a mandamus to the State to allow the petitioner to withdraw his resignation merely because in another case such a course as adopted. Some of the observations made in that case, which are quite instructive, are extracted below:

> "The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously `No'. In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right."

In Union of India v. International Trading Co. (supra), the Court reiterated that Article 14 does not comprehend negative equality and observed:

> "What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned counsel for the appellants, even if it is accepted that there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect because two wrongs do not make one right.
>
> A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring

> both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."

In Directorate of Film Festivals and others v. Gaurav Ashwin Jain and others (supra), a two-Judge Bench, after making a reference to the judgments in Jagjit Singh's case and Gursharan Singh's case, observed:

> "When a grievance of discrimination is made, the High Court cannot just examine whether someone similarly situated has been granted a relief or benefit and then automatically direct grant of such relief or benefit to the person aggrieved. The High Court has to first examine whether the petitioner who has approached the court has established a right, entitling him to the relief sought on the facts and circumstances of the case. In the context of such examination, the fact that some others, who are similarly situated, have been granted relief which the petitioner is seeking, may be of some relevance. But where in law, a writ petitioner has not established a right or is not entitled to relief, the fact that a similarly situated person has been illegally granted relief, is not a ground to direct similar relief to him. That would be enforcing a negative equality by perpetuation of an illegality which is impermissible in law."

36. In view of the above stated legal position, the order passed by the Division Bench dismissing the Letters Patent Appeal cannot be sustained.

37. In the result, the appeal is allowed, the orders of the learned Single Judge and Division Bench are set aside and the writ petition filed by the respondents is dismissed.

.....J. [MARKANDEY KATJU] .....J. [G.S. SINGHVI] New Delhi, March 20, 2009.