

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A. No. 62/6110/2020



Pronounced on: This the 28th day of July 2021

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. ANAND MATHUR, MEMBER (A)

1. Gowhar Ahmad Bhat, Aged 35 Years
S/o Abdul Rehman Bhat
R/o Nowgam, Anantnag
2. Naseer Ahmad Khan, Aged 36 Years
S/o Ghulam Mohammad Khan
R/o Syed Hamidpora Nawa Bazar, Srinagar
3. Shafil Irfan Shah, Aged 37 Years
S/o Mohd Shareef Shah
R/o Wasoor, Pulwama
4. Muzaffar Ahmad Mir, Aged 35 Years
S/o Sona Ullah Mir
R/o Haribala, Kupwara
5. Feroz Ahmad Khanday, Aged 36 Years
S/o Mohammad Akbar Khanday
R/o Amlar Tral, Pulwama
6. Shamid Mushtaq Kar, Aged 35 years
S/o Mushtaq Ahmad Kar
R/o Sagam Kokernag, Anantnag
7. Imtiyaz Shaban Lone, Aged 36 Years

S/o Mohammad Shaban Lone
R/o Manigam, Ganderbal



8. Farooq Zabi-Ullah, Aged 36 Years
S/o Itrat Rasool Nazki
R/o Mander, Bandipora
9. Tariq Maqbool Lone Aged 35 Years
S/o Mohammad Maqbool Lone
R/o Bandipora
10. Farooq Ahmad Itoo, Aged 36 years
S/o Ghulam Mohammad Itoo
R/o Harditura, Anantnag
11. Bilal Ahmad Yatoo, Aged 35 Years
S/o. Gul Mohammad Yatoo
R/o. Mandole, Kulgam
12. Mohammad Shafi Pir, Aged 37 years
S/o Abdul Khaliq Pir
R/o Dedikoote, Kupwara
13. Mehraj-ud-din Parra, Aged 36 years
S/o Ghulam Mohammad Parra
R/o Kunjar, Ganderbal
14. Ishfaq Ahmad Ganai, Aged 35 years
S/o Mohamamd Sidiq Ganai
R/o Pattan, Baramulla
15. Javid Ahmad Mir, Ageo 36 Years
S/o Abdul Hamid Mir
R/o Wasoom, Pulwama
16. Zahoor Ahmad Shah, Aged 37 years
S/o Mohammad Shafi Shah
R/o Saida Kadal, Srinagar



17. Nissar Ahmad Bhat, Aged 37 years
S/o Mohammad Akram Bhat
R/o Pathan, Pulwama
18. Tasaduq Saleem Dar. Aged 37 Years
S/o Mohammad Ramzan Dar
R/o Achan, Pulwama
19. Mohammad Shafi Dar, Aged 37 Years
S/o Abdul Rehman Dar
R/o Dangerpora, Pulwama
20. Mehraj-ud-Din Bhat, Aged 36 Years
S/o Ghulam Nabi Bhat
R/o Ushkara, Baramulla
21. Javeed Ahmad Lone, Aged 36 Years
S/o Mohammad Akbar Lone
R/o Ushkara, Baramulla
22. Ajay Paul Parihar, Aged 37 years
S/o Tej Ram Parihar
R/o Tondwah, Doda
23. Rajinder Singh, Aged 36 years
S/o Zaffer Singh
R/o Pernote Thathri, Doda
24. Sudarshan Singh , Aged 36 years
S/o Sandhur Singh
R/o Pernote Thathri, Doda
25. Sunil Dutt, Aged 36 years
S/o Amir Chand
R/o Mela Hiranagar, Kathua
26. Shahnawaz, Aged 35 years
S/o Ayoub Shah
R/o Dodsan Balla, Rajouri



.....Applicants
(Advocate: Mr. Jahangir Ganai, Sr. Advocate assisted by Mr. Irfan, advocate
for applicants)

Versus

1. State of Jammu & Kashmir through Chief Secretary to Government
Civil Secretariat, Srinagar/Jammu
2. Principal Secretary to Government Home Department, Civil
Secretariat, Srinagar/Jammu.
3. Director General of Police, J&K Srinagar
4. Umar Jan Beigh
S/o Habibullah Beigh
R/o Devi Angan Hariparbat Srinagar
5. Irfan Ahmad Mir
S/o Late Ghulam Nabi Mir
R/o Malik Sahab Gojwara, Srinagar
6. Tanvir Ahmad Qureshi
S/o Fayaz Ahmad Qureshi
R/o Allochibagh, Shallapora, Srinagar
7. Shabir Ahmad Ganai,
S/o Abdul Ahad
R/o Gupt Ganga Ishber, Nishat, Srinagar
8. Bila Ahmad Bhat
S/o Ghulam Mohammad Bhat
R/o Tilwani Mohalla, Harwan, Srinagar
9. Basharat Ahmad Mir
S/o Ghulam Mohammad Mir
R/o Upper Brian, Nishat



10. Uzair Bashir
S/o Bashir Ahmad Najar
R/o Solina Payee, Srinagar
11. Zahoor Ahmad Bhat
S/o Nasir Ahmad Bhat
R/o Pati Brein, Srinagar
12. Ramiz Raja,
S/o Late Ali Mohammad Hajam
R/o Magarmal Bagh, Srinagar
13. Jasbir Singh,
S/o Harcharan Singh
R/o Tulsi Bagh, Srinagar
14. Dilber Mohammad Saleem,
S/o Abdul Samad Sofi
R/o Malabagh, Srinagar
15. Nahid Ahmad Dar,
S/o Shabir Ahmad Dar
R/o Basant Bagh, Srinagar
16. Adiel Hassan Mir,
S/o Ghulam Hassan Mir
R/o Sadoora Dooru, Anantnag
17. Sajad Ahmad Bhat,
S/o Ghulam Mustafa Bhat
R/o Arwani, Bijbehara, Anantnag



18. Bilal Ahmad Khan
S/o Mushtaq Ahmad Khan
R/o Hamandi Liver Pahalgam Anantnag
19. Abid Hussain Bhat,
S/o Abdul Hamid Bhat
R/o Tailwani, Anantnag
20. Syed Faheem Hussain
S/o Syed Mohammad Farooq
R/o Sagam, Anantnag,
21. Shakil Abdullah Shah
S/o Syed Mohammad Farooq Abdullah
R/o Ganoora, Anantnag
22. Mohammad Asif Bhat
S/o Ghulam Nabi Bhat
R/o Hugam, Anantnag
23. Mudasir Ahmad Wani,
S/o Ghulam Nabi Wani
R/o Shangus, Anantnag
24. Mohammad Hussain Ganai
S/o Assadullah Ganai
R/o Tellwani, Anantnag
25. Muzaffar Ahmad Bhat
S/o Mohammad Anwar Bhat
R/o Honomanpora, Anantnag
26. Aabid Hussain Bhat
, S/o Ghulam Rasool Bhat

R/o Shangus, Anantnag



27. Peerzada Murtaza Ahmad,
S/o Peerzada Sonaullah
R/o Nanil Anantnag
28. Muzaffar Ahmad Chopan
S/o Mohammad Sultan Chopan
R/o Lalan, Anantnag
29. Shabir Ahmad Sheikh,
S/o Nazir Ahmad
R/o Kokagund, Dooru, Anantnag
30. Showkat Ahmad Rather
S/o Habib Rather
R/o Lousi Seer Pahalgam, Anantnag
31. Mohammad Rafi Khan,
S/o Gh. Rasool Khan
R/o Lousi Seer Pahalgam, Anantnag
32. Bilal Ahmad Naik
S/o Mohammad Ayoub Naik
R/o Asnoor, Kulgam
33. Sajad Ahmad Dar
S/o. Mohammad Ramzan Dar
R/o Checkpora Kulgam
34. Usman Yousuf Wani
S/o Mohd Yousuf Wani
R/o Yamrach, Kulgam



35. Bilal Bashir
S/o Bashir Ahmad Mir
R/o Chansar, Kulgam
36. Asif Mohi-ud-Din Tak
S/o Gh Mohi-ud-din Tak
R/o Yaripora, Kulgam
37. Hilala Ayoub Shah
S/o Mohd Ayoub Shah
R/o Balsoo, Kulgam
38. Mohammad Amin Bhat
S/o Mohd Ismail Bhat
R/o Qaimoh, Kulgam
39. Shabir Ahmad Bhat
S/o Mohd Afzal Bhat
R/o Yamrach, Kulgam
40. Arshid Abbas Mir
S/o Gh Mohd Mir
R/o Zangalpora, Kulgam
41. Parvaiz Ahmad Lone
S/o Gh Mohd Lone
R/o Bogund, Kulgam
42. Aijaz Hussain Mir,
S/o Nazir Ahmad
R/o Bumthan, Kulgam
43. Mohammad Amin Reshi

S/o. Gh Mohd Reshi
R/o Wachi, Shopian



44. Sartaj Habib,
S/o Habibullah Bhat
R/o Zainapora, Shopian
45. Irfan Ahmad Shah,
S/o Nazir Ahmad Shah
R/o Sangran, Shopian
46. Manzoor Ahmad Dar
S/o Mohd Ahsan Dar
R/o Gatipora, Shopian
47. Parvaiz Ahmad Wani
S/o Gh Rasool Wani
R/o Mughalpor, Shopian
48. Mohd Iqbal Wani,
S/o Ahmadullah Wani
R/o Agglar, Shopian
49. Ishfaq Hussain Shah
S/o Mohd Sadiq Shah
R/o Sugoo, Handhama, Shopian
50. Ajay Sudan
S/o Ashok Kumar
R/o Jandial Thati, Jammu
51. Nitish Sharma
S/o Mohan Lal Sharma
R/o Khojipura Bisnah, Jammu



52. Ajeeb Singh,
S/o Rasal Singh
R/o Dumi Bahera, Jammu
53. Varinder Singh
S/o Ram Singh
R/o Kandoli Nagrota Tehsil & Distt Jammu
54. Deepak Sharma
S/o Nanak Dev Sharma
R/o Lower Gadi Garh Tehsil & Distt. Jammu
55. Arun Kumar
S/o Bishan Dass
R/o Seri Panditan Tehsil and Distt. Jammu
56. Tanver Singh Chib
S/o Late Parlad Singh
R/o H. No. 97 Narwal Pain Tehsil & Distt. Jammu
57. Jitendar Singh
S/o Jagetter Singh
R/o Vihar Tehsil Akhnoor Dist Jammu
58. Bharat Bushan Rama
S/o Jagar Nath Raina
R/o Darapora Kupwara A/P Q No.521 Mishriwalla Camp Jammu
59. Tarundeep Singh
S/o Ajit Singh
R/o Basti H.No 45 W No.1 Gho Manhasan Tehsil & Distt Jammu



60. Sushil Singh Chib
S/o Jankar Singh Chib
R/o Ashok Nagar Canal Road The. & Distt Jammu
61. Anjuman Sharma
S/o Madan Lal Sharma
R/o Sobka A/P H No.235 Sector 4 Pamposh Colony Janipur, Jammu
62. Suraj Parkesh Singh
S/o Haqiqat Singh
R/o Jagti Nagrota The. & Distt. Jammu
63. Sahil Bakshi
S/o Nand Kishore
R/o Ismailpur Tehsil & Distt. Jammu
64. Gurpreet Singh
S/o Manjeet Singh
R/o Azadnagar Upper Gadi Garh Tehsil & Distt Jammu
65. Manoj Kumar Pandita
S/o Ram Jee Pandita
R/o Nagrihakcherpora Kupwara A/p Q No 714 Migrant Camp
Mishriwalla, Jammu
66. Lakhbir Singh
S/o Harminder Singh
R/o Sehora Babafareed Nagar Bisnah Jammu
67. Naresh Kumar Sharma
S/o Rashpaul Sharma
R/o Majua Uttam Bisnah Distt Jammu



68. Gurmeet Singh
S/o Lt Amrik Singh
R/o Purana Pindi, R.S.Pura Jammu
69. Rohit Kumar Sani
S/o Kuldeep Singh
R/o Kool Kalan P/s Arnia Bisnah, Jammu
70. Abhinandan
S/o Som Dutt Sharma
R/o Bhure Chaak, Jammu
71. Kavinder Singh Jamwal
S/o Sham Singh
R/o Tengbal, Kulgam A/p Q. No. 406 Vinayak Nagar Muthi Jammu
- 72 . Arvinder Sharma
S/o Harban Lal
R/o Badyal Brahmna, R S Pura Jammu
73. Gagandeep Singh
S/o Amardev Singh
R/o Bhou R S Pura Jammu
74. Ajay Kumar
S/o Kuldeep Singh
R/o 130/1 Narwal Pain, Jammu
75. Mukesh Sharma
S/o Lt Makhan Lal
R/o Dadi Garh, Jammu
76. Manmohan Khajuria

S/o Babu Ram

R/o . no. 594 W. No. 2 Narwal Pain, Jammu



77. Vishal Singh Jamwal

S/o Bhupinder Singh

R/o Raipur Bantalab, Jammu

78. Neeraj Jamwal

S/o Balbir Singh

R/o Katal Batal, Nagrota, Jammu

79. Avtar Krishan

S/o Rattan Lal

R/o Bhatyaril Bisnah Jammu A/ H. No. 270 Sec-F Sainik Colony,
Jammu

80. Harish Sharma

S/o Durga Dass

R/o Lower Gadi, Jammu

81. Harish Sharma

S/o Durga Das

R/o Lower Gadi, Jammu

82. Vishal Sharma

S/o Kuldeep Raj Sharma

R/o H. No. 18 Kacchi Chowni, Jammu

83. Rameek Singh

S/o Sagar Singh

R/o Gurha Slathia Vijaypur, Samba.

84. Sanjeev Choudhary

S/o Sh. Mohinder Singh

R/o Khanpur Camp, Vijaypur, Samba.



85. Vikas Kumar
S/o Harbans Lal
R/o Patti, Vijaypur, Samba.
86. Sanjeev Kumar
S/o Tilak Raj
R/o Ramloo Barhama, Ramgarh, Samba.
87. Ashwini Kumar
S/o Des Raj
R/o Patti Vijaypur, Samba
88. Ghulam Nabi
S/o Hyder Hussain
R/o Khara Madana, Samba
89. Sunandan Singh
S/o Yudhvair Singh
R/o Gurah Slathia Vijaypur, Samba
90. Bhanu Pratap Singh Sambyal
S/o Surkakh Singh
R/o Check Manga, Samba
91. Anil Sharma
S/o Ashok Sharma
R/o Om Colony, Vijaypur, Samba
92. Rakesh Singh
S/o Sewa Singh
R/O Channi Kartholi, Ban Brahmana, Samba



93. Amit Kumar Dubey
S/o Ram Rattan
R/o Jakh Vijaypur, Samba.
94. Deepak Sharma
S/o Ramlal Sharma
R/o Bari Brahmana, Samba.
95. Sukesh Singh
S/o Pretam Singh Slathia
R/o Gurah Slathia Ramgarh, Samba.
96. Deepak Sharma
S/o Puran Chand
R/o W.No. 5, Kuthua.
97. Vijay Kumar
S/o Om Prakadh
R/o Parnall Deh. Billawar, Kuthua.
98. Diraj Singh
S/o Ragubeer Singh
R/o Pratap Nagar, W.No. 17 Kuthua.
99. Vikas Singh
S/o Proshatam Sigh
R/o. Kharote Kuthua
100. Raj Kumar Sharma
S/o Kasturi Lal
R/o W. No. 4, Kuthua
101. Vijay Kumar
S/o Bishan Das

R/o Dhare, Bilawar, Kuthua



102. Mukesh Kumar
S/o Mansak Ram
R/o Durang, Kuthua
103. Vikas Mathur
S/o Ram Das
R/o Check Changa, Hira Nagar, Kuthua
104. Munish Sharma
S/o Netar Prakash
R/o Ramnagar, Keerin, Kuthua
105. Manoj Kumar
S/o Som Dat
R/o Hardo Muthi, Hiranagar, Kuthua
106. Sikandar Hussain Shah,
S/o Nazar Hussain
R/o Harmutta, Gursai, Mendhar, Poonch
107. Vishal Sudhan
S/o Bhagat Ram Sudhan
R/o Khakba, Nabanti, Tehsil Haveli, Poonch
108. Swikle Bali
S/o Suraj Prakash Bali
R/o Bhainch Tehsil haveli Poonch.
109. Iftiqar Hussain
S/o Mohammad Afzal
R/o Dhanore Jarallan Rajouri.



110. Vikarm Singh
S/o Gardhari Singh
R /o Peoni, Ramnagar, Udhampur

111. Rajnish Khajuria
S/o Ram Parshad
R/o Jaganoo The, Udhampur

112. Rockey Sigh Rathore
S/o Bhru Singh Rathore
R/o Umella The, Udhampur.

113. Ranjit Singh
S/o Dhain Singh
R/o Battal Udhampur

114. Vikas Khajuria
S/o Narayan Dutt
R/o Bhaghta, Udhampur.

115. Renuka Sharma
S/o Tirat Ram Sharma
R/o Dhonori, Udhampur

116. Pawan Kumar
S/o Daya Nand
R/o Chah Rakhwalan, Udhampur

117. Banu Pratap Singh
S/o Narinder Singh Jamwal
R/o Marta Ramnagar, Udhampur

118. Mohammad Shakeel
S/o Mila Baksh

R/o Baryal, Udhampur



119. Sunit Kumar
S/o Hans Raj
R/o Sela (Gadal), Reasi
120. Anil Dev Singh
S/o Sher Singh
R/o Gajore, Reasi
121. Sanjeev Kumar
S/o Om Prakash Sharma
R/o Laiter (Danaa), Reasi
122. Pritam Singh
S/o Raj Chand
R/o Pattan Reasi.
123. Neeraj Sharma
S/o Om Prakash Sharma
R/o Marri (Pouni), Reasi.
124. Anil Kuar Motwal
S/o Mohinder Nath
R/o Kullatha, Doda.
125. Ramnik Kumar
S/o Devki Nand
R/o Ghat, Doda.
126. Shri Sharma
S/o Sansar chand
R/o Chindhora Baderwah, Doda.



127. Iftikhar Yousuf Tantray
S/o Mohammad Yousuf
R/o Kharkoot Banihal, Ramban.
128. Showkat Ahmad Chopan,
S/o Mohammad Ramzan
R/o Nowgam, Banihal, Ramban
129. Tanveer Ahmad,
S/o Mohammad Afzal Beigh
R/o Kaskote, Malikpora, Banihal, Ramban
130. Muzamil Nisar,
S/o Nisar Ahmad
R/o Chareel Mirpora, Banihal, Ramban

.....Respondents

(Advocate: Mr. Amit Gupta, learned A.A.G. for the official respondents/
Mr. Abhinav Sharma, Sr. Advocate assisted by Ms.Saba Atiq, advocate/
Mr. Javed Iqbal, advocate for private respondents)

(ORDER)

(Delivered by Hon'ble Mr. Rakesh Sagar Jain, Member (J))

1. Applicant Gowhar Ahmad Bhat and 25 other applicants seek the following reliefs:
- “(i) Issue an appropriate writ, order or direction in the nature of Certiorari, the impugned Government order bearing no. 891-Home of 2018 dated 10.07.2018, be quashed.



(ii) Issue an appropriate writ, order or direction in the nature of Mandamus, directing the respondents to consider and appoint the Petitioners as against the post of Wireless Operators.

(iii) Any such order or direction which this Hon'ble Court may consider appropriate in the given facts and circumstances of the case."

2. Case of applicants is that respondent-State selected Constable (Operator) in J&K Police in pursuance to Advertisement dated 09.03.2007 at district level instead of State or Divisional level vide PHQ order No. 2844-2609 dated 01.08.2009 which was set aside by the Hon'ble High Court vide order dated 09.05.2014 and respondents were directed to reframe the select list. Review Application filed against the order dated 09.05.2014 was disposed of vide order dated 25.02.2015.

3. It is the further case of applicants that respondent No. 2 issued Government Order No. 891 Home of 2018 dated 10.07.2018 creating 151 post of Wireless Assistants and engaging 151 ousted wireless assistants (private respondents) which is challenged in the present case being violative of Article 14, 15 and 16 of the Constitution of India. The applicants also aver that the impugned order would also indicate that the candidates (private respondents) appointed have less merit than the applicants.



4. As per order dated 20.05.2021, Mr. Abhinav Sharma, advocate for private respondents had submitted that counter affidavit filed in TA No. 864/2021 be treated counter affidavit in this application also. In the counter affidavit filed by private respondents, it has been averred that the applicants have no locus standi to challenge the impugned government order since their right have been violated. Vide order dated 19.01.2017, the Official Respondents re-framed the selection list and the services of answering respondents were terminated which have been challenged in Writ Petitions wherein interim orders were passed allowing the applicants (private respondents herein) to continue till further orders from the court. The impugned government order dated 10.07.2018 sanctioned the engagement of 151 ousted Wireless Operators (Private Respondents in the present T.A.) by treating them as a separate and distinct class. It is further averred in the counter affidavit that Cabinet decision was outcome of the finding that the answering respondents had been selected after proper selection process without there being any element of fraud or misrepresentation on their part, but on account of error of Government and that the said Wireless Operators had been working having completed at that point of time, three years of service, as also most of them having become over aged for fresh recruitment in as much as their ouster would have consequences as they had been provided with arms and technical training and had gained sufficient experience on the post.



5. The private respondents further aver that the applicants and answering private respondents are not similarly situated and therefore not entitled to equal treatment. The consideration of the case of the Wireless Assistants is founded on reasonable classification having an intelligible differentia, which distinguishes them from the petitioners and differentia has a reasonable relation to the object sought to be achieved. Petition, therefore, being misconceived is liable to be dismissed.

6. The Administration in its counter affidavit averred that the impugned Government order was issued on consideration of following conclusions that: - 1. The ouster candidates had undergone through a proper selection process conducted by the PHQ. (2)The ousted candidates were placed in the relevant grade of Constable Operators and drawing salary; (3)The ouster candidates underwent the training as is required under the Police Rules, 1960; (4)The State by providing them training has invested in these candidates, hence, it is in the larger interest of the State, if the ousted candidates are appointed; (5)The illegality in making selections/appointments at the district level of Constable (Operators) is not attributable to the ousted candidates; (6)The ousted candidates may have crossed the upper age limit prescribed for government jobs and hence may not be able to apply afresh; and (7)The ouster of these candidates may have applied harshly to their families, besides the candidates.



7. At the onset, it was argued by respondents that applicants have no locus standi to challenge the impugned Government Order. Whereas, learned counsel for applicants submitted that in the matter of public employment, Government cannot adopt a procedure which is violative of law to benefit a few persons to the exclusion of the equally situated persons, and therefore, applicants have the locus standi to challenge the Government Order.

8. The applicants have the locus standi to file the present case is clear from the observation of the Hon'ble Apex Court in Secretary, State of Karnataka Vs. Umadevi, (2006) 4 SCC 1 that:

“These binding decisions are clear imperatives that adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.”

“. . . . The rule of law constitutes the core of our Constitution of India and it is the essence of the rule of law that the exercise of the power by the State whether it be the Legislature or the Executive or any other authority should be within the constitutional limitations and if any practice is adopted by the Executive which is in flagrant and systematic violation of its constitutional limitations, petitioner No. 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice.”

9. It has been argued by the respondents that the private respondents have been employed for a number of years and it would be an injustice that after a long length of service and when they have become overage, they should be deprived of their employment as

wireless operators and that the Tribunal ought to take a compassionate view by upholding the impugned order. We consider this contention only because the respondents have raised it.



10. The select list of 2009 was challenged in the year 2009 itself. The respondents were permitted to appoint the private respondents in 2010 subject to outcome of the writ petitions. So, the respondents were cautioned that appointments made would be subject to outcome of writ petitions and consciously ran the risk of being turned out of service if the writ petition is decided against them. They cannot approbate and reprobate at the same time. The contention that being employed for a number of years and becoming overage, it would be injustice if they be deprived of their employment is devoid force of law and cannot be accepted. Reference may made to Pratap Kishore Panda Vs. Agni Charan Das, (2018) 1 SCC (L&S) 371, wherein the Hon'ble Apex Court observed that:

“The prevailing law is now discernable from Umadevi, which has correctly been cited before us in extenso. The Umadevi doctrine is that if employment of persons is contrary to or de hors the statutory provisions and/or Rules and Regulations, then equities will not have any play even if such persons have been rendering services for several years.”

11. It has been argued by learned counsel for applicants that the classification making the private respondents a distinct and separate class for appointments is not founded on an intelligible differentia

which distinguishes persons or things that are grouped together from others left out of the group, and that the differentia does not have a rational nexus to the object of employment sought to be achieved by the Government Order impugned in the present T.A.



12. Whereas, learned counsels for respondents argued that the private respondents were rightly treated as class separate from the applicants and this classification is in accordance with Article 14 and 16 of the Constitution of India. Learned counsels submitted that they were selected after proper selection process and besides completing three years of service, have become overage to apply for fresh recruitment and have gained sufficient experience on the post and that the case of the private respondents is founded on reasonable classification having an intangible differentia and differentia has a reasonable relation to the object sought to be achieved.
13. The impugned Government Order appointed the private respondents by treating them as a separate and distinct class of unemployed persons. It is now well settled that Article 14 forbids class legislation, but does not forbid reasonable classification. Whether a classification is a permissible classification under Article 14 or not, two conditions must be satisfied, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (2) that the differentia must have a rational nexus to the object sought to be achieved by the statute in question. (Read with advantage **D.S Nakara**

V. Union Of India, (1983) 1 SCC 305 and State of J&K v. Triloki Nath Khosa, 1974 (1) SCC 19)



14. So, it is to be seen whether the classification of applicants and private respondents is based on an intelligible differentia which distinguishes or classify them into different class and the classification has to be justified on the basis of the nexus between the classification and the object to be achieved.
15. In the counter affidavits, the impugned order is sought to be sustained on the ground that the private respondents formed a separate class which entitles them to be employed in Government service. The private respondents are sought to be inserted in a separate class for the reasons mentioned in counter affidavit of official respondents and referred to in above paragraph No. 6.
16. All the criteria/reasons relied upon by the respondents for classification of private respondents into a separate class have arisen due to the extension of the services of the private respondents by the Government knowing fully well that the appointments are subject to the outcome of the writ petition. If the State had acted wisely and taken remedial action immediately on the decision of the Hon'ble High Court in 2014, these criteria would not have arisen. All the criteria relied upon by respondents to create a separate and distinct class for private respondents have been created artificially due to inaction of the Government. In any case, we find no rational principle for creating a separate and distinct class for the private respondents.



17. In order to consider the question as to the reasonableness of the classification of ousted private respondents, it is necessary to take into account the objective for such classification. Respondents' case being that the object was to provide employment to the ousted candidates (private respondents) for the reasons mentioned in the decision of the Cabinet Sub-Committee to the exclusion of the applicants who also appeared along with the private respondents in the same selection process.
18. Indisputably, all unemployed persons inclusive of applicants and private respondents form one class and entitled to be considered equally for the public employment offered by the Government and their classification has to be based on some rational principle and the rational principle must have nexus to the objects sought to be achieved.
19. Both applicants and private respondents are unemployed and form one class for seeking public employment. Just because, the Government appointed the respondents subject to the outcome of the writ petitions, would not make them a class apart from the applicants otherwise equally placed in matter of public appointments. Therefore, the criteria which classified the parties to the dispute into two classes is not based on any rational principle and if the rational principle is the one of dividing the equally placed persons to give something more to some persons in contrast to other persons, otherwise equally placed, it would be discriminatory and it is so, in the present case.



20. We may refer to the arguments of the respondents that the initial selection of the private respondents was made after proper selection process without any fraud on part of the respondents but on account of error of the Government. It be noted that the initial selection was quashed by the Court. Therefore, this contention is to be outrightly rejected in view of the observations of the Hon'ble Apex Court in *Arbind Kumar v/s State of Jharkhand*, (2016) 10 Scale 310 as under:

“Although the appellants have pleaded that they are mere victims of irregular or illegal action by the concerned police officials who appointed them to the post of Constable without following the procedure prescribed under the Police Manual and hence deserve sympathy, but we are not persuaded to accept such submission. In our considered view, the beneficiaries cannot blame the appointing authority alone and claim that the illegal appointment should be continued in perpetuity. To accept such plea would amount to giving premium to dishonest and illegal acts in matters of public appointments.”

21. Regarding the contention of private respondents that their selection was not made on the basis of any fraud or misrepresentation on their behalf and they have remained in service for a long time and that it was due to error on behalf of Government, they were selected, they placed reliance upon (1) *Rajesh Kumar Vs. State Of Bihar*, 2013 (4) SCC 690, the Hon'ble Apex Court held that since the Appellants were innocent parties who did not indulge in any fraud and misrepresentation for preparation of the erroneous key or the distorted result and served the State for nearly seven years now, their ouster



need not be inevitable and inexorable consequence of such a re-evaluation. The facts of the cited case are entirely different from the facts of the present case. In any case, the respondents contributed to the present predicament by accepting appointment which were subject to outcome of the writ petition. (2) *Tejinder Kaur v/s Lady Constable Raj Kumari*, (2009) 1 SCC 177 wherein it was observed that “6. We find that the guidelines really provide for request by the candidate for re-assessing of his/her marks and there is no scope for asking for re-assessment in the case of other candidates. But in view of the earlier order of the High Court that question has become academic. It is to be noted that the respondent Nos. 6 to 10 in the writ petition had completed 2 years of training. In the meantime they had appeared in List B, C and List D. 7. In view of the aforesaid peculiar situation we set aside that part of the order of the High Court by which their selection was set aside. It would be inequitable to deprive them the benefits of what had been extended to them. Deficiency, if any, in not allotting proper marks as done by the authorities cannot deprive them of the benefit which they have obtained. It is not shown that they were a party to the wrong allotment of marks at the original stage.” (3) *Sahil Aggarwal v/s State of Punjab*, 2014 Legal Eagle (P&H) 2026 wherein it was held that appointments are not to be set aside if the same have been made on the basis of some error in question of answer sheet since they have worked for three years unless they are guilty of fraud and misrepresentation. In both these cases, the facts are entirely different from the facts of the present case and in any case, the

respondents contributed to the present predicament by accepting appointment which were subject to outcome of the writ petition.



22. Even, if the applicants are getting the salaries, they are drawing the salary since they accepted the appointment orders subject to the outcome of the writ petitions which were ultimately decided against them and so, the appointment orders became non est having no sanctity in the eye of law. In this regard, we may refer to R. Vishwanatha Pillai v. State of Kerala, (2004) 2 SCC 105 wherein the Hon'ble Apex Court held that:

“17. The point was again examined by a Full Bench of the Patna High Court in Rita Mishra v. Director, Primary Education, Bihar [AIR 1988 Pat 26 : 1988 Lab IC 907 : 1987 BBCJ 701 (FB)] . The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

“13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it.”

18. We agree with the view taken by the Patna High Court in the aforesaid cases.”



23. It is difficult to accept the contention that the ousted private respondents stand on a different footing from the applicants. The test is whether the applicants are equally in a disadvantageous position like the ousted respondents in matter of employment. There can be no doubt and it is not disputed that both of them stand on an equal footing and there is no difference between these two classes of employees in that regard. To exclude the applicant in matter of public appointments will not, therefore, satisfy the test of intelligible differentia that distinguishes the ousted private respondents grouped together from the applicants and other persons who would have been part of the selection process. It is true that a classification need not be made with mathematical precision but, if there be little or no difference between the persons or things which have been grouped together and those left out of the group, in that case, the classification cannot be said to be a reasonable one. In the instant case, we are also unable to accept the contention of the respondents that such exclusion of the employees of private establishments is justified on the ground of administrative convenience.

24. In the present case, we do not find any intelligible differentia for classification of the unemployed class into two groups who are equally situated. Members of both groups seek public employment and cannot be divided and classified into two classes on an unintelligible principle with a view to giving something more to



persons otherwise equally placed, which course would be discriminatory. In considering the reasonableness of classification from the point of view of Article 14 of the Constitution, the court has also to consider the objective for such classification. If the objective be unjust, necessarily the classification will have to be held as unreasonable. In the instant case, the foregoing discussion reveals that the classification of the ousted employees by the impugned Government Order of employment purpose to the exclusion of applicants who like the respondents are unemployed and took part in the selection process is unreasonable and unjust, as it does not subserve any fair and logical objective. The applicants like the ousted respondents are entitled to the benefit of public employments. It follows from the above discussion that the impugned Government Order made a classification which cannot to be justified on any reasonable basis, must be held to be discriminatory and violative of Article 14 and 16 of the Constitution.

25. It was also argued by learned counsel for applicantt hat all cases of direct appointments to public posts without these being advertised would be discriminatory and hit by Art. 16 of the Constitution. It was argued by learned counsel for applicant that the State did not issue any advertisement in matter of public appointment and the Government Order is discriminatory towards the applicants. And the impugned order does not give any reason for its promulgation and cannot be supplemented by reasons given in the counter affidavits and placed

reliance on Mohinder Singh Gill v/s The Chief Election Commissioner, New Delhi, (1978) 1 SCC 405.



26. It is a settled principle of law that recruitment to Public Services should be held strictly in accordance with the recruitment rules and publicity so as to enable all persons to participate in the employment drive. Deviation, as is sought to be done in the present case, from the rules allows entry to chosen few persons and deprives many others who could have competed for the post and more so, private respondents secured lesser marks that applicants are being given undue preference for employment to the exclusion of applicant.
27. We may in this regard refer to Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others, AIR 2006 SC 1165, wherein the Hon'ble Supreme Court of India stated: -

“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.”



28. In the present case, admittedly, appointments are being made without issuing advertisement for selection and without holding a proper selection process where all eligible candidates get a fair chance to compete violates the guarantee under Article 16 of the Constitution and on this ground too, the impugned Government Order deserves to be struck down.
29. For the reasons aforesaid, the Government Order No. 891 Home of 2018 dated 10.07.2018 is set aside as discriminatory and violative of Article 14 and 16 of the Constitution of India and, accordingly, invalid. T.A. is accordingly disposed of. It is left to the Government to proceed further in accordance with law. No costs.

(ANAND MATHUR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun/-