

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU

Hearing through video conferencing

O.A. 62/552/2020



Pronounced on: This the 15th day of July 2021

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

1. Abdul Hamid Mir, Aged about 54 years, S/o Abdul Salam Mir, R/o Gangipora, Chadoora, District Budgam.
2. Mohammad Shafi Wani, Aged about 44 years, S/o Habibullah Wani, R/o Lurgam, Tral.
3. Ali Mohammad Mir, Aged about 46 years, S/o Mohammad Akbar Mir, R/o Gulshanpora, Tral.
4. Javid Ahmad Hakim, Aged about 54 years, S/o Ghulam Rasool Hakim, R/o Pinglena Pulwama.
5. Mukhtar Ahmad Masoodi, Aged about 52 years, S/o Peer Ab. Aziz Masoodi, R/o Nambalebal Pampore.
6. Farooq Ahmad Wani, Aged about 48 years, S/o Ghulam Ahmad Wani, R/o Chatipora Shopian.
7. Manzoor Ahmad Ganaie, Aged about 51 years, S/o Mukhtar Ahmad Ganaie, R/o Haffshermal, Shopian.
8. Farooq Ahmad Bhat, Aged about 49 years, S/o Ghulam Ahmad Bhat, R/o Dharam Daru, Pulwama.
9. Farroq Ahmad Pampori, Aged about 50 yeas, S/o Abdul Gani, R/o Katipora, Pulwama.
10. Mohammad Shafi Shah, Aged about 49 years, S/o Ali Muhammad Shah, R/o Nayanagund, Anantnag.
11. Abdul Rashid Bhat, Aged about 45 years, S/o Abdul Gaffar Bhat, R/o Noorpora, Tral.
12. Manzoor Ahmad Bhat, Aged about 49 years, S/o Abdul Rehman Bhat, R/o Kandizal Pampore.



13. Nazir Ahmad Kumar, Aged about 52 years, S/o Mohammad Shaban, R/o Khrew Pampore.
14. Reyaz Ahmad Shah, Aged about 50 years, S/o Ghulam Mohi-ud-Din Shah, R/o Kanginag Awantipora.
15. Farooq Ahmad Mir, Aged about 50 years, S/o Amma Mir, R/o Kongan Shopian.
16. Farooq Ahmad Baba, Aged about 54 years, S/o Muhammad Yousuf Baba, R/o Kanginag, Awantipora.
17. Ghulam Mohi-ud-Din Sofi, Aged about 56 years, S/o Salam Sofi, R/o Malapora, Pulwama.
18. Showkat Ahmad Reshi, Aged about 44 years, S/o Abdul Rahim Reshi, R/o Chandrigam Tral.
19. Mohammad Iqbal Mir, Aged about 43 years, S/o Mohammad Shaban Mir, R/o Gulshanpora, Tral.
20. Shabir Ahmad, Aged about 47 years, S/o Ghulam Nabi, R/o Shopian.
21. Ghulam Mohammad Bhat, Aged about 58 years, S/o Ghulam Rasool Bhat, R/o Rathsona Tral.
22. Irshad Ahmad Bhat, Aged about 44 years, S/o Gh. Qadir Bhat, S/o Gh. Qadir Bhat, R/o Dadasar, Tral.
23. Mohammad Maqbool Shah, Aged about 45 years, S/o Ghulam Nabi Shah, R/o Khul Tral.
24. Ghulam Mohammad Dar, Aged about 54 years, S/o Muhammad Ahsan Dar, R/o Turk Wangan, Tral.
25. Shabir Ahmad Dar, Aged about 54 years, S/o Muhammad Yousuf Dar, R/o Tral.
26. Shabir Ahmad Shah, Aged about 46 years, S/o Ghulam Ahmad Shah, R/o Midoora Tral.
27. Nissar Ahmad, Aged about 44 years, S/o Ghulam Rasool Mir, R/o Litter Pulwama.
28. Fayaz Ahmad Kar, Aged About 50 years, S/o Ghulam Nabi Kar, R/o Tral.
29. Jameel Ahmad Bhat, Aged about 51 years, S/o Ghulam Mohammad Bhat, R/o Wahibug Pulwama.
30. Mohammad Iqbal Dar, Aged about 54 years, S/o Mohammad Anwar Dar, R/o Pulwama.
31. Abdul Gani Lone, Aged about 50 years, S/o Sonaullah Lone, R/o Brarpora.
32. Sonaullah Wani, Aged about 54 years, S/o Ali Mohammad Wani, R/o Patalbagh, Pulwama.



33. Mukhtar Ahmad Peer, Aged about 55 years, S/o Abdul Khaliq Peer, R/o Pampore.
34. Manzoor Ahmad Peer, Aged about 52 years, S/o Ghulam Qadir Peer, R/o Pampore.
35. Mohammad Yousuf Rather, Aged about 52 years, S/o Abdul Ahad Rather, R/o Pingoora Pulwama.
36. Ghulam Mohammad Reshi, Aged about 55 years, S/o Abdul Aziz Reshi, R/o Awantipora, Pulwama.
37. Niyaz Ahmad Shah, Aged about 60 years, S/o Sonaullah Shah, R/o Panchpora Bijbehara.
38. Mohammad Ishaq Hurra, Aged about 50 years, S/o Muhammad Abdullah Hurra, R/o Manando Pulwama.
39. Farooq Ahmad Shah, Aged about 49 years, S/o Ab. Aziz Shah, R/o Medura Tral.
40. Mehraj-ud-Din Sheikh, Aged about 56 years, S/o Habibullah Sheikh, R/o Kuchmulla Tral.
41. Mushtaq Ahmad Ganaie, Aged about 56 years, S/o Sonaullah Ganaie, R/o Browbindina, Pulwama.
42. Jalal-ud-Din Parray, Aged about 51 years, S/o Mohammad Ramzan Parray, R/o Yader Pulwama.
43. Farooq Ahmad Bhat, Aged about 55 years, S/o Assad Ullah Bhat, R/o Litter Pulwama.
44. Mushtaq Ahmad Khan, Aged about 48 years, S/o Dillawar Khan, R/o Viloora Pulwama.
45. Mohammad Ashraf Mir, Aged about 49 years, S/o Ghulam Hassan Mir, R/o Litter Pulwama.
46. Manzoor Ahmad Bhat, Aged about 50 years, S/o Ghulam Qadir Bhat, R/o Baghat Barzulla, Srinagar.
47. Imtiyaz Ahmad Dar, Aged about 45 years, S/o Ali Mohammad Dar, R/o Goripora, Pulwama.
48. Mohammad Amin Hakim, Aged about 46 years, S/o Ali Mohammad Hakim, R/o Krangsoo Anantnag.
49. Abdul Gaffar Rather, Aged about 53 years, S/o Abdul Samad Rather, R/o Lalgam Tral.

.....Applicants

(Advocate: Ms. Moksha Kazmi)

Versus



1. Union Territory of Jammu and Kashmir, through Principal Secretary to Government, PHE, Irrigation and Flood Control Department, Civil Secretariat, Srinagar/Jammu.
2. Chief Engineer, Kashmir Irrigation & Flood Control Department, Srinagar.
3. Superintending Engineer, Hydraulic Circle, Anantnag/Kulgam/Pulwama, Hqr. Anantnag.
4. Executive Engineer, Irrigation Division, Pulwama,
5. Assistant Executive Engineer, irrigation Sub-Division, Pulwama.
6. Assistant Executive Engineer, Irrigation Sub-Division, Pampore.
7. Assistant Executive Engineer, Irrigation Sub-Division, Awantipora.

.....Respondents

(Advocate: Mr. Rajesh Thappa, learned D.A.G.)

(ORDER)

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

1. Applicant Abdul Hamid Mir and 48 other applicants in the present O.A. seek the following reliefs:-

“8.1 Call for the records.

8.2 Declaring the impugned action of the Respondent No. 2 vide impugned Orders dated 26.06.2020 and 27.06.2020, cancelling the appointment of the Applicants above named, void ab-initio having been passed in violation of the Judgement and Order of the Hon'ble High Court dated 29.09.2011, apart from being totally arbitrary, invidiously discriminatory, passed in a most mechanical and perfunctory manner, overlooking and ignoring material on Record therefore liable to be interdicted/quashed under the appropriate Orders of this Hon'ble Tribunal.

8.5 Mandamus, commanding the Respondents to grant same treatment as has been granted to 17 officials who have been given substantive appointment with all grade of Class IV alongwith all consequential benefits.



- 8.6 Mandamus, direct the Respondents to act upon the Enquiry Report and recommendations of the Disciplinary Authority as submitted hereinabove in detail.
- 8.6 Pass such Order or Direction that this Hon'le Tribunal deems just and proper to pass/issue in the interests of justice in the attendant facts and circumstances of the case.
- 8.7 That the cost of the litigation be also awarded to Applicants."

2. Applicants feel aggrieved of the order dated 26.06.2020 and 27.06.2020 passed by respondent No. 2 (Chief Engineer) whereby appointment of the applicants as Class IV employees in Department of Irrigation, Pulwama has been cancelled and their services terminated without application of mind and in violation of order dated 29.09.2011 passed by the Hon'ble High Court in case titled Abdul Hamid v/s State. It be noted that the controversy in the present case is regarding the appointment orders of applicants which are alleged to be either fake appointment orders or orders passed by officers having no competency to issue such appointment orders.
3. Case of applicants is that they were appointed on regular temporary establishment of Irrigation Divisions, Irrigation and Flood Control Department in the year 1993-1994. Vide order dated 27.09.2007, services of applicants were terminated but said order was quashed by the Hon'ble High Court vide order dated 04.05.2010 in SWP No. 1364/2007 titled Abdul Hamid v/s State of J&K and it was observed in the order that:

“ . . . respondents are directed to initiate enquiry against the petitioners in accordance with mandate of law and follow the



settled norms. While conducting such enquiry, respondents will provide an opportunity of hearing to the petitioners. It is further provided that respondents to initiate and conclude the enquiry within one month from the date copy of this order is served upon them. In case on the conclusion of the enquiry, it is found that petitioners have entered into services on the strength of fake orders, then they will not be entitled to any service benefit which includes salary as well. It is further provided that petitioners will appear before the Chief Engineer on 10.05.2010 who will either conduct the enquiry himself or will appoint an enquiry officer. Petitioners will render their assistance to the enquiry officer for conducting the enquiry. In case, despite petitioners rendering assistance to the enquiry officer, enquiry is not completed within one month from today, petitioners will be entitled to get salary after one month from today, till such time enquiry is concluded and the same will at the risk and peril of concerned authority who will be personally liable to reimburse the State for the loss caused.”

4. Respondent No. 2 on the basis of the enquiry report vide order dated 09.05.2011 terminated the services of the applicants. The said order was set aside by the Hon’ble High Court vide order dated 29.09.2011 in SWP No. 1022/2011 titled Abdul Hamid v/s State by observing that:

“For the reasons discussed above, the writ petition is allowed and the order 1234-37 dated 9.5.2011 is set aside. The respondent No. 2 is directed to provide copy of the enquiry report as also action proposed to be taken against the petitioners, to all the petitioners within one week from the date copy of the order is served/communicated to the respondent No. 2. The petitioners shall submit their reply, if any, within two weeks after the copy of the enquiry report and the aforesaid



communication is handed over to them. The respondent No. 2 shall thereafter within one week from the receipt of the reply/replies from the petitioners pass order as may be deemed fit and proper having regard to the enquiry report and the conclusions drawn by the Disciplinary Authority on going through the enquiry report and the replies, if any, received from the petitioners and of course rules governing the matter. It is made clear that the Disciplinary Authority shall be at liberty to pass the orders individually as the reply submitted by the petitioners may warrant individual and separate consideration and because all the petitioners may not respond to the communication of the Disciplinary Authority or delay their response and prejudice expeditious disposal of the matter (s) of his/their co-petitioners.

Disposed of.”

5. Six years after the order dated 29.09.2011 of the Hon’ble High Court, the Government woke up and issued order dated 04.08.2017 constituting a committee to examine the issue and furnish clear cut recommendations within one week from the date of issuance of the said order. The Committee filed its report recommending that:

“In this context committee submits the enquiry report with the recommendations to adhere the decision of Hon’ble High Court Dt:- 29-9-2011 & give same treatment to 64 petitioners as had been given to above 17 persons/officials.

Hence report is submitted for favour of information and necessary action.”



6. Thereafter, respondents No. 1 and 2 holding a meeting with other officers on 13.02.2020 took the following decision:

“During the meeting, reports submitted by the Committees constituted vide No. 12945-50 dated 25.01.2012 and the Committee constituted vide Government Order No. 310-PW (Hyd) of 2017 dated 04.08.2017 were placed for discussion. The meeting deliberated upon the recommendations of the Committee and held that the recommendation of parity of 64 petitioners with similarly situated 16 other candidates are not acceptable for the reasons that the basic engagements of all the candidates including the petitioner as Class-IV were not legal and authorized. None of these appointments were made in a transparent manner & no recruitment process was followed. Mere working on a particular Government post for a pretty long time that too on court directions does not confer any right of regularization of such action as held by the Hon’ble Supreme Court & Hon’ble High Courts in the different judicial pronouncements. It is a settled principle that negative parity cannot be claimed. As the basic appointment is faulty and unauthorized, no further benefit can be claimed merely on the basis of parity.

Accordingly, following decisions were taken:-



1. The Chief Engineer, I&FC Department Kashmir shall issue individual speaking orders in light of the judgement dated 29.09.2011 passed by the Hon'ble High Court reads with the judgement dated 10.05.2019 & 03.05.2019.
2. The Chief Engineer shall also conduct enquiry with regarding 16 other employees referred in his report No. LA/10982 dated 06.01.2020 who have also been engaged without following transparent recruitment procedure and submit the same to this Department within week's time alongwith specific recommendations to Administrative Department for taking further appropriate action.”
7. In pursuance of aforementioned decision dated 13.02.2020, vide impugned orders, the appointment orders issued by Superintending Engineer, Hydraulic Circle Pulwama, Executive Engineer Irrigation Division, Pulwama and Deputy Commissioner, Pulwama were cancelled ab initio. It be noted that (1) the appointment orders and orders to convert Daily wagers to RT Establishment issued by concerned Engineers were cancelled on the ground that the said officers were not competent to make such orders; (2) appointment order issued by the Deputy Commissioner Pulwama were fake orders. It is the case of applicants most of the applicants have not received the charge sheet.



8. In the Counter affidavit, respondents take the plea that the cancelled appointment orders of the applicant either were not issued by the competent authority or were fake and it is on the basis of these orders, applicants were drawing salary of last many years. The directions issued by the Hon'ble High Court to furnish a copy of the inquiry report was complied with and it was only after consideration of the representations made by the applicants in response to the charge memo, that the impugned orders were passed. Respondents also take the plea that since there did not exist any valid order of appointment, the question of continuing the applicants, or conducting departmental inquiry, does not arise and the impugned orders were rightly passed by the Administration. Respondents also plead that it is a settled principle that once an appointment is made against non-sanctioned post without following any prescribed mode of recruitment and not providing an opportunity to all eligible candidates, such appointments are back door entries and act of nepotism & favouritism, thus, from any judicial standards cannot be said to be irregular appointment but an illegal appointment.
9. We have heard Ms. Moksha Azmi, learned advocate for applicants and Mr. Rajesh Thappa, learned Deputy Advocate General and gone through the material on record.
10. In short, the facts of the present case are that after an inquiry, the State Administration came to know that the appointment orders of applicants on Regular Temporary Establishment were forged under



the name of Deputy Commissioner, Pulwama or issued by an incompetent authority i.e. Superintending Engineer, Hydraulic Circle Pulwama and Executive Engineer Irrigation Division Pulwama and therefore issued termination orders which were challenged in SWP No.1022/2011 wherein vide order dated 29.09.2011, the termination orders were set aside and directing that the copy of the inquiry report, as also the charge memo, indicating the proposed action, shall be served upon the applicants therein and further steps shall be taken in accordance with law.

11. The Chief Engineer accordingly complied with the Hon'ble High court directions dated: 29-09-2011 by issuing charge sheet to all the petitioners individually and the same stands replied by the petitioners. Thereafter, the impugned orders cancelling the appointments of the applicants were passed wherein it was observed as under:

“Cases where appointment orders issued by incompetent authority

7. Whereas, after serving charge sheet to you, you have failed to produce copy of your appointment order to substantiate your claim of appointment and;

8. Whereas, on perusal of the duplicate Service book no certificate has been found recorded, on whose authority the duplicate service book has been prepared; when as per rules the same requires the authority from the Head of department, but in your case no authority has been issued and;

9. Whereas, it has been found that you have been appointed without following transparent mechanism and

on pick and choose basis by the then Superintending Engineer Hydraulic Circle Pulwama* at his own level in violation of rules as he was not competent to make such appointment and.

* Executive Engineer Irrigation Division Pulwama.

Cases where the appointment orders were forged under the office of Deputy Commissioner, Pulwama

“7. Whereas, the then Deputy Commissioner Pulwama vide his No. DDCP/11/266 dated: 13.04.2011 has reported that no such order has been issued by this office.

8. Whereas, after serving charge sheet to you, you have failed to produce copy of your appointment order to substantiate your claim of appointment and;

9. Whereas, on perusal of the duplicate Service book no certificate has been found recorded, on whose authority the duplicate service book has been prepared; when as per rules the same requires the authority from the Head of department, but in your case no authority has been issued and;

11. Whereas, mere working on a particular post for any duration of time however long it may be when basis appointment being fake does not bestow any right to the petitioner against the said post and”

12. Even in the present O.A., the applicants have not placed on record, the copy of order through which they were appointed. It is unnatural that none of the applicants could produce their appointment order. The appointment orders were not placed before this Tribunal or before the administrative authorities/inquiry committees. There does not even exist any service record since it was allegedly gutted in a fire incident in the office. Even so, if it is true that record was gutted in the fire, the



duplicate service record is to be prepared under the orders of the competent authority but in the instant case, indisputably there does not exist any such permission, but a duplicate service register was brought into existence.



13. Apart from the non-production of the appointment orders by the applicants, an abnormal feature of the present case is that the appointment orders could not be placed on record since the record was gutted in the fire incident in the office. The appointment orders emanated from two sources i.e Superintending Engineer, Hydraulic Circle Pulwama and Executive Engineer Irrigation, Division Pulwama. Surly, the fire did not engulf the records of both the departments. Even so, there is no explanation by the applicants for the non-production of the appointment orders alleged to be issued by the Deputy Commissioner, Pulwama since it is nobody's case that even the record of Deputy Commissioner, Pulwama was destroyed in a fire incident. This circumstances by itself makes the case of the applicants very shady and meritless.
14. There is no controversy or dispute about the facts that the appointment orders were issued by officers who did not have the authority or competency to appoint and issue appointment orders. The finding that Deputy Commissioner, Pulwama reported that the appointment orders are fake has not been controverted by applicants by placing any record to show otherwise.



15. It was argued by learned counsel for applicants that the impugned orders doing away with the services of the applicants is against the principles of natural justice since no opportunity was given to the applicants to file representation against the impugned orders.

16. We notice the averment in the O.A. that “respondents served charge sheet on some of the Applicants herein and most of the Applicants have not received the same. . . .” A bald and inconclusive statement made by the applicants without giving details of the applicants who did not and who did receive the charge sheet. It is also to be noted that the respondents in their counter affidavit have specifically averred that the Chief Engineer complied with the Hon'ble High Court directions dated 29.9.2011 by issuing charge sheet to all the petitioners individually. This factual statement has not been rebutted by the applicants. So, it is apparent that the procedure as contemplated by the order dated 29.09.2011 of the Hon'ble High Court was adhered to, by the respondents and thereafter the impugned orders were issued. In fact, the copy of Charge sheet (Annexure XXV to the O.A.) reveals that copy of the Enquiry Officer was given to the applicants and given opportunity to file their representation. And it is only after considering the material on record including the representation, that the respondent passed the impugned orders rescinding the orders of appointments.

17. It is not in dispute that the State Committee did offer opportunity of representation and hearing to the affected employees. The principles of natural justice having been complied with, this Court does not have



any reason to disbelieve or interfere with the finding recorded by the State Committee. It is noteworthy that the applicants have not challenged the finding recorded by the State Committee or at least have not been able to establish that the respective finding is erroneous on the facts of the case. As recorded hereinabove, in repeated enquiry made by the State Government, all such appointments were found to be illegal, void ab-initio. Unless there is a strong evidence of such finding being wrong, this Court in exercise of power of judicial review cannot interfere with such finding. In the present case, none of the petitioners has dislodged the finding of illegal/fake appointment or has established that his appointment was legal and valid in all respects. The argument of applicants that the principles of natural justice were violated is devoid of force and to be rejected.

18. We take notice of the argument of learned DAG that giving prior opportunity to the applicants before issuing the impugned orders was not obligatory; and no fruitful purpose would have been served by giving such notice.
19. It is settled law that if the appointment letters are nullity, having been issued by an officer who did not have authority to do so, there can be no question of observance of principles of natural justice. In this regard, reference may be made to Union of India v/s Raghuwar Pal Singh, (2018) 2 SCC (L&S) 823 wherein the Hon'ble Apex Court held as under:

“17. For taking this contention forward, we may assume, for the time being, that the then Director Incharge H.S. Rathore,



Agriculture Officer had the authority to issue a letter of appointment. Nevertheless, he could do so only upon obtaining prior written approval of the competent authority. No case has been made out in the Original Application that due approval was granted by the competent authority before issue of the letter of appointment to the respondent. Thus, it is indisputable that no prior approval of the competent authority was given for the appointment of the respondent. In such a case, the next logical issue that arises for consideration is: whether the appointment letter issued to the respondent, would be a case of nullity or a mere irregularity' If it is a case of nullity, affording opportunity to the incumbent would be a mere formality and non grant of opportunity may not vitiate the final decision of termination of his services. The Tribunal has rightly held that in absence of prior approval of the competent authority, the Director Incharge could not have hastened issuance of the appointment letter. The act of commission and omission of the then Director Incharge would, therefore, suffer from the vice of lack of authority and nullity in law.

28. We have no hesitation in concluding that in the fact situation of the present case, giving opportunity of hearing to the respondent before issuance of the subject office order was not an essential requirement and it would be an exercise in futility. For the view that we have taken, the exposition in D.K. Yadav (supra), which commended to the High Court, in our opinion, has no application to the fact situation of the present case concerning an appointment which is void ab initio and nullity.”

20. Applicants rely upon (1) Punjab National Bank v/s Sh. Kunj Lal Behari, 1998 (7) SCC 84, unlike the facts of the present case, there was violation of provisions of Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 by the Disciplinary Authority and in this context, it was held that there was violation of principle of natural justice. (2) State Bank of India v/s



K.P.Narayanan, 2003 (2) SCC 449. The facts of said case reveal that the Court allowed the writ petition accepting the contention that no opportunity was given to the respondent by the disciplinary authority in regard to the charges with which the findings of the Enquiry Officer were not agreed to by the disciplinary authority in the enquiry under State Bank of India (Supervising Staff) Service Rules. The facts of both cases are entirely different. (3) H.P. State Electricity Board Ltd. Vs. Mahesh Dahiya, 2017 (1) SCC 768 wherein inquiry under CCS(CCA) Rules, 1965 was initiated. The Hon'ble Apex Court held that "We are, thus, of the view that there was violation of principle of natural justice at the level of Disciplinary Authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the inquiry report to the delinquent and before obtaining his comments on the inquiry report." The facts of the said case are entirely different from present case and inapplicable to the facts of the present case. (4) Amarkant Rai Vs. State of Bihar, (2015) 2 SCC(L&S) 679 was regarding the case of regularisation of service of the applicant and the facts are entirely different from the present case. The facts of the aforementioned citations are different from the facts of the present case and therefore inapplicable.

21. Looking to the facts of the case, we are of the opinion that the appointments of the applicants was illegal and void ab initio. The applicants have been unable to establish the genuineness or the legality of their appointment orders. In the present case, the Superintending Engineer, Hydraulic Circle Pulwama and Executive

Engineer Irrigation, Division Pulwama not only acted arbitrarily at every step of the process of recruitment but, also made the appointments which were beyond their authority and competency to make such appointments and while other orders were found to be forged.



22. On the question of competency of the officers who issued the appointment orders, it has been argued by learned counsel for applicants that it is not the concern of the applicants-employees to find out whether or not the orders have been passed by the competent authority and placed reliance on order dated 01.02.2018 passed by the Hon'ble High Court of J&K at Srinagar in SWP No. 1018/2010 titled Mohammad Saleem Koka v/s State of J&K.
23. However, this contention of the applicants is to be 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.”

We may also refer to *Pratap Kishore Panda v/s Agni Charan Das*, (2018) 1 SCC (L&S) 371 wherein the Hon'ble Apex Court held that "The Uma Devi 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."



24. In the instant case, the appointment of the applicants was made in complete violation of law. In view of the settled law laid down by the Hon'ble Apex Court, it is clear that if employment of person 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. In the present case, the appointment of applicants is an act which has been committed by some government official with a pre-concerted meeting of mind to commit a fraud upon the Government. It is settled law that fraud vitiates all subsequent acts. That some of the orders were forged documents reflect adversely upon the concerned applicants since they seemingly participated in the preparation of forgery of Government documents.
25. Applicants challenge the impugned orders on the ground that respondents should have conducted an inquiry under the J&K Classification Control and Appeal Rules, 1956. As discussed above, applicants have been unable to establish the validity of their appointment orders. We refer to *State of Bihar Vs. Kirti Narayan Prasad*, (2019) 13 SCC 250 wherein the following observations of the

Hon'ble Apex Court are a complete answer to reject the submission of the applicants as under:



“The real controversy is whether the writ petitioners were legally and validly appointed. The finding of the State Committee is that many writ petitioners had secured appointment by producing fake or forged appointment letter or had been inducted in Government service surreptitiously by concerned Civil Surgeon-cum-Chief Medical Officer by issuing a posting order. The writ petitioners are the beneficiaries of illegal orders made by the Civil Surgeon-cum-Chief Medical Officer. They were given notice to establish the genuineness of their appointment and to show cause. None of them could establish the genuineness or legality of their appointment before the State Committee. The State Committee on appreciation of the materials on record has opined that their appointment was illegal and void ab initio. We do not find any ground to disagree with the finding of the State Committee. In the circumstances, the question of regularisation of their services by invoking para 53 of the judgment in Umadevi (supra) does not arise. Since the appointment of the petitioners is ab initio void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise.”

26. In the present case, none of the applicants has dislodged the finding of illegal appointment or established that the appointment was legal and valid in all respects. The facts and circumstances of the present case show that the appointments of some applicants were backdoor entries, act of nepotism and favouritism and therefore illegal appointments made in a wholly arbitrary process. Whereas, some applicants managed to secure forged appointment letters.



27. Taking into account the entire facts of the case, we hold that the appointment of the applicants was irregular and without sanction of law and therefore non est and void ab initio from the day one. The concerned officers having no authority to make appointment issued the orders of appointment in favour of the applicants. The procedure adopted by the said officers was not having the sanctity of law and strictly prohibited under the Business Rules of the Government as well as Article 14 and 16 of the Constitution of India. Respondents, thus, committed no illegality, rather were under a legal obligation to withdraw the order of appointment of the applicants which, on the face of it, were *void abinitio* and unconstitutional. The arguments raised by the learned advocate are, therefore, not tenable.

28. Even, if the applicants were getting the salaries on basis of illegal orders, the same would not make their appointments to be valid and legal. We 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.”

29. It was argued by learned counsel for applicants that the applicants should be given the same treatment i.e. appointment as has been given to 17 officials who are similarly situated and denial of this treatment has violated the rights of applicants who are entitled to similar treatment as per Article 14 of the Constitution of India.
30. Countering the arguments of learned counsel for applicants, it has been argued by learned DAG that Article 14 or 16 of the Constitution cannot be invoked and pressed in service to perpetuate illegality. It was submitted that if one illegal action is taken, a person whose case is similar, cannot invoke Article 14 or 16 and demand similar relief, illegally or against a statute. Therefore, if some officials were wrongly and illegally appointed, the applicants are not entitled to benefit of such illegality.
31. Undoubtedly, the principle is very clear that there cannot be any parity in the illegality. We may refer to the observations of the Hon’ble Apex Court in the following cases:

A. Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81:



“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an 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 a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible.

B. Pankjeshwar Sharma Vs. State of Jammu & Kashmir, (2021) 2 SCC 188 that:

“This Court further held that even if in some cases appointments had been made erroneously or by mistake, that did not confer any right of appointment to another person as Article 14 of the Constitution does not envisage negative equality and if the State or its authority had committed a mistake at any given stage, it cannot be forced to perpetuate the said mistake under the writ jurisdiction of the High Court under Article 226 of the Constitution.”

“If an appointment is made illegally or irregularly, the same cannot be made the basis of further appointment and erroneous decision cannot be permitted to perpetuate

further error to the detriment of the general welfare of the public or a considerable section. This has been the consistent approach of this Court.”



- C. State of Orissa v/s Mamata Mohanty, 2011 (3) SCC 436 that:

“36. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief.”

- D. Union of India v. M.K. Sarkar, (2010) 2 SCC 59 : (2010) 1 SCC (L&S) 1126 as under:

“26. A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief.”



32. So, the settled law being that merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the applicants to claim equality. In the present case, applicants seek parity with 17 officials who are similarly situated. In view of the clear law as stated above, even if the appointment orders of the 17 officials are either forged or issued by officers who had no competency to make appointments or otherwise legal, the applicants have no right to claim parity with these officials.
33. Lastly, it was argued by learned DAG, that similar orders dated 26.06.2020 were challenged in O.A. No. 1184/2020 titled Manzoor Ahmad Mir and anr. v/s Union Territory of Jammu & Kashmir and the O.A. was dismissed by this Tribunal vide order dated 17.05.2021, therefore, this Bench is bound by the order passed by the previous Bench and the O.A. is to be dismissed.
34. We have perused the order dated 17.05.2021 dismissing the O.A. wherein similar orders were challenged. It is a settled law that the decision of the Coordinate Bench, has to be respected and adopted. In this regard, the decision of the Hon'ble Apex Court in sub-Inspector Rooplal v/s Lt. Governor, (2000) 1 SCC 644 is relevant to be cited wherein it has been held as under:

“12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a Coordinate Bench of the Tribunal has overruled, in effect, an earlier judgment of another Coordinate Bench of the same Tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the Tribunal was of the opinion that the earlier view taken by the Coordinate Bench of the same Tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two Coordinate Benches on the same point could have



been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every presiding officer of a judicial forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again that precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A Coordinate Bench of a Court cannot pronounce judgment contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement.”

35. The Coordinate Bench having dismissed the O.A. having similar facts, we are bound by the earlier order in case of Manzoor Ahmad Mir (supra) and see no reason to disagree with it. On this ground also, the present O.A. deserves dismissal.
36. It is clear from the discussions in the preceding paragraphs that in some cases, the appointments orders have been made by an authority not competent to make such appointments and in other cases, the appointment orders are forged documents. The appointment letters have been rightly cancelled and impugned orders of cancellation do not call for any interference by this Tribunal. The applicants have failed to establish any case in their favour. We do not find any merit in the O.A. It is accordingly dismissed. There shall be no order as to costs.

(Anand Mathur)
Member (A)

(Rakesh Sagar Jain)
Member (J)

Arun/-