

(Reserved)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Hearing through video conferencing

T.A. No. 62/1488/2020



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. Bilal Ahmad Ganai, Aged 34 years, S/o Ghulam Mohd Ganie. R/o Sherabad Pattan Baramulla.
2. Feroz Ahmad Lone, Aged 36 years, S/o Ab Rashid Lone, R/o Udipora, Langte.
3. Nasrullah Wani, Aged: 37 years, S/o Mohammad Yousuf Wani, R/o Hajin Sonawari, Bandipora.
4. Bilal Ahmad Kaloo, Aged 34 years, S/o Gh. Nabi Kaloo, R/o Pattan District Baramulla.
5. Aftab Hma War, Aged 34 years, S/o Gh. Ahmad War, R/o Kullangam Handwara, Kupwara.
6. Samees Abass, Aged 32 years, S/o Syed Abyass, R/o Gund Khawaja Keem Pattan, Baramulla.
7. Muzaffer Ahmad Rather, Aged: 34 years, S/o Gh. Ahmad Rather, R/o Purinisuder Shah, Tehsil Beerawah, Budgam.
8. Mudasir Ahmad Ganie, S/o Abdul Rahman Gania, R/o Peth-Kanihama, Beerah Budgam.
9. Syed Ashaq Hussain, Aged 38 years, S/o Syed Mehboob Shah, R/o Manzhari Kupwara.
10. Abid Hussain, Aged: 36 years, S/o Abdul Majeed Darzi, R/o Sangri Colony Baramulla.

.....Applicants

(Advocate: Mr. M Y Bhat, Sr. Advocate assisted by Mr. Hamzad)

Versus



1. 1. State of Jammu and Kashmir through Chief Secretary to Government of J&K, Civil Secretariat, Srinagar/ Jammu.
2. Principal Secretary to Government Home Department, Civil Secretariat, Srinagar/ Jammu.
3. Commissioner cum Secretary to Government Finance Department, Civil Secretariat, Srinagar/Jammu.
4. Commissioner cum Secretary to Government General Administration Deptt. Civil Sectt. Srinagar/ Jammu.
5. Umar Jan Beigh
S/o Habibullah Beigh
R/o Devi Angam Hariparbat Srinagar.
6. Irfan Ahmad Mir
S/o Late Gh Nabi Mir
R/o Malik Sahib Gojwara Srinagar.
7. Tanveer Ahmad Qureshi
S/o Fayaz Ahmad Qureshi
R/o Allochi Bagh Shalipopra Srinagar.
8. Shabir Ahmad Ganie
S/o Abdul Ahad Ganie
R/o Ishber Nishat Srinagar.
9. Bilal Ahmad Bhat
S/o Gulam Mohammad Bhat
R/o Tilwani Mohalla Harwan Srinagar.
10. Basharat Ahmad Mir
S/o Gh Mohd Mir
R/o Upper Brain Nishat Srinagar
11. Uzair Bashir Najar

S/o Bashir Ahmad Najar
R/o Solina Payeen Srinagar.



12. Zahoor Ahmad Bhat
S/o Naseer Ahmad Bhat
R/o Pati Braine Srinagar.

13. Rameez Raja
S/o Late Ali Mohd Hajam
R/o Magarmal Bagh Govt Flat Srinagar.

14. Jasbeer Singh
S/o Harcharan Singh
R/o Tulsi Bagh Opp. M-5 Srinagar.

15. Dilbar Mohd Saleem
S/o Abdul Samad Sofi
R/o Mala Bagh Srinagar.

16. Nahid Ahmad Dar
S/o Shabir Ahmad Dar
R/o Basant Bagh Srinagar.

17. Adil Hassan Mir
S/o Gh Hassan Mir
R/o Sadura Dooru Anantnag.

18. Sajad Ahmad Bhat
S/o Ghulam Mustafa Bhat
R/o Arwani Bejebihara Anantnag.

19. Bilal Ahmad Khan
S/o Mushtaq Ahmad Khan
R/o Hamdani Liver Pahalgam Anantnag.



20. Abid Hussain Bhat
S/o Ab. Hamid Bhat
R/o Tailwani Anantnag.
21. Syed Faheem Hussain
S/o Syed Mohd Farooq
R/o Sangam Anantnag.
22. Shakil Abdullah Shah
S/o Mohd Abdullah Shah
R/o Ganoorah Anantnag.
23. Mohd Asim Bhat
S/o Ghulam Nabi Bhat
R/o Hugam Anantnag.
24. Mudasir Ahmad Wani
S/o Ghulam Nabi Wani
R/o Shangas Anantnag.
25. Mohd Hussain Ganai
S/o Assadullah Ganai
R/o Tailwani Anantnag.
26. Salama Yaqoob
D/o Mohd Yaqoob Sheikh
R/o Hardu Shiehen Anantnag.
27. Shabir Ahmad Malik
S/o Mohd Munawar Malik
R/o Gani Gund Dooru Anantnag.
28. Shahnawaz Ahmad Malik

S/o Ghulam Rasool Malik
R/o Okingam Anantnag.



29. Ashiq Hussain Lone
S/o Ab. Hamid Lone
R/o Kulu Nowgam.
30. Muzaffar Ahmad Bhat
S/o Mohd Anwar Bhat
R/o Huno Manapora Pahalgam Anantnag.
31. Abid Hussain Bhat
S/o Gh. Rasool Bhat
R/o Shangas Anantnag.
32. Peerzada Murtaza Ahmad
S/o Peerzada Sonaullah
R/o Nanil Anantnag.
33. Muzzffar Ahmad Chopan
S/o Mohd Sultan Chopan
R/o Lalan Anantnag.
34. Shabir Ahmad Sheikh
S/o Nazir Ahmad Sheikh
R/o Koka Gund Veerinag Anantnag.
35. Showkat Ahmad Rather
S/o Habib Rather
R/o Seer Pahalgam Anantnag.
36. Mohd Rafiq Khan
S/o Gh. Rasool Khan
R/o Losi Seer Anantnag.



37. Bilal Ahmad Naik
S/o Mohd Ayoub Naik
R/o Asnoor Kulgam.
38. Sajad Ahmad Dar
S/o Mohd Ramzan Dar
R/o Chechpora Kulgam.
39. Usman Yousus Wani
S/o Mohd Yousuf Wani
R/o Yamrach Kulgam.
40. Bilal Bashir
S/o Bashir Ahmad Mir
R/o Chandsar Kulgam.
41. Asif Mohi-ud-din Tak
S/o Gh Mohi-ud-din Tak
R/o Yaripora Kulgam.
42. Hilal Ayoub Shah
S/o Mohd Ayoub Shah
R/o Balsoo Kulgam.
43. Mohd Amin Bhat
S/o Mohd Ismail Bhat
R/o Qaimoh Kulgam.
44. Shabir Ahmad Bhat
S/o Mohd Afzal Bhat
R/o Yamrach Kulgam.



45. Arshid Abas Mir
S/o Gh Mohd Mir
R/o Zangalpora Kulgam.
46. Parvaiz Ahmad Lone
S/o Gh Mohd Lone
R/o Bogund Kulgam.
47. Ajaz Hussain Mir
S/o Nazir Ahmad
R/o Bumthan Kulgam.
48. Mohd Ashraf Lone
S/o Gh. Hassan Lone
R/o Shapora Tral Pulwama.
49. Mohd Amin Reshi
S/o Gh. Mohd Reshi
R/o Wachipora Shopian.
50. Sartaj Habibi
S/o Habib Ullah Bhat
R/o Zainpora Shopian.
51. Irfan Ahmad Shah
S/o Nazir Ahmad Shah
R/o Sangran Shopian.
52. Manzoor Ahmad Dar
S/o Mohd Ahsan Dar
R/o Gatipora Shopian.
53. Parvaiz Ahmad Wani

S/o Gh. Rasool Wani
R/o Mughalpora Shopian.



54. Zulfkar Ahmad Mir
S/o Ghulam Ali Mir
R/o Kerana Manloo Shopian.

55. Tahiq Ahmad Wani
S/o Gh Mohd Wani
R/o Largam Shopian.

56. Jamsheed Iqbal Khan
S/o Bashir Ahmad Khan
R/o Kariwa Zowora Shopian.

57. Mohd Iqbal Wani
S/o Ahmad Ullah Wani
R/o Aglar Shopian.

58. Ishfaq Hussain Shah
S/o Mohd Sadiq Shah
R/o Sogoo Shopian.

59. Ajay Sudan
S/o Ashok Kumar
R/o Jandiyal Thatri Jammu.

60. Nitesh Sharma
S/o Mohan Lal Sharma
R/o Khojipore Jammu.

61. Ajib Singh
S/o Rasal Singh

R/o Dumi Bahara Jammu.



62. Varinder Singh
S/o Ram Singh
R/o Kanduli Jammu.

63. Deepak Shama
S/o Nanak Dev Sharma
R/o Lower Gadi Jammu.

64. Arun Kumar
S/o Bishan Das
R/o Sere Panditan Jammu.

65. Tanveer Singh Chib
S/o Late Parlad Singh
R/o Narwal Pan Jammu.

66. Jitender Singh
S/o Jagetter Singh
R/o Vihar Jammu.

67. Bharat Bushan Raina
S/o Jagarnath Raina
R/o Darapora Kupwara A/P Q. No.521 Mishriwal Camp.

68. Taran Deep Singh
S/o Ajit Singh
R/o Basti Gomanhasan Jammu.

69. Sushil Singh Chib
S/o Jankar Singh Chib
R/o Ashok Nagar Jammu.



70. Aran Joman Sharma
S/o Madam Lal Sharma
R/o Sobka APHQ No. 235 Sector 4 Pamposh Janipore Jammu.
71. Suraj Prakash Singh
S/o Hakikat Singh
R/o Jagti Nagrota Jammu.
72. Sahil Bakshi
S/o Nand Kushore
R/o Ismaipore Jammu.
73. Gur Preet Singh
S/o Manjit Singh
R/o Azad Nagar Jammu.
74. Manor Kumar Pandita
S/o Ram Jee Pandita APHQ No. 714 Migran Camp Mir Sheriwala
Jammu.
75. Lakhbir Singh
S/o Harminder Singh
R/o Sehora Baba Farid Nagar.
76. Naresh Kumar Sharma
S/o RashPal Sharma
R/o Majua Uttam Bisna Jammu.
77. Gurmeet Singh
S/o Late Amreek Singh
R/o Purana Pind R.S. Pora Jammu.
78. Rohit Kumar Saini
S/o Kuldeep Singh

R/o Kool Kalan P/S Arniya Bisna.



79. Abi Nandan
 S/o Som Dath Sharma
 R/o Bhura Chak Jammu.
80. Kavinder Singh Jamwal
 S/o Sham Singh
 R/o Tangbal Kulgam A/P Q No. 406 Vinak Nagar Muthi Jammu.
81. Arvinder Sharma
 S/o Harbans Lal
 R/o Badiyal Brahmina Jammu.
82. Gagan Deep Singh
 S/o Amar Dev Singh
 R/o Bhou R.S. Pora Jammu.
83. Mandeep Singh
 S/o Narinder Singh
 R/o Khutian R.S. Pora Jammu.
84. Ajay Kumar
 S/o kul Deep Singh
 R/o Narwal Pan Jammu.
85. Mukesh Sharma
 S/o Makhan Lal
 R/o Dadi Gari Jammu.
86. Manmohan Khujoria
 S/o Babu Ram
 R/o Narwal Pan Jammu.



87. Vishal Singh jamwal
S/o Bobinder Singh
R/o Raipore Bantalab Jammu.
88. Neeraj Jamwal
S/o Balbir Singh
R/o Katal Batal Nagrota Jammu.
89. Avtar Krishan
S/o Ratan Lal
R/o Bhatyara Bisna Jammu.
90. Mohinder Kumar
S/o Bodh Raj
V/o Rohimorh Jammu.
91. Harish Sharma
S/o Durga Das
R/o Lower Gadi Jammu.
92. Vishal Sharma
S/o Kul Deep Sharama
R/o Kachi Chowni Jammu.
93. Rameek Singh
S/o Sagar Singh
R/o Gurha Salathiya Samba.
94. Sanjeev Chodary
S/o Mohinder Singh
R/o khanpore Vijaypore Samba.
95. Vikar Kumar

S/o Harbans Lal
R/o Pati Vijaypore Samba.



96. Sanjeev Kumar
S/o Tilarak Raj
R/o Ramlooh Brahmma Samba.

97. Ashwani Kumar
S/o Des Raj
R/o Pati Vijaypore Samba.

98. Ghulam Nabi
S/o Hyder Hussain
R/o Kharmadana Samba.

99. Sanandan Singh
S/o Yudh Veer Singh
R/o Gurha Sithiya Samba.

100. Banoo Pratab Singh
S/o Sur Kaka Singh
R/o Check Manga Samba.

.....Respondents

(Advocate: Mr. Amit Gupta, learned A.A.G. for the official respondents)

(ORDER)

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



1. Applicant Balal Ahmad Ganai and 9 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 applicants against the post of Wireless Assistant.
 - (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.

Mr. Abhinav Sharma, Sr. advocate and Mr. Hakim Suhail Ishtiaq, advocate for private respondents had submitted that counter affidavit filed in other T.A.s 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 applicant that 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)

Arun/-

(RAKESH SAGAR JAIN)
MEMBER (J)