HIGH COURT OF MADHYA PRADESH : JABALPUR

Writ Petition No.198/1999

Mansukh Lal Saraf …..Petitioner

Versus

Arun Kumar Tiwari & others ….Respondents

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Coram:

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice
Hon'ble Shri Justice K.K.Trivedi,

Whether approved for reporting? : Yes
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Shri Vibhudhendra Mishra, Advocate for the petitioner.
Shri Samdarshi Tiwari, Deputy Advocate General for the respondents No.2 to 4.

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Reserved On : 01.07.2015
Date of Decision : 06.08.2015

JUDGMENT
{ 06/08/ 2015}

Per: A.M. Khanwilkar, Chief Justice:

1. This *pro bono publico* petition, under Article 226 of the Constitution of India, for a writ of *quo warranto,* raises questions regarding the appointments made on the public posts

in illegal and arbitrary manner in the State of Madhya Pradesh, resulting in denial of opportunity of employment to the eligible persons.

2. According to the petitioner, the impugned appointment of respondent No.1 on the post of Sub-Engineer in the Water Resources Department of the State Government, is a classic case of not only arbitrary action of persons involved in the decision making process of having bestowed undue favour on the respondent No.1 but also nullifying or defying the order passed by this Court in the previous litigation regarding the appointment of respondent No.1 in the same manner elsewhere.

3. In brief, the facts of the case are that the respondent No.1 was initially appointed on daily wages in the service of Nagar Panchayat, Mauganj, District Rewa. His appointment as daily rated employee on the post of Sub Engineer, made in the year 1990, was against the statutory provisions of the rules governing those services in the Nagar Panchayat. The State Government in exercise of its powers vested under the provisions of the Madhya Pradesh Municipalities Act, 1961, framed rules known as Madhya Pradesh Municipal Services (Scale of Pay and allowances) Rules, 1967. Under the said Rules, the posts were

classified. Under the Madhya Pradesh Municipal Employees (Recruitment and Conditions of Service) Rules, 1968, wherein provision has been made for making direct recruitment on the post sanctioned in any Municipal Council/Nagar Panchayat. The method of recruitment prescribed therein did not contemplate appointment on daily wage basis.

4. Be that as it may, the persons in power went on to regularize the appointment of respondent No.1 on the post of Sub Engineer by an order dated 03.04.1995. That order was passed, purportedly, on the basis of some recommendation made by the Selection Committee said to have been constituted, vide minutes dated 28.03.1995. The petitioner, who was the elected Councillor of Nagar Panchayat, Mauganj at the relevant time, therefore, approached this Court to challenge the order of regularization of respondent No.1 herein by way of W.P. No.2673/1995. It was specifically alleged that the order of regularization issued in favour of the respondent No.1 was in utter breach of the law and the rules framed therefor, and that the recommendation made by the Committee was in gross violation of the rules and the prevailing instructions of the State Government.

5. The said writ petition was heard by a single Bench of this Court and by order dated 11.09.1997, the Court held that the selection procedure followed, preceding the regularisation of respondent No.1, was *de hors* the rules. From the finding recorded by this Court in the said case, it is abundantly clear that from day one the appointment of respondent No.1 in the service was against the law, as observed in paragraphs 5 and 6 of the order passed by this Court, which reads thus :

> "5. From a perusal of the proceedings of the selection committee, this Court finds that the authorities of the State and the Nagar Panchayat have patently shown favourtism to respondent no.2. Although the respondent no.2 did not fulfill the requisite minimum prescribed period of service, the Directorate issued a letter for his regularisation and the selection committee of the Nagar Panchayat immediately obeyed those directions. When such orders of regularisation are obtained by approach and favourtism, public interest suffers because eligible candidates who could compete for the post lose chance of employment. The petitioner was appointed as daily rated Sub Engineer only in the year 1990. If he was working against a sanctioned post, the post was required to be advertised for regular recruitment to enable eligible candidates to compete for the post along with respondent no.2. The Govt. circulars on subject of regularisation which have been made applicable to local authorities did not permit consideration of respondent no.2 as he was not in continuous service since 1988 had not completed ten years of service on the post as daily rated employee. No letter of recommendation, therefore, could have been issued by the Directorate of Local Administration and on that basis no appointment could have been made by regularising the services of respondent no.2. Merely because the petitioner is not himself an aspirant for any appointment but is only an elected coucillor, the Court cannot dismiss the petition on the alleged ground of locus standi. In this case, the Court has come to a conclusion that the regularisation of the respondent no.2 is against recruitment rules framed under the M.P. Municipalities Act and Govt. circulars on regularisation. No rule or circular has been brought to the notice of the Court which provides for relaxation of the prescribed period of service, either

by the State authorities or by the authorities of the Nagar Panchayat.

6. Consequently, the petition succeeds and is hereby allowed. The impugned proceedings of the selection committee contained in the minutes dated 28.3.1995 (Annexure-P/7) and the consequent order of regularisation of the petitioner's services dated 6.4.1995 by the Nagar Panchayat as also the order dated 3.4.1995 giving approval to his appointment by the Joint Director, Local Administration, Bhopal are all hereby quashed. It is directed that the respondent no.2 be continued in service only as a daily rated employee. The post against which the respondent no.2 was regularised be now advertised for recruitment through open competition in accordance with the recruitment rules and the provisions of M.P. Municipalities Act. Let the necessary advertisement be issued within three months from the date of this order. Along with other eligible candidates, the respondent no.2 be also given opportunity to compete for the post. Let the formalities for making regular appointment as per the rules be completed within outer limit of six months. Since the petitioner has brought a just and rightful cause in this Court, he shall also be entitled to get costs of this petition, which is assessed at Rs.1000/- to be paid in equal proportion by respondent no.1 State of Madhya Pradesh in the concerned department, respondent no.2 Arun Kumar Tiwari and respondent no.4-Nagar Panchayat, Mauganj."

6. As a result of the High Court order, of quashment of regularization of respondent No.1, he was deemed to be a daily wage employee with the Nagar Panchayat, Mauganj and was not entitled to any other benefit whatsoever. However, on 21st May, 1998, the respondent No.1 was favoured by appointing him in the Government department of Local Government Department. That order reads thus :

"क्रमांक 332800/64/98

कार्यलय प्रमुख अभियंता

जल संसाधान संभाग म0प्र0 भोपाल, दिनांक 21.5.98

आदेश

म0प्र0 शासन जल संसाधन विभाग के क्रमांक एफ05–24/97/पी/31 दिनांक 21 मई 1998 के अनुसार श्री अरूण कुमार तिवारी, आत्मज श्री उग्रभान प्रसाद तिवारी, दैनिक वेतन भोगी, स्थानीय शासन विभाग, भोपाल की विशेष प्रकरण मानकर सेवा भर्ती नियमों को शिथिल कर जल संशाधन विभाग में उपयंत्री [नाम] के पद पर नियक्ति दिये जाने के आदेश प्रशारित किये गये । तदनुसार श्री अरूण कुमार तिवारी आत्मज श्री उग्रभान प्रसाद तिवारी की मध्यप्रदेश तृतीय श्रेणी तकनीकी [कार्यपालिक] सेवा में उपयंत्री श्री [नाम] के पद पर वेतनमान रू05000–150–8000 तथा शासन द्वारा धोषित महगाई भत्ते एवं अन्य भत्ते में कार्य ग्रहण करने के दिनांक से आगामी आदेश तक अस्थाई रूप से स्थापन्न रूप से निम्नांकित शर्तों के अधीन नियुक्त किया जाकर उनके नाम के समक्ष दर्शाए गए मुख्य अभियंता की संरचना में पदस्थ किया जाता है।

स0क0	नाम एवं पिता का नाम	कार्यालय जिनके अधीन पदस्थ किया जाता है।
1–	श्री अरूण कुमार तिवारी आत्मज श्री उग्रभान प्रसाद तिवारी	मुख्य अभियंता, गंगा कछार रीवा के अधीन जल संसाधन उप संभाग व्योहारी

1– आदेश प्राप्त होने के 30 दिवस के अन्दर कार्य ग्रहण करना अनिवार्य है, यदि समयावधि में अभ्ययर्थी कार्य ग्रहण नहीं करेंगे तो नियमित आदेश निरस्त माना जावेगा।

2– कार्य ग्रहण करने के पूर्व निम्नांकित प्रमाण पत्र व पत्रक जिला कार्यालय में अभ्यर्थी कार्यग्रहण करेंगे, उस कार्यालय प्रमुख को प्रस्तुत करना अनिवार्य है।

अ– सम्बंधित जिले के प्रमुख चिकित्सक के स्वास्थ परीक्षण प्रमाण पत्र।

ब– चरित्र एवं पूर्ववत चरित्र सत्यापन का पत्रक पूर्ण करके (परिशिष्ट संलग्न)

स– शैक्षणिक योग्यता डिप्लोमा प्रमाण पत्र एवं जन्मतिथि का प्रमाण पत्र।

मूल रूप से मय एक–एक सत्यप्रतिलिपि के सत्यापन के पश्चात् मूल प्रमाण पत्र वापिस कर दिये जायेंगे।

द– कार्यग्रहण सूचना (परिशिष्ट संलग्न)

ई– मध्यप्रदेश का मूल निवासी प्रमाण पत्र (परिशिष्ट संलग्न)

3– चरित्र एवं पूर्ववत सत्यापन में निर्धारित प्रपत्र में जानकारी कार्यग्रहण सूचना के साथ प्रस्तुत करना अनिवार्य है।

4– अभ्यर्थी को कार्यग्रहण करने के तुरन्त बाद संलग्न प्रपत्र में अस्थायी सेवा घोषणा पत्रक भरकर प्रस्तुत करना अनिवार्य है (परिशिष्ट संलग्न)

5– उनकी नियुक्ति नियमित स्थापना में कार्य ग्रहण करने के दिनांक से मानी जावेगी।

6– यदि अभ्यर्थी सेवा त्यागना चाहते है तो एक माह का नोटिस अथवा एक माह का वेतन एवं भत्ते देकर सेवा त्याग सकते हैं अथवा शासन द्वारा भी उन्हें एक

माह का नोटिस अथवा एक माह के वेतन भत्ते देकर सेवा से निकाला जा सकता है।

7– कार्य ग्रहण करने हेतु यात्रा भत्ता की पात्रता नहीं होगी।

8– अभ्यर्थी को वर्क्सडिपार्टमेंट मेन्युअल भाग–1 के पैरा 1–005 एवं 1–0056 के अनुसार लेखा एवं यांत्रिकी परीक्षा 3 वर्ष के अन्दर उत्तीर्ण करना अनिवार्य है, अन्यथा शासकीय सेवा से हटाया जा सकता है।

9– उपरोक्त अभ्यर्थी की तकनीकी शैक्षणिक योग्यता एवं जन्मतिथि आदि कीजानकारी का परीक्षण इस कार्यालय द्वारा नहीं किया गया है अतः कार्य ग्रहण सूचना मान्य करने से पूर्व शैक्षणिक योग्यता/तकनीकी योग्यता/जन्मतिथि आदि का पूर्ण परीक्षण मुख्य अभियंता गंगा कछार

द्वारा किया जायेगा उसके पश्चात् ही कार्य ग्रहण प्रतिवेदन मान्य होगा। किसी भी प्रकार की त्रुटि होने पर कार्यग्रहण सूचना मान्य न कीजाकर प्रकरण इस कार्यालय को भेजा जावे।

हस्ता/–

(व्ही0 एल0 वर्मा)
प्रमुख अभियंता जल संसाधन

पृष्ठांकन क्र0 3322800/64/98 भोपाल, दिनांक 21.05.98"

Challenging this order, the present writ petition has been filed by the petitioner. The reliefs, claimed in the present writ petition, are as under:

"That the petitioner prays :

(i) That the order No.F-5-24/97/P/31 dated 21/5/98 passed by respondent No.2 be quashed by issuing writ of quo warranto.

(ii) That order No.3322800/64/99 dated 21/5/98 passed by the respondent No.3 and order No.9380/Stha/8-5-K-93 dated 26/5/98 passed by the respondent No.4 be quashed.

(iii) That the State be directed not to appoint the respondent No.1 on any other regular post without justified reasons.

> (iv) Any other relief which deem fit and proper this Hon'ble Court may also kindly be issued alongwith cost of the petition."

7. This Court, however, vide order dated 22.01.1999 directed to convert this petition into PIL. The said order reads thus :-

> "The petition appears to be in the nature of Public Interest Litigation against the alleged favouritism done to respondent No.1 in accommodating him in Government service after his appointment in municipal services was set aside by this court in WP. 2673/95 decided on 11-9-97 which was a petition filed by the present petitioner.
>
> The petitioner is granted a weeks' time to convert this petition into a PIL and place before the appropriate Division Bench."

The writ petition was admitted on 01.10.2002, with a direction to issue notice to respondent No.1. The order-sheets indicate that the respondent No.1 was not served, therefore, *Dasti* notice was issued to respondent No.1, vide order dated 30th April, 2010. It appears that *Dasti* notice could not be served on respondent No.1 and for that reason this Court directed service of notice on respondent No.1 through the Secretary of the Department of Water Resources and thereafter the matter was to proceed for hearing. In terms of order dated 20.01.2011, action was taken for service of notice on respondent No.1 and a note has been made that the respondent No.1 was duly served (as noted on 13.05.2011), but was not represented. Thereafter, the matter proceeded for hearing on several occasions and as it was noticed

that no counter affidavit has been filed by the respondents, on the prayer made by the counsel for the State, opportunity was granted to do so. When the matter was heard on 15.04.2014, this Court observed thus :

> "Shri Vibhudendra Mishra, Advocate for the petitioner.
>
> Shri S.D. Tiwari, G.A. for the respondents-State.
>
> Grievance in this petition, filed as back as in the year 1999, is to question the regular appointment of respondent no.1 against the post of Sub Engineer vide order dated 21/5/1998. For, the same has been in utter disregard of the decision of this Court in W.P. No.2673/1995 dated 11/9/1997 setting aside regularization order of respondent no.1 and appointing him as Sub Engineer.
>
> This Court plainly noted that respondent no.1 could not be regularized and, at best, could be permitted to participate in the selection process pursuant to public advertisement issued in that behalf.
>
> According to the petitioner, admittedly, soon thereafter respondent no.1 has been appointed in some other department without following the norms and, in particular, issuing public advertisement to fill up the post on which he has been appointed on regular basis.
>
> Respondent no.1 has not chosen to file any reply affidavit nor the department has filed any reply affidavit to counter the assertions made in this petition.
>
> On the basis of un-controverted facts, this petition ought to succeed. Nevertheless, by way of indulgence, we give last opportunity to learned counsel for the State to file reply in this petition, if so advised, on or before 28/4/14, failing which this petition shall proceed further.
>
> Be listed under caption "Top of the List" in the daily Board on 28/4/14.
>
> We place on record that the Court, while allowing the petition, may not only direct setting aside of the order appointing respondent no.1 on regular basis, but also further order to proceed against the persons responsible for taking such untenable decision to circumvent the order of this Court.
>
> Original record pertaining to impugned appointment of respondent no.1 shall be kept ready for perusal of the Court on the next date of hearing."

8. Lateron, return was filed by the respondents on 18th June, 2014. Nothing much has been said in the return except that the order of appointment of respondent No.1 was issued because of the recommendation made by the then Chief Minister of the State in the year 1997, which decision was duly placed and approved by the Cabinet of Ministers on 5th May, 1998. It is thus contended that no case has been made out for interference by this Court in exercise of its extraordinary jurisdiction in the matter of appointment of respondent No.1. At the cost of repetition, it is to be reiterated that respondent No.1 has not filed any return, nor has chosen to appear though duly served.

9. During the course of hearing, the State was directed to produce the original record pertaining to the appointment of respondent No.1. As per the direction, photocopy of the original record has been produced before us. We have examined the said record and heard learned Counsel for the parties at length.

10. The foremost question is: whether in the given circumstances the respondent No.1 could have been appointed in the manner he has been appointed; and whether the appointment so made can be said to be within the framework of the rules or the law?

11. It is noticed from the original record produced before us that, without there being any application by the respondent No.1, on his own, the then Chief Minister made a note purportedly on 27.09.1997, which has been annexed with the return and relevant part of which reads thus :

> "श्री अरूण कुमार तिवारी, उपयंत्री, स्थानीय शासन विभाग कार्यालय, उप संचालक, नगर प्रशासन रीवा में पदस्थ हैं। इनका संविलियन उप यंत्री के पद पर सिंचाई विभाग में किया जाता है। संविलियन आदेश मंत्रिपरिषद की स्वीकृति की प्रत्याशा में इनकी पदस्थापना कार्यालय, मुख्य अभियंता गंगा कछार रीवा में की जाती है। आदेश प्रसारित करें।
>
> Sd/-
> 27/9
> [दिग्विजय सिंह]
> मुख्यमंत्री
> मध्यप्रदेश शासन"

12. Notably, the process for appointment of respondent No.1 in the Government Department was ignited with the direction issued by the then Chief Minister; and not because of any proposal submitted by the concerned Department. Moreover, no reference is made to the decision of this Court in W.P.No:2673 of 1995 dated 11.09.1997, which was in public domain, of having quashed the regularisation of service of respondent No.1 in the Nagar Panchayat and directing to continue him in service only as a daily rated employee until the regular appointment was made through open competition as per the recruitment rules and M.P. Municipalities Act. The impugned appointment obviously

nullified the effect of Court's order against the respondent No1. Significantly, direction was issued by the then Chief Minister in just about two weeks after the decision of the High Court dated 11.09.1997, which raises a strong presumption about the close proximity of respondent No.1 with the then Chief Minister, who exercised no restraint in directing appointment of respondent No.1 in the teeth of mandatory procedure prescribed in the relevant Rules and also in complete disregard of the order of the High Court, only to favour the respondent No.1. There can be no other reason as to why the Chief Minister of the State would go out of the way to make such appointment on his own.

13. Be that as it may, a bare reading of the aforesaid note makes it amply clear that neither any application was submitted by the respondent No.1 nor the sanction of the Governor was obtained to relax the stipulations prescribed in the recruitment rules. In fact, such relaxation was not permissible. Further, the status of respondent No.1 has been wrongly mentioned as an employee serving in the Local Government Department, for the reasons best known to the then Chief Minister. Whereas, the respondent No.1 at the relevant time was working only as a daily rated employee on the post of Sub-Engineer of Nagar

Panchayat Mauganj, District Rewa and not on regular establishment in terms of order of the High Court dated 11.09.1997 in W.P.No.2673/1995 until the regular appointment was to be made. On such misdescription, straightway direction was issued to appoint respondent No.1 on the post of Sub-Engineer in the Government Department.

14. The abovesaid instructions dated 27.09.1997 issued by the then Chief Minister, on a note-sheet, was sent to the department for taking follow up action. Significantly, the Under Secretary of the Local Government Department made a noting, pointing out the fact that no objection certificate is being issued by the department but since the order of regularization of the person concerned (respondent No.1) was set aside by the High Court, this fact be taken note of. From the record it is clear that the fact that respondent No.1 was appointed on daily wages in the year 1990, was made known to all concerned. Instructions were given to get relevant information from the Director, Urban Administration - as the earlier order of regularization issued by the Director, Urban Administration on 03.04.1995 was already quashed by the High Court. Such instructions were issued on 25.10.1997, to obtain status report of the said employee

(respondent No.1). The fact relating to the order passed by this Court in the earlier writ petition on 11.09.1997 was also recorded in the note, with a suggestion to examine whether appointment of respondent No.1, in view of the aforesaid quashment of his earlier regularization, was possible or not.

15. The note-sheet further indicates that while the matter was to be placed before the Cabinet of Ministers, relevant notings were brought to the notice of the Deputy Secretary of the then Chief Minister vide communication dated 28th October, 1997, with a request to bring the relevant facts to the notice of the then Chief Minister. Notably, prior to this date certain note-sheets were moved to indicate that since the respondent No.1 was appointed on daily wages, he cannot be appointed directly. However, no rules under which appointment of respondent No.1 in the Government Department was permissible, have been pointed out in the entire note-sheet. Further, as the then Deputy Chief Minister was incharge of Ministry of Department of Water Resources, all these facts were brought to his notice with a specific noting that appointment of persons like respondent No.1 was not possible on regular basis in the department as he was only a daily wage employee and in terms of the policy made by

the State, appointees after 31st December, 1988 could not be absorbed in service. The Minister incharge concurred with that noting and also noted that these facts be brought to the notice of the then Chief Minister. It was also suggested that relevant facts be brought to the notice of the Cabinet as well. However, nothing more is available in the note-sheets after this - except that the regular Cabinet meeting was not held, and the approval to the proposal was given by the Cabinet by circulation and thereafter the impugned order of appointment of respondent No.1 was issued, in terms of the directions issued by the then Chief Minister. The note-sheet regarding the decision taken by the Cabinet of Ministers on 5th May, 1998 reads thus :-

F 5/24/97/P/31

"पूर्व पृष्ठ से :

ef=&ifj"kn vkns'k

vk;Ve dzekad 8 fnukad 5 ebZ 1998

fo"k; % *Jh v:.k dqekj frokjh mi;a=h] LFkkuh; 'kklu foHkkx dk ty lalk?ku foHkkx esa lafoy;u djuk*

निर्णय लिया गया कि श्री अरूण कुमार तिवारी उपयंत्री, (दैनिक वेतन भोगी), स्थानीय शासन विभाग को संबंधित भर्ती नियमों को षिथिल कर, जल संसाघन विभाग में उपयंत्री के पद पर नियुक्त किया जाए ।

(के. एस.शर्मा)
मुख्य सचिव
5 मई, 1998"

सचिव,
जल संसाघन विभाग

16. It will not be out of place to mention that continuous monitoring of the proposal was done by the then Chief Secretary

as is indicated in the note-sheet dated 24.10.1997, presumably under dictation of the then Chief Minister.

17. The fact which may have some bearing on the issue on hand, as noticed from the note-sheet dated 22.12.1998, is that, note-sheet was moved that the previous service of respondent No.1 should be counted or not. Part of the note-sheet moved for this purpose is reproduced for ready reference :

> "श्री अरूण कुमार तिवारी उपयंत्री जो दिनांक 7.9.90 से नगर पंचायत जिला रीवा में दैनिक वेतन भोगी पद पर उपयंत्री के रूप में कार्यरत थे। मंत्रि–परिषद के अनुमोदन अनुसार शासन के आदेश दिनांक 6.4.95 द्वारा नियमित उपयंत्री के रूप में नियुक्त किया गया तथा प्रमुख अभियन्ता के आदेश दिनांक 21.5.98 द्वारा नियमित उपयंत्री के रूप में अपर सोन जल संसाधन मण्डल शहडोल के अंतर्गत जल संशासन उप संभाग ब्यौहारी में पदस्थ किया गया। श्री तिवारी द्वारा दिनांक 27.5.98 को स्थानीय शासन से भारमुक्त होकर 28.5.98 को जल संसाधन उप संभाग ब्यौहारी में अपना कार्यभार ग्रहण कर लिया गया।
>
> 2. श्री अरूण कुमार तिवारी उपयंत्री की स्थानीय शासन विभाग के अधीन नगर पंचायत जिला रीवा की दैनिक वेतन भोगी के रूप में की गई सेवा की वर्तमान सेवा के साथ निरंतर किये जाने की मांग की गई है।
>
> 3. इस संबंध में शासन के कोई स्पष्ट निर्देश उपलब्ध नहीं है, अतः सामान्य प्रशासन विभाग को मत प्राप्त करने हेतु प्रकरण प्रस्तुत किया गया था। सामान्य प्रशासन विभाग द्वारा एम/18 पर इस पृच्छा के साथ मत नहीं दिया है कि नियुक्ति के समय सामान्य प्रशासन विभाग से सहमति प्राप्त नहीं की गई थी। चूंकि श्री तिवारी की उपयंत्री के पद पर नियुक्ति के समय सामान्य प्रशासन विभाग से कोई सहमति प्राप्त नहीं की गई थी, उक्त स्थिति में पुनः निवेदन किया जाये कि मा0 मुख्यमंत्रीजी के निर्देश के परिप्रेक्ष्य में क्या पूर्व सेवा जोड़ने की कार्यवाही की जा सकती है ?
>
> तदनुसार प्रकरण सामान्य प्रशासन विभाग को पुनः अंकित करना चाहेंगे।"

The opinion of the General Administration Department recorded on 3rd April, 1999 is of some relevance, which is reproduced below :

> "प्रशासकीय विभाग की पूर्व पृष्ठ पर अंकित टीप के संदर्भ में निवेदन है कि विभाग में अतिशेष कर्मचारी उपलब्ध होते हुए भी श्री तिवारी को भर्ती नियमों के विरूद्ध नियुक्त करते समय सामान्य प्रशासन विभाग से परामर्श नहीं किया गया। मंत्रिपरिषद आदेश के पूर्व सा0प्र0वि0 का अभिमत लिया जाना चाहिए था।

विभाग में नियुक्ति से पहले वे शासकीय सेवा में भी नहीं थे। शासकीय सेवा से अन्यत्र की गई दैनिक वेतनभोगी सेवा को शासकीय सेवा में जोड़ने का कोई औचित्य नहीं है।

[अपर मुख्य सचिव द्वारा अनुमोदित]"

18. On the basis of these facts we may now examine whether the appointment of respondent No.1 in the Water Resources Department can be said to be proper and legal? Further, whether that has been done in utter disregard of the order passed by this Court in the earlier writ petition? An incidental issue also arises for consideration as to whether the appointment of respondent No.1 is bordering on criminal misconduct and would attract any penal action?

19. We may first advert to the settled legal position about the scope of writ jurisdiction for issuing a writ of quo warranto. The Supreme Court in the case of **Rajesh Awasthi Vs. Nand Lal Jaiswal & others**[1], in paragraph 19 has expounded thus :-

> "19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in *Mor Modern Coop. Transport Society Ltd. vs. Govt of Haryana* held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In *B.Srinivasa Reddy,* this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one

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[1] **(2013) 1 SCC 501**

> which can only be issued if the appointment is contrary to the statutory rules. The said position has been reiterated by this court in Hari Bansh Lal wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules."

20. We may also usefully advert to the decision of the Division Bench of this Court in the case of **Pushpendra Singh Baghel Vs. State of M.P. and others[2],** which has dealt with the question that if the appointment on compassionate ground is in violation of the service rules, public interest litigation, challenging such appointment, must be entertained.

21. Although the prayer clause (i) in writ petition is *inter alia,* for issuance of a writ of quo warranto, but the other two substantive reliefs claimed are wider. The same may require issuance of a writ of certiorari and/or mandamus. Moreover, the present petition has already been treated as public interest litigation which may require elaboration of matters on all other relevant aspects for issuance of appropriate writ in larger public interest.

22. We may first examine the question whether the appointment of respondent No.1 is against the statutory provisions. Indisputably, recruitment rules for appointment on

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[2] **2005 (4) MPLJ 424**

the post of Sub-Engineer have been framed in exercise of powers conferred by the second proviso of Article 309 of the Constitution of India, titled as "M.P. Water Resource Department (Non-Gazetted) Service Recruitment Rules, 1969." These rules have been framed without prejudice to the generality of the provisions contained in the M.P. Civil Services (General Conditions of the Service) Rules, 1961, as predicated in Rule 3. Rule 4 mentions about the Constitution of the service. It postulates that service shall consist of three categories of persons referred to therein. In the present case, the appointment of respondent No.1 having been made on 21.05.1998, the third category mentioned in clause (iii) of Rule 4, will be applicable. It provides for persons recruited to the service "in accordance with the provisions of these rules".

23. The question is: whether the appointment of respondent No.1 is in accordance with the provisions of Rules of 1969. Rule 6 provides for the method of recruitment. Rule 6 reads thus :-

> "**6. Method of recruitment. -** (i) Recruitment to the service after commencement of these rules, shall be by the following methods viz. –
> (a) by direct recruitment, by Selection/by Competitive Examination as shown in schedule II.
> (b) by promotion of substantive /officiating members of the service (as shown in the Schedule IV), and
> (c) by transfer of persons who hold in a

substantive capacity such posts in such services as may be specified in this behalf.

(ii) The number of persons recruited under clause (b) and (c) of sub-rule (i) of Rule 6 shall not at any time exceed the percentage shown in the Schedule II.

(iii) Subject to the provisions of these rules, the method/methods of recruitment to be adopted for the purpose of filling any particular vacancy vacancies in the Service as may be required to be filled during any particular period of recruitment, and the number of persons to be recruited by each method shall be determined on each occasion by the Appointing Authority.

[(iv) Notwithstanding anything contained in sub-rule (1). If in the opinion of the Government the exigencies of the service so require the Government may after obtaining concurrence of the General Administration Department, adopt such methods of recruitment to the service other than those specified in the said sub-rule, as it may, by order issued in this behalf, prescribe."

24. One of the method of recruitment is by direct recruitment, by Selection/by Competitive Examination as mentioned in Schedule II. This is besides the two other methods of recruitment, namely, by promotion and transfer. As per Rule 6, direct recruitment is permitted by Selection/by Competitive examination. The recruitment by selection is to be done by the Committee constituted for that purpose. Schedule II to the Rules specifies, who should be the member of the departmental selection committee, below column 7, which reads thus :-

SCHEDULE II
(See Rule 6)

Name of Department	Name of Service		Total Number of duty posts	Percentage of the number of duty posts to be filled in			Name of members of Departmental Selection Committee	Remarks
	(i)Category	(ii)Description of post		By direct recruitment vide Rule 6 (i) (a)	By promotion of substantive members of service vide Rule 6 (i) (b)	By transfer of persons from other service vide Rule 6 (i) (c)		
(1)	(2)		(3)	(4)	(5)	(6)	(7)	(8)
Class-III Technical – Executive								
Irrigation Department	Class III	Junior Engineer *	282	Cent Percent	…..	…..	[1.Other Chief Irrigation Department Nominated by E-in-C, Irrigation Deptt – Chairman] 2. Two Superintendent Engineers Nominated by Engineers -in-Chief,- Members	
	Do.	Overseer (Select Grade)	23	……	Cent Percent	….	Do	
	Do.	Overseer	1776	75%	25%	….	Do	

Substituted vide MPGG Pt IV (Ga) dt. 26-3-71 P.136
***Note : Post of "Junior Engineer" rechristened as "Sub-Engineer"**.

(emphasis supplied)

25. The other process to be followed for direct recruitment is by conducting competitive examination. Assuming that we were to agree with the submission of the respondents that the

appointment of respondent No.1 is ascribable to direct recruitment by selection, the question is: whether the selection was done by following procedure prescribed by law. The answer is an emphatic "No". In that, it is indisputable that the appointment was made pursuant to the direction issued by the then Chief Minister. The argument of the respondents that the decision was taken at the highest level and was a collective decision of the Cabinet of Ministers is of no relevance. The fact that more persons joined hands in perpetrating the illegality or making appointment contrary to the statutory rules, cannot validate the action. One intriguing feature noticed from the note-sheet, is that, the then Chief Minister not only instructed appointment of respondent No.1 but also issued instructions to give posting to the respondent No.1 at a particular place. On account of such instructions issued by the then Chief Minister, the respondent No.1 came to be appointed at Rewa (District Rewa).

26. Notably, no reason is recorded, muchless a special reason as to why the appointment of respondent No.1 was so essential or indispensable, either by the then Chief Minister or by the Cabinet of Ministers, contrary to the prescribed procedure as per

the Rules. No contemporaneous noting in that regard is found in the entire record preceding the issuance of the impugned appointment order. In the case of **Pushpendra Singh Baghel** (supra), the Division Bench of this Court has opined that the term ‘exigencies of service’ refers to a situation where there is an urgent need or necessity to appoint officers to public posts, but such appointment by prescribed mode is not feasible. It would be a different matter if the appointment was on contract basis, but the persons in power disregarding the statutory prescription and inspite of the judgment of the High Court proceeded to make appointment of respondent No.1 on regular basis on a civil post. Indubitably, the people’s representatives being law makers cannot act in a manner or consider themselves to be above the law. It is the bounden duty of the elected representatives to administer and govern the State as per the rule of law; and not to show favour to any person or class of persons. That is the oath of office they take before putting on the gaunlet of policy makers and Ministers.

27. We have already alluded to the relevant factual matrix about the circumstances in which the impugned appointment order was issued in favour of respondent No.1, in the preceding

paragraphs. There is nothing to indicate that the respondent No.1 was subjected to “any” process of interview test, which, in any case, is indispensable - even in the matter of selection by the Committee. Nor it is the case of the respondents that the Cabinet of Ministers which considered the proposal for appointment of respondent, by circulation, had taken decision after conducting interview of the respondent No.1. Notably, the expression used in Rule 6 is “shall”. That presupposes that the procedure prescribed in the Rules for selection, is mandatory.

28. Clause (iv) of Rule 6, which opens with a non-obstante clause, does give an impression that if exigencies of service so require, the Government may after obtaining concurrence of the General Administration Department, adopt such methods of recruitment to the Service other than those specified in the said sub-rule, as it may, by order issued in this behalf. In the first place, the respondents are not taking support of this provision. Further, this provision was inserted on 10.02.1986. However, neither in the noting made by the then Chief Minister, nor the proposal prepared by the Department any exigency of service at the relevant point of time has been spelt out, which necessitated the Government to dispense with the mandatory selection

procedure. The power to be exercised, by virtue of Clause (iv) of Rule 6, is obviously, an exception; and for tangible reasons to be recorded contemporaneously. Since the validity of this provision is not put in issue nor this provision is pressed into service by the respondents, we need not dilate on that provision any further.

29. The consistent view of the Supreme Court in regard to the procedure to be followed for making appointments on civil posts, is that, it is not only a matter of moment for the administration; but is equally significant for the aspiring eligible candidates, for affording equal and fair opportunity to them for being considered for appointment. The Supreme Court has ordained to adopt transparent and fair procedure for making appointments on public posts on regular basis. In the case of **State of Bihar Vs. Upendra Narayan Singh and others**[3], the Supreme Court has deprecated the growing bane of **"spoils system"** evolved in appointments in different departments of the State after independence. After analysing its earlier decisions on that subject, it observed in paras 25, 27, 31, 32, 38, to 42, 44, 45 and 51, thus :-

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[3] (**2009) 5 SCC 65**

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

………………….

27. For ensuring that equality of opportunity in matters relating to employment becomes a reality for all, Parliament enacted the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (for short `the 1959 Act'). Section 4 of that Act casts a duty on the employer in every establishment in public sector in the State or a part thereof to notify every vacancy to the employment exchange before filling up the same.

………………….

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

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

…………………….

38. With a view to insulate the public employment apparatus in independent India from the virus of spoils system, the framers of the Constitution not only made equal opportunity in the matter of public employment as an integral part of the fundamental rights guaranteed to every citizen but also enacted a separate part, i.e., Part XIV with the title

"Services under the Union and the States". Article 309 which finds place in Chapter I of this part envisages enactment of laws by Parliament and the State Legislatures for regulating the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Proviso to this Article empowers the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and the Governor of a State or such person as he may direct in the case of services and posts and in connection with the affairs of State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts till the enactment of law by the appropriate legislature.

39. Article 311 which also finds place in the same chapter gives protection to the holders of civil posts against dismissal, removal or reduction in rank by an authority subordinate to the one by which they are appointed. This Article also provides that an order of dismissal, removal or reduction in rank can be passed only after holding an inquiry and giving reasonable opportunity of hearing to the affected person.

40. The provisions contained in Chapter II of Part XIV relate to Public Service Commissions. Article 315 mandates that there shall be a Public Service Commission for the Union and a Public Service Commission for each State. Article 320(1) casts a duty on the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the State respectively.

41. Clause 3 of Article 320 makes consultation with Union Public Service Commission, or the State Public Service Commission, as the case may be mandatory on all matters relating to methods of recruitment to civil services and for civil posts, on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers, on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters, on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown in India or under the Government of an Indian State, in a civil capacity, that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the Consolidated Fund of India, or, as the case may be, out of the Consolidated Fund of the State, on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under

the Crown in India or under the Government of an Indian State, in a civil capacity, and any question as to the amount of any such award. This clause also casts a duty on the Public Service Commissions to advise on any matter referred to them by the President or the Governor.

42. However, the hope and expectation of the framers of the Constitution that after independence every citizen will get equal opportunity in the matter of employment or appointment to any office under the State and members of civil services would remain committed to the Constitution and honestly serve the people of this country have been belied by what has actually happened in last four decades. The Public Service Commissions which have been given the status of Constitutional Authorities and which are supposed to be totally independent and impartial while discharging their function in terms of Article 320 have become victims of spoil system.

……………………..
44. The scenario is worst when it comes to appointment to lower strata of the civil services. Those who have been bestowed with the power to make appointment on Class III and Class IV posts have by and large misused and abused the same by violating relevant rules and instructions and have indulged in favouritism and nepotism with impunity resulting in total negation of the equality clause enshrined in Article 16 of the Constitution.

45. Thousands of cases have been filed in the Courts by aggrieved persons with the complaints that appointment to Class III and Class IV posts have been made without issuing any advertisement or sending requisition to the employment exchange as per the requirement of the 1959 Act and those who have links with the party in power or political leaders or who could pull strings in the power corridors get the cake of employment. Cases have also been filed with the complaints that recruitment to the higher strata of civil services made by the Public Service Commissions have been affected by the virus of spoil system in different dimensions and selections have been made for considerations other than merit.

…………………….
51. Notwithstanding the critical observations made in Delhi Development Horticulture Employees Union vs. Delhi Administration, Delhi and others (supra) and State of U.P. and others v. U.P. State Law Officers Association and others (supra), illegal employment market continued to grow in the country and those entrusted with the power of making appointment and those who could pull strings in the corridors of power manipulated the system to ensure that their favourites get employment in complete and contemptuous disregard of the equality clause enshrined in Article 16 of the Constitution and Section 4 of the 1959 Act. However, the Courts gradually realized that unwarranted sympathy shown

> to the progenies of spoil system has eaten into the vitals of service structure of the State and public bodies and this is the reason why relief of reinstatement and/or regularization of service has been denied to illegal appointees/backdoor entrants in large number of cases - Director, Institute of Management Development, U.P. v. Pushpa Srivastava [(1992) 4 SCC 33], Dr. M.A. Haque and others v. Union of India and others [(1993) 2 SCC 213], J & K Public Service Commission and others v. Dr. Narinder Mohan and others [(1994) 2 SCC 630], Dr. Arundhati Ajit Pargaonkar v. State of Maharashtra and others [1994 Suppl. (3) SCC 380], Union of India and others v. Kishan Gopal Vyas [(1996) 7 SCC 134], Union of India v. Moti Lal [(1996) 7 SCC 481], Hindustan Shipyard Ltd. and others v. Dr. P. Sambasiva Rao and others [(1996) 7 SCC 499], State of H.P. v. Suresh Kumar Verma and another [(1996) 7 SCC 562], Dr. Surinder Singh Jamwal and another v. State of J&K and others [(1996) 9 SCC 619], E. Ramakrishnan and others v. State of Kerala and others [(1996) 10 SCC 565], Union of India and others vs. Bishambar Dutt [1996 (11) SCC 341], Union of India and others v. Mahender Singh and others [1997 (1) SCC 245], P. Ravindran and others v. Union Territory of Pondicherry and others [1997 (1) SCC 350], Ashwani Kumar and others v. State of Bihar and others [1997 (2) SCC 1], Santosh Kumar Verma and others v. State of Bihar and others [(1997) 2 SCC 713], State of U.P. and others vs. Ajay Kumar [(1997) 4 SCC 88], Patna University and another v. Dr. Amita Tiwari [(1997) 7 SCC 198] and Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and others [(2005) 5 SCC 122]."
>
> (emphasis supplied)

30. In the case of **Syed Khalid Rizvi and others Vs. Union of India and others**[4] while dealing with the rules governing promotion, the Apex Court observed thus :-

> "Accordingly we hold that seniority, though normally an incidence to service, Seniority Rules, Recruitment Rules and Promotion Regulations form part of the conditions of recruitment to the Indian Police Service by promotion, which should be strictly complied with before becoming eligible for consideration for promotion and are not relaxable."

31. Reverting to the Rules of 1969, Rule 7 mandates that all

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[4] **1993 Supp (3) SCC 575**

appointments to the service shall be made after selection by one of the methods of recruitments specified in Rule 6. From the circumstances emanating from the record as has been noticed earlier, the appointment of respondent No.1 is not ascribable to the procedure of appointment by direct recruitment, either by selection or by competitive examination. Moreover, it is also not ascribable to having been made in exercise of powers under Clause (iv) of Rule 6.

32. Rule 8 provides for the conditions of eligibility of direct recruitment. It is not known whether this aspect was duly kept in mind by the Appointing Authority, whilst appointing respondent No.1 as sub engineer in the Water Resource Department. We do not intend to dwell upon this issue further, as it is crystal clear from the circumstances available on record that the appointment of respondent No.1 was not as per the selection methods of recruitment specified in Rule 6, but only to favour him. As a matter of fact, the manner in which the respondent No.1 has been appointed by taking favour of the then Chief Minister, renders him disqualified for being appointed, by virtue of Rule 9 of the Rules of 1969. For, it stipulates that any attempt on the part of the candidate in support of his candidature by any means

would disqualify him for selection.

33. Rule 10 of the Rules of 1969 envisages that the decision of the Selection Committee/Appointing Authority as to the eligibility or otherwise of the candidate for selection or competing at competitive examination shall be final. We may now turn to Rule 11 of the Rules of 1969. It mentions about the procedure for direct recruitment by Selection/Competitive Examination. Rule 11 reads thus :-

> **"11. Direct Recruitment by Selection/Competitive Examination, -** (i) Selection for recruitment to the Service shall be held at such intervals as the Appointing Authority may from time to time determine.
>
> (ii) Selection of candidates for the service shall be made by the Selection Committee, after interviewing them. In Class IV posts interview is not necessary.
>
> (iii) (a) A competitive examination for the recruitment of LDC's and 50 per cent of the posts of UDC II shall be held at such interval as the Appointing Authority may from time to time determine.
>
> (b)The examination shall be conducted by the Appointing Authority in accordance with such orders as the Government may from time to time issue.
>
> (iv) 16 per cent and 20 per cent of the available vacancies for direct recruitment shall be reserved for candidates who are members of the Scheduled Castes and Scheduled Tribes, respectively.
>
> (v) In filling the vacancies so reserved candidates who are members of the Scheduled Castes and the Scheduled Tribes shall be considered for appointment in the order in which their names appear in the list referred to in rule 12 irrespective of their relative rank as compared with other candidates.
>
> (vi) Candidates belonging to the Scheduled Castes or the Scheduled Tribes, declared by the Selection Committee to be suitable for appointment to the Service with due regard to the maintenance of efficiency of administration, may be appointed to the vacancies reserved for the candidates, of Scheduled Castes or the Scheduled Tribes as the case may be under sub-rule (4) of this Rule.
>
> [(vii) **Selection through interview with competitive examination. –** If sufficient number of candidates belonging

> to the Scheduled Tribes are not available for filling all the vacancies reserved for them, the remaining vacancies shall be re-advertised for the candidates of these categories. If any vacancies remain unfilled after the re-advertisement, the same shall be filled in from general candidates and equal number of additional vacancies shall be reserved for candidates belonging to the Scheduled Castes and Scheduled Tribes in the subsequent selection:
>
> Provided that total number of vacancies for Scheduled Castes and Scheduled Tribes candidates (including the number of carried forward vacancies) shall not exceed 45% of the total number of vacancies advertised.
>
> (viii) **Selection through competitive examination. –** If the Scheduled Castes and Scheduled Tribes candidates are not available in sufficient number to fill up to reserved vacancies, then the remaining vacancies shall be filled up by other candidates and in the subsequent examination the same number of additional vacancies shall be kept reserved for Scheduled Castes and Scheduled Tribes candidates :
>
> Provided that the total number of reserved vacancies (including carried forward vacancies) shall not exceed 45% of the total vacancies at any time.]"

34. Relying on clause (ii) of this provision, it was contended on behalf of the respondents that even this rule recognizes appointment by direct recruitment, merely after interviewing the candidate. That prescription, however, is in respect of the procedure to be followed by the selection committee. We fail to understand as to how this clause can come to the aid of the respondents, to justify the appointment of respondent No.1, which per se has been made under dictation of the then Chief Minister and not by resorting to the procedure by selection as such. It was also faintly argued by the respondents that the appointment of respondent No.1 was possible by exercising power of relaxation of the Rules as permitted by Rule 20. Rule

20 reads thus :-

> "**20. Relaxation.-** Nothing in these Rules shall be construed to limit or abridge the power of the Government to deal with the case of any person to whom these rules apply in such manner as may appear to it to be just and equitable:
> Provided that the case shall not be dealt with in any manner less favourable to him than that provided in these Rules."
>
> (emphasis supplied)

35. On a bare reading of this Rule, it is evident that the power of relaxation can be invoked in relation to a person to whom the rules apply. It is unfathomable as to how the Rules of 1969 would apply to the respondent No.1, when he had not even entered the service and was being considered for appointment on a civil post which could be filled only by the method prescribed in Rule 6 read with the procedure envisaged in Rule 11. Thus, it is not only a case of appointment against the prescribed procedure in the Rules, but one of bestowing favour on respondent No.1. It is also a case of denying opportunity to eligible candidates for being considered and appointed and of abridging Constitutional rights in that behalf.

36. It was then argued on behalf of the respondents that the appointment letter issued to the respondent No.1, was in the name of the Governor. The Cabinet having approved the proposal of appointment of respondent No.1, and the Governor

having authorised issuance of appointment letter to respondent No.1, no fault can be found with that appointment. This, to say the least, is an argument of desperation. The people's representatives, no doubt are law makers but are obliged to follow the prescribed procedure in decision making to uphold the Rule of law. It is well established position by now and for that matter, it was so in vogue in 1995, that when the Rules provide for the procedure to be followed for appointment on any public post(s), it must be strictly followed. Any appointment made dehors the mandate of the prescribed rules, must be treated as nonest; having been made without authority of law and thus, amenable to quashment by issuance of a writ of quo warranto.

37. Our attention was also invited to the circular issued by the under Secretary of General Administration Department dated 06.01.1996 and executive instructions dated 09.04.1995. However, since the appointment of respondent No.1 has been made in earlier point of time, it is not necessary to examine the efficacy of the said circular/executive instructions.

38. We have no hesitation in concluding that the impugned appointment of respondent No.1 is non-est in law, having been

made in the teeth of statutory provisions in the Rules of 1969 applicable to appointments by direct recruitment on the post of Sub-Engineer.

39. We may now turn to the question whether the impugned appointment order dated 21.05.1998 was intended to frustrate the effect of judgment of this Court dated 11.09.1997? Indeed, the appointment of respondent No.1 was not on the same post nor in the same establishment, where he was appointed as daily wage employee on the post of Sub-Engineer of Nagar Panchayat Mouganj, District Rewa and later on regularized on that post which, however, came to be quashed by this Court.

40. Even in the matter of impugned appointment, it is not only about the inappropriate manner of appointment of respondent No.1 as such. What is questionable, is, the approach of the persons in power. For, the then Chief Minister having pursued the cause of respondent No.1 for the reasons best known to him; and that too on the basis of misdescription of status of respondent No.1, issued instructions to his subordinates to take follow up action to favour the respondent No.1. It can be inferred that since the regularisation of respondent No.1 on the post of Sub-Engineer in Nagar Panchayat Mouganj, District

Rewa was quashed by this Court in Writ Petition No.2673/1995, which was in public domain, to frustrate the effect of the judgment of the High Court and to guarantee employment to the respondent No.1, the then Chief Minister went out of the way and in utter disregard to the mandatory provisions in the Rules of 1969, issued instructions in just two weeks from the date of order passed by the High Court, on 27.09.1997. That is a clear case of colourable exercise of power, to favour the respondent No.1 and also to undermine the authority of the Court. It is quite possible that because of the proximity with persons in power the respondent No.1 may have succeeded in influencing the officials/elected representatives of the Nagar Panchayat Mauganj, District Rewa, to employ him initially as a daily rated employee on the post of Sub-Engineer (in 1990) and then regularized on that post (in 1995). His regularization, however, came to be quashed by the High Court on 11.09.1997. To frustrate the effect of that judgment, the respondent No.1 must have used the good offices of the then Chief Minister, who readily favoured the respondent No.1 by appointing him on a public post in the department of the State Government, without following procedure established by law. All persons involved in

the process of undermining the decision of the High Court must be frowned upon for their misadventure - of frustrating the efficacy of the judgment of this Court dated 11.09.1997; and also for the arbitrary and illegal appointment, to favour the respondent No.1. This view expressed by us, is reinforced from the exposition of the Supreme Court in the case of **Bihar State Government Secondary School Teachers Association Vs. Ashok Kumar Sinha and others**[5]. In that case, inspite of the decision of the Court, the Government proceeded to promulgate Rules with the sole intention to frustrate the effect of the judgment of the Court, which the Supreme Court, in no uncertain terms, has held that it constitutes contempt of Court. The case on hand, is a brazen attempt of defeating not only the law, but the judicial pronouncement which had declared the regularization of respondent No.1 elsewhere as illegal. That needs to be deprecated firmly.

41. On examination of the record, it is thus amply clear that the order passed by this Court in the earlier writ petition was never implemented in its letter and spirit. The respondent No.1, who was only a daily wager in Nagar Panchayat, Mauganj,

[5] **(2014) 7 SCC 416**

could not have taken employment elsewhere in any other service, that too on a civil post of the State. The allegations of nepotism and favourtism made in the writ petition have not been denied. What were the special circumstances in which the respondent No.1 was directly recruited on the public post, have not been indicated. It is nothing but a case of showing special favour to a choiced person by the then Chief Minister. It is not as if the appointment of respondent No.1 was made on contract basis. Thus, the act of the then Chief Minister was nothing but exercise of uncanalized power to favour the respondent No.1 for the reasons best known to him. If the civil post was available for recruitment, it could be filled in only by the process known to law and by providing opportunity to the deserving aspirants in waiting to seek employment in public service.

42. A priori, the repercussion of the impugned order has had far reaching effect. It not only resulted in denial of opportunity to the aspirants in waiting to seek employment on such post, who could be more efficient, eligible, honest and sincere to discharge their duties for development of the State.

43. Suffice it to observe that there are clinching circumstances on record to indicate that both the respondent No.1 and the then

Chief Minister knowingly acted without any restraint, so as to frustrate the effect of the judgment delivered by the High Court on 11.09.1997.

44. The incidental question posed by the petitioner is: whether the acts of commission and omission of the persons in power, in showing undue favour to the respondent No.1 in the matter of appointment on a public post in one of the department of the State Government, constitutes any offence or entails in criminal liability or criminal misconduct by a public servant. We observe restraint in analyising this aspect, but leave it open to the Competent Authority of the State Government to examine all aspects in that behalf and to proceed appropriately against all concerned in accordance with law forthwith.

45. The next question is about the nature of order to be passed in this case. The order that we propose to pass is to do complete justice not only in the matter of illegal appointment of respondent No.1, but also to assuage the impression gaining ground that large number of similar appointments have been made in different departments of the State Government during

the same time, in which similar pattern would emerge at least in respect of non-observance of the selection procedure prescribed by the Recruitment Rules applicable to the concerned Civil post. That is a matter of grave concern. If large number of civil posts have been usurped in this manner, resulting in denial of the opportunity of employment to the deserving candidates and for being considered for appointment, such illegality cannot be ignored and allowed to be perpetrated. All the persons appointed in such manner, being beneficiaries of the non-est appointment, must face the same consequence.

46. The order we propose to pass will be in two parts. One, dealing with the appointment of the respondent No.1 and the other about the argument advanced before us that the illegal appointment of respondent No.1 is only a tip of the iceberg. In that, there are several other appointments made in similar manner around the same time. It had become the norm to make appointments in similar manner in disregard of the selection process prescribed by the recruitment rules. However, the details of those cases are not before us. We cannot assume that large number of appointments have been made in similar manner, in breach of statutory rules. That is a matter to be enquired by

the concerned department of the State. If the Secretary of the concerned department after due verification, is of the opinion that any appointment in his department has been made without following the selection process prescribed in the relevant recruitment rules, must take the same action as we propose to direct in respect of respondent No.1. The Secretary of the concerned Department shall conduct enquiry into the illegal appointments (made without following the selection procedure prescribed in the relevant Rules framed in that behalf), in a time bound manner preferably within four months and submit report in that behalf to the Chief Secretary within such time. The Chief Secretary in turn must initiate the process for revoking all such illegal appointments either by issuing a general Government order or on case to case basis, as may be advised. That, however, must be done within four weeks after expiry of four months period given to the Secretary of the respective Department to submit their report to the Chief Secretary.

47. By this pronouncement, we declare that all appointments made in similar manner (without following the selection process prescribed by the relevant recruitment rules), in breach of statutory rules, be treated as non-est in the eye of law from its

inception and would stand annulled forthwith. However, we may leave the passing of a formal general Government order for revocation of all such appointments or on case to case basis, to be issued by the Appropriate Authority of the State Government.

48. Now reverting to the appointment of respondent No.1, since we have held that the same is capricious, arbitrary and illegal, having been made against the statutory rules and also intended to defeat the judgment of this Court, in our opinion, not only the appointment order deserves to be quashed and set aside but it is necessary to also clarify that the respondent No.1 shall not be extended any other service benefits as given to regular appointees - as a consequence of quashment of his appointment order, in any manner. In that, the initial appointment will have to be treated as nonest in law from its very inception, being the product of fraud played on the statute to which the respondent No.1 was equally responsible. The period for which the respondent No.1 has worked on the post be treated only as a contractual appointment without accrual of any other rights, until this order of quashing his appointment is passed today. The fact that the respondent No.1 has been in service for quite some time can be no reason to take a lenient view, as from the

inception his appointment was fraudulent, illegal and non-est in law. It is well established position that no person can be permitted to take advantage of his own wrong – NULLUS COMMODUM CAPERE POTEST DE INJURIA SUA PROPRIA. Further, it is well established position that delay and laches do not constitute any impediment to deal with the lis on merits, as expounded in **Kashinath G. Jalmi V. Speaker[6].** This has been restated in paragraph 31 of **Rajesh Awasthi's** case (supra). In the case of **V.C.Banaras Hindu University and others Vs. Shrikant[7],** the Supreme Court held that if initial order is nullity, its purported approval by the Competent Authority would not cure the defect.

49. In the present case, we have held that the appointment of respondent No.1 must be treated as non-est in the eye of law from its very inception, for more than one reason. The illegality committed in appointment of respondent No.1 was not only to show undue favour to him but also entailed in denial of Constitutional rights of the deserving candidates who could have been appointed after following proper selection process as per the rules and more so denial of opportunity of being

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[6] **(1993) 2 SCC 703**
[7] **(2006) 11 SCC 42**

considered to several eligible aspirants waiting to be appointed on the post on which respondent No.1 came to be appointed by a back door method.

50. We have already adverted to the fact that the respondent No.1 inspite of service of notice has not chosen to appear before the Court. Presumably, he has advisedly stayed away from the present proceedings. As noticed earlier, this petition has already been treated as a Public Interest Litigation. In such proceedings, if any direction is issued by the Court which may prejudice some section of persons, can be no impediment for issuing appropriate directions in larger public interest in the quest for justice. Giving individual notice to persons likely to be affected by such decision is not necessary, in view of the principle underlying the exposition of the Supreme Court in the case of **State of M.P. and others Vs. Shyama Pardhi and others.**[8] **and Inderpreet Singh Kahlon & others Vs. State of Punjab and others**[9]

51. One intriguing feature noticed in the present proceedings is about the pendency of this public interest litigation for over 15 years. Firstly because of non-service of notice on the

[8] **(1996) 7 SCC 118**
[9] **(2006)11 SCC 356**

respondent No.1 till May 2011 (for 12 years) and for non-filing of reply-affidavit by the State till April, 2014 (for 15 years). This is a matter for introspection, by all concerned as to how justice is being trivialized. The hearing of this petition finally materialised because of the CMIS software of the M.P. High Court, which ensures that the oldest matter pending in the High Court of a given category should be listed first on Board for being taken up accordingly. Because of the heavy docket load the more urgent matters get precedence, overlooking the need to hear the oldest matter of the same type first. That problem can be addressed only by rationalising the resources - both human resources (available number of judges) and time resources (Court working hours); and by logical prioritization of different category of cases so as to ensure transparent, logical, fair and consistent approach in the matter of listing of cases, as is followed as a policy for listing of cases by our High Court.

52. We, accordingly, **allow** this writ petition and make the rule absolute on the following terms :-

(i) The impugned appointment order dated 21.05.1998 issued by the respondent No.2 in favour of respondent No.1, is quashed and set aside.

(ii) Further direction is issued to the State of Madhya Pradesh, compliance whereof must be ensured by the Chief Secretary, to initiate appropriate legal action against the respondent No.1 and all concerned who were instrumental in the appointment of respondent No.1 knowing fully well that it was contrary to the selection procedure prescribed by the recruitment rules and would also result in defeating or nullifying the judgment of this Court dated 11.09.1997 in Writ Petition No.2673/1995 against the respondent No.1 quashing his regularization on the post of Sub-Engineer in Nagar Panchayat, Mauganj, District Rewa.

(iii) The respondent/State of Madhya Pradesh and all its functionaries are directed to make all future regular appointments on the public posts in the respective departments strictly in conformity with the selection procedure specified in the concerned recruitment rules.

(iv) The Chief Secretary of the State of Madhya Pradesh shall call upon the Secretary of the respective departments of the State, to enquire into whether any employee in his Department has been or was appointed on regular basis without following the selection process prescribed in the relevant rules framed therefor after coming into force of such rules; and to proceed

against all such persons as also against the person(s) responsible for making such appointment, in accordance with law; and submit report in that behalf to the Chief Secretary of the State of Madhya Pradesh within four months from today. The Chief Secretary of the State of Madhya Pradesh must then initiate necessary proposal for issuance of a general Government order or on case to case basis, to formally revoke all such illegal appointments made in similar manner without following the selection procedure prescribed by the relevant recruitment rules. The services rendered by such persons consequential to revocation of appointment be treated as only contractual appointment during the relevant period and that no other benefit shall be given or will accrue to them as in the case of regular appointee appointed as per the prescribed selection process for recruitment.

(v) The Chief Secretary to submit compliance report, within four weeks from the expiry of initial four months granted to the Secretary of the concerned Department.

(vi) The petition, though disposed of in terms of this judgment, be notified in the third week of **January, 2016,** under caption **"Direction"** for consideration of the compliance report.

	(A.M. Khanwilkar)	**(K.K.Trivedi)**
AM.	**Chief Justice**	**Judge**