

CASE NO.:
Appeal (civil) 5460-5465 of 2007

PETITIONER:
Nagendra Chandra Etc. Etc

RESPONDENT:
State of Jharkhand & Ors

DATE OF JUDGMENT: 28/11/2007

BENCH:
B.N. AGRAWAL & TARUN CHATTERJEE & V.S. SIRPURKAR

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS 5460-5465 OF 2007
[Arising out of SLP (C) Nos. 18379-18384 of 2005]

B.N. AGRAWAL, J.

1. Leave granted.
2. The appellants along with several others were appointed as constables in the year 1990 pursuant to vacancies notified through notice displayed on the notice board in the Office of Zonal Inspector General, Ranchi. Subsequently, when it transpired that the vacancies were neither advertised through the employment exchange nor in the newspapers, the Director General \026 cum \026 Inspector General of Police directed that all such persons, including the appellants, be dismissed from service and consequentially they were dismissed. Some of the constables filed writ petitions challenging the orders of their dismissal which were quashed by a learned Single Judge of the High Court on the ground that the orders were passed without giving opportunity of hearing against which the State of Jharkhand filed letters patent appeals in the High Court. In the meantime, the appellants also challenged their orders of dismissal by filing separate writ petitions and their writ petitions and the letters patent appeals were heard together by a Division Bench and by the impugned order High Court allowed the letters patent appeals, set aside orders of the learned Single Judge and dismissed the writ petitions filed on behalf of the appellants with this modification only that orders of dismissal from service should be treated as orders of termination. Hence these appeals by special leave.
3. Learned counsel appearing on behalf of the appellants submitted that though the vacancies were neither advertised through the employment exchange nor in any newspaper, as required under Rule 663(d) of the Bihar Police Manual, but as the same were displayed on the notice board, it cannot be said that there was infraction of the said Rule; as such the services of the appellants should not have been terminated, more so when they have continued in service for a period of fourteen years. On the other hand, learned counsel appearing on behalf of the State of Jharkhand submitted that as the appointments, being in infraction of Rule 663(d), were illegal, the competent authority was quite justified in terminating services of the appellants.
4. In the case of Secretary, State of Karnataka & Ors., vs. Umadevi (3) & Ors., (2006) 4 SCC 1, a Constitution Bench of this Court laid down that any appointment made in violation of recruitment rules would be violative of Articles 14 and 16 of the Constitution of India [hereinafter referred to as 'the Constitution'] rendering the same nullity, as such even if the appointee has continued in service for a long period,

he cannot be further allowed to continue in service but if, however, it was found that the appointment was not illegal but irregular, in that eventuality he could be permitted to continue in service and the same could be regularized in case he had worked for ten years or more on duly sanctioned post.

5. Thus, the question that falls for our consideration is as to whether the appointments of the appellants being in infraction of Rule 663(d) of the Bihar Police Manual were irregular or illegal.

6. Rule 663 of the Bihar Police Manual runs thus:-

"Selection of recruits.- (a) Strong, healthy, young men between the ages of 19 and 27 years and who have passed secondary (i.e., Matriculation) examination shall be selected as recruits, as far as possible. The standard of physical tests shall be same as given in Appendix 38, clause 9 for Sub-Inspectors. For scheduled castes and tribes, the upper age-limit is up to 32 years and educational qualification can be reduced to middle pass if matriculates are not available. The standards of height and chest measurements are given below. These are the minima and Superintendents should endeavour to get men of higher standard:-

(i) for general \026 height 163 centimetres and chest 80 centimetres.

(ii) for scheduled caste and tribe \026 height 158 centimetres and chest 78 centimetres.

Note.-In measuring the chest, the measuring tape must be applied evenly but not tightly, its upper edge touching the lower border of the shoulder blades, and its lower edge passing just above the nipples, the arms hanging by the sides. The standard is the minimum measurement, with the chest fully deflated. Just before the measurement is taken the candidate shall be made to count up to thirty, without taking breath and without hurrying.

(iii) There is no physical standard for Gurkhas, who are residents of India and men of the best physique obtainable and at least literate shall be enlisted.

N.B. - Nepalese subjects cannot be enlisted.

(b) Recruits shall be measured by the reserve inspector in the Superintendent's presence at the time of enlistment.

(c) The Selection Board is not precluded from selecting men over 27 years of age or, for special reasons, men beneath the standard of measurement, but it shall do so only on good grounds. Before enlistment the Deputy Inspector-General can give relaxation in height and chest by 2.5 cms. only. [See Cl. 9 of Appendix 2, Part 2).

(d) The recruitment shall be made twice a year in such a way that recruits are ready to go to Constables Training School before the start of the session. There shall be no necessity for training

in district headquarters. The Superintendent shall publish notice of selection of candidates in newspapers giving the exact number of vacancies and also advertise through employment exchange. He shall endeavour that selection is completed and results are laid before the candidates the same day or on the following day so that they are not made to stay unnecessarily. No waiting list of candidates beyond the number advertised except for few extramural for possible unfitness in medical test is to be kept."

From a bare perusal of the aforesaid Rule it would be clear that the requirement of the Rule is to notify the vacancies in newspapers and to advertise the same through employment exchange, which, undisputedly, has not been done in the present case as here the vacancies have been notified through notice displayed on the notice board.

7. In the case of *Ashwani Kumar & Ors. vs. State of Bihar & Ors.* (1996) 7 SCC 577, large number of appointments were made by Dr. Mallick, Deputy Director, Health Department, Government of Bihar, by notifying the vacancies on the notice board. When the illegality was brought to the notice of the Government, the appointments were cancelled which necessitated filing of writ petitions before the High Court which were dismissed and when the matter was brought to this Court, the cases were placed before a 2-Judge Bench consisting of K.Ramaswamy and B.L. Hansaria, JJ. There was difference of opinion between the two learned Judges. K.Ramaswamy, J. (as His Lordship then was), held that the vacancies having been put up on the notice board, there was flagrant breach of Articles 14 and 16 of the Constitution. Learned Judge observed in paragraph 26 at page 594 thus:-

"Admittedly, except putting up the vacancies on the notice board of the Tuberculosis Centre at Patna, no advertisement inviting applications from the open market was made nor were the names called from the employment exchange\005...The procedure adopted by Mallick in either appointing or directing to appoint persons who had applied for appointment pursuant to the notification of vacancies put up on the notice board was stage-managed by him and is in flagrant breach of Articles 14 and 16(1) of the Constitution."

Hansaria, J., dissented from the aforesaid view expressed by Ramaswamy, J., and, therefore, the matter was placed before a 3-Judge Bench - *Ashwani Kumar & Ors. vs. State of Bihar & Ors.* [(1997) 2 SCC 1] - in which order of the High Court was upheld and directions were given, inter alia, for making appointments by publishing notice in all the newspapers having circulation in the State of Bihar inviting applications for filling up the vacancies.

8. In the case of *National Fertilizers Ltd. & Ors. vs. Somvir Singh*, (2006) 5 SCC 493, this Court was dealing with the case of recruitment under Rule 1.5 of Recruitment and Promotion Rules which required "direct recruitment by advertisement". The appointments were made without advertisement by a public sector undertaking which is State within the meaning of Article 12 of the Constitution. Those appointed filed a writ petition before the High Court for regularization of their services which was allowed and their services were regularized. Challenging the said order, when the matter was brought to this Court, the orders of regularization were quashed on the ground that the initial appointments were nullities in view of the fact that the same were in

infraction of the Rules and violative of Articles 14 and 16 of the Constitution. The Court observed in paragraph 13 at page 497 thus:-

"\005.Admittedly, no advertisement was issued in a newspaper nor was the employment exchange notified as regards existence of vacancies. It is now trite law that "State" within the meaning of Article 12 of the Constitution is bound to comply with the constitutional requirements as adumbrated in Articles 14 and 16 thereof. When the Recruitment Rules are made, the employer would be bound to comply with the same. Any appointment in violation of such Rules would render them as nullities\005."

9. In view of the foregoing discussion, we have no option but to hold that if an appointment is made in infraction of the recruitment rules, the same would be violative of Articles 14 and 16 of the Constitution and being nullity would be liable to be cancelled. In the present case, as the vacancies were not advertised in the newspapers, the appointments made were not only in infraction of Rule 663(d) of the Bihar Police Manual but also violative of Articles 14 and 16 of the Constitution, which rendered the appointments of the appellants as illegal; as such the competent authority was quite justified in terminating their services and the High Court, by the impugned order, was quite justified in upholding the same.

10. In the result, the appeals fail and the same are accordingly dismissed, but in view of the fact that the appellants have continued in service for a period of fourteen years, we may, however, observe that their cases may be considered for future appointment and age bar, if any, may be relaxed in relation to them. There shall be no order as to costs.