PETITIONER:
ASHWANI KUMAR & ORS.

Vs.

RESPONDENT:
STATE OF BIHAR & ORS.

DATE OF JUDGMENT16/11/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
JT 1995 (8) 563 1995 SCALE (6)779

ACT:

HEADNOTE:

JUDGMENT:
(With Civil Appeal Nos 10760-11058, 11062-66 of 1995 (arising out of SLP (C) Nos. 13203-13213, 13137-13140, 13933-13934, 14009-14030, 14031-14036, 14037-14042, 14050-14067, 16237-16238, 15281-15435, 17114, 17292-17294, 14759, 19408, 21949, 22649, 23059, 22650-22669, 22671-22677, 22678-22687, 22688-22692 of 1994, and 1041, 1243-1245, CC.254 and 255, SLP(C) No.2, CC.974, SLP(C) No. 7095 and 7912, CC.1557 and 2302 & SLP(C) Nos.8110, 11091, 8164-8166, 13548 and 8900 of 1995.)

J U D G M E N T

HANSARIA, J.

I have had the benefit of perusing the judgment of learned brother Ramaswamy, J. in draft. Despite the great respect he commands at my hand, I have not been able to persuade myself to agree with him. According to me, the impugned termination order deserves to be set aside, and not upheld, as opined by learned brother. To sustain any stand, it is stated as below.

2. A wrong-doer, a sinner, has to be punished; so too those who aid, abet or instigate him. But not those regarding whom only a doubt is created. Full care has to be taken to see that while punishing the wrong-doer, the penalty does not visit those who may be innocent, specially when the penalty as such which would hit hard so much so as to take away livelihood of the concerned persons.

2A. This prologue sums up the core question which we are called upon to decide in this batch of cases, which involve the fate of 1363 appellants inasmuch as we have to decide whether the services of this number of persons have been duly and legally terminated or not. The enormity itself calls for a cautious approach. This is more so because Article 21 of the Constitution would require us to tread the path avoiding pitfalls, whose number is significant in these cases.

3. The prima donna (villain of the piece) is one Dr. A.A. Mallick, who at the relevant time was holding the post of

Deputy Director (tuberculosis) Bihar, and had come to be vested with almost absolute powers to see that the targets fixed by the Government of India in implementing a scheme relating to Anti-Tuberculosis programme are achieved. When it came to the notice of the State Government in the Health Department that some centres were not working as per the directions of Dr. Mallik, all concerned were asked by the Government to do so. The saying "Power corrupts, and absolute power corrupts absolutely" became true inasmuch as Dr. Mallik started either appointing himself or giving directions right and left to appoint large number of persons as class III/IV employees. It was ultimately found that as against about 2500 sanctioned posts the number of persons to be so appointed shot up to 6000. Questions relating to this came to be asked even on the floor of the Assembly by 1987 when the concerned Minister stated that the appointments had been given after following all procedures. The matter did not rest there and various persons not getting their salary, though appointed, approached the High Court of Judicature at Patna - the number of such writ applications ultimately came to be around 250. The High Court observed at one stage that it saw no reason as to why the State should not proceed against concerned officers who benefitted themselves illegally, and disposed of the writ petitions with the direction that an enquiry into the matter shall be held and upon consideration of the individual cases appropriate orders shall be passed for payment of salary for the period the concerned person had actually worked, subject to the condition that it was found that they had fulfilled criteria for obtaining salary. Pursuant to these observations, a high powered Committee came to be formed, consisting of (1) Director-in-Chief, Health Services; (2) Deputy Director (Administration) Health Services; (3) Deputy Director (Planning) Health Services; and (4) Deputy Director (Tuberculosis). The Committee issued a general notice through newspapers to all concerned and directed them to appear before the Committee for personal hearing between 17.8.92 to 29.9.92. A report was submitted subsequently, pursuant to which a blanket order came to be issued on 30.4.93, terminating the services of all the employees.

4. The same came to be challenged again before the High Court. Long arguments were advanced by both the sides and after applying its mind to various points of fact and law, a Division Bench of the High Court dismissed virtually all the writ petitions by its order dated May 6, 1994. The main order of dismissal was passed In CWJC No.4942/93 and batch. This was followed by other Benches of the High Court in analogous matters. The affected employees have filed these appeals under Article 136 of the Constitution.

5. We were also addressed at length by various counsel appearing for the appellants; so too by the State counsel. Shri Shanti Bhushan appearing for some of the appellants covered most of the ground, which came to be supplemented by others. Shri Verma replied on behalf of the State.

6. disposal of the appeals, require determination of the following:

(1) Whether the initial appointments of the appellants were in accordance with law?

(2) Whether the ser vices of the appellants were duly regularised? and

(3) Whether natural justice had been complied with before their services were terminated?

I would consider these aspects seriatim.

7. Whether the initial appointment of the appellants were in accordance with law?

The controversy qua this facet of the case is whether the appellants were required to be initially appointed in accordance with the procedure of appointment to class III/IV posts as contained in the Office Memorandum (OM) of even number issued on December 3, 1980 by the Department of Personnel and Administrative Reforms of the State Government. There is no dispute from the side of the appellants that the procedure had not been followed. Question is whether it was required to be so done?

8. Shri Shanti Bhushan was emphatic in his contention that this OM having been meant for appointment to "posts" had no application to the initial appointment inasmuch as the appellants had been appointed on daily wage basis to implement the crash programme of eradication of tuberculosis from the State - the urgency in the matter being apparent from the fact that the State Government was issuing orders to all concerned to comply with the orders or directions given by Dr. Mallik so as to achieve the target. The appointments were thus not to any 'posts', as, such appointments can be made only if sanctioned posts be available, which is not required to be so in case of daily rated workers, who are appointed as and when needed and in such number as would meet the exigency of the situation. This was sought to be brought home by contending that an urgent need for employing such persons may arise, say, when there is a sudden flood or earthquake, when employment would not brook delay and financial rules of the Government would permit employment of required number of persons, whose wages could be paid out of Contingent Fund. This submission is countered by Shri Verma for the State, according to whom, even while making initial appointment the procedure laid down in the aforesaid OM was required to be followed.

9. To support his contention, Shri Shanti Bhushan brought to my notice a Constitution Bench decision of this Court in State of Assam vs. Kanak Chandra Dutta, 1967 (1) SCR 679, at p. 683 of which it has been stated that "post may be created before the appointment or simultaneously with it. A post is an appointment, but even appointment is not a post. A casual labourer is not the holder of a post". Shri Verma on the other hand has sought to rely on a 3 Judge bench decision in Union of India vs. Deepchand Pandey & Anr. 1992 (4) SCC 432. As to this decision, Shri Shanti Bhushan's contention is that it has not held that persons employed on casual basis would be holders of posts.

10. The observation in the Constitution Bench case if unambiguous inasmuch as the statement is that a casual labourer is not the holder of a post. As to Deepchand Pandey's case it may first be mentioned that it has not taken note of the Constitution Bench decision. This apart, a perusal of the judgment shows that it dealt with the question as to whether a Central Administrative Tribunal, constituted under Administrative Tribunal Act, 1985, which was passed pursuant to Article 323-A of the Constitution, was vested with the jurisdiction to entertain and decide the claim of the respondents as against the appellant (Union of India) and its officers in Railway Department. This question came up for determination because the respondents, who had been engaged as casual typists on daily wages in railway offices, challenged the order of their termination before the High Court, which allowed the same. The Union of India contended that the High Court had no jurisdiction in view of the provisions in the aforesaid Act. To decide this

question, the Bench noted the case of the respondents and then referred to the scope of Article 323-A and held that as the respondents were claiming the right to continue in the employment of the Union of India as before, with additional claim of temporary status, it was idle to suggest that such claim was not covered by the Act. It was, therefore, concluded that the remedy of the respondents was before the central Administrative Tribunal and not the High Court.

11. The judgment in Deepchand Pandey cannot, therefore, be said to have laid down that even casual workers on daily wages are holders of posts. In fact, this question had not arisen for decision in this form in that case. This being the position and the Constitution Bench observation being unambiguous, I hold that the appointments of the appellants initially were not to any posts, and so, the procedure mentioned in the aforesaid OM was not required to be followed.

12. Whether the services of the appellants were duly regularised?

The aforesaid question would need answering of the following:

(i) Was the procedure mentioned in OM of 3rd December, 1980 required to be followed?

(ii) Whether non-advertisement of the posts introduced any infirmity?

(iii) Whether non-information to the employment exchange for filling up the posts caused any dent to the appointments ?

(iv) Was there non-reservation of posts for Scheduled Castes/Scheduled Tribes? If so, whether the same introduced any illegality in the appointments of general candidates?

(v) Whether the regularisation had been made pursuant to recommendation of the Selection Committee visualised by the aforesaid OM/

(vi) Whether any panel was prepared by the Selection Committee? If not, does this provide a good ground to regard the appointments as violative of the prescribed procedure ?

I propose to discuss these contentions in the order noted above. It would be apposite to mention that the aforesaid are the grounds mentioned in the blanket order of termination.

13. Was the procedure mentioned in OM of 3rd December, 1980 required to be followed?

The thrust of Shri Shanti Bhushan's argument in this regard is that regularisation of an ad-hoc/temporary employee is a constitutionally protected right, as pointed out by this Court in Dharwad's case, 1990 (2) SCC 396. Therefore, this right should not be hedged with any such procedure which should defeat it.

14. This submission calls for an examination of the law relating to regularisation, as spelt out by this court in its various decisions. There is no need to refer to different pronouncements on this point inasmuch as the law came to be summed up by a 3-Judge bench in State of Haryana vs. Piara Singh and others, 1992 (4) SCC 118. Indeed, the learned counsel of both the sides sought to rely on what has been stated in this decision in support of their contentions.

15. The Piara Singh Bench after referring to a large number of earlier decisions on the point, which include Dharward's case, summarised the law in paragraphs 45 to 53 which read as below:

> "45. The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an ad hoc or temporary appointment to be made. In such a situation, effort should always be to replace such an ad hoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/ appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an ad hoc/temporary employee.
>
> 46. Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.
>
> 47. Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.
>
> 48. An unqualified person ought to be appointed only when qualified persons are not available through the above processes.
>
> 49. If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to the rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.
>
> 50. The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is

already framed, the same may be made consistent with our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.

51. So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell-say two or three years - a presumption may arise that there is regular need for his service. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of Government of Haryana (contained in its letter dated April 6, 1990 referred to hereinbefore) both in relation to work-charged employees as well as casual labour.

52. We must also say that the orders issued by the Governments of Punjab and Haryana providing for regularisation of ad hoc/temporary employees who have put in two years/one year of service are quite generous and leave no room for any legitimate grievance by any one.

53. These are but a few observations which we thought it necessary to make, impelled by the facts of this case, and the spate of litigation by such employees. they are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made herein."

16. The only other case which I propose to note, in view of strong reliance on it by Shri Verma, is Delhi Development Horticulture Employees Union vs Delhi Administration, 1992 (4) SCC 99. Shri Verma drew my attention to the general observations made by the Bench in para 23 in which a mention was made about the common practice to ignore employment exchanges and to employ and get employed persons who are either not registered with the employment exchange or who, though registered, are lower in the waiting list in the employment register. The Bench stated that such employment is sought and given for "various illegal considerations

including money". The motivating force to do so is to get the benefit of regularisation after one has continued to work for 240 days or more, knowing about the judicial trend that those who have completed 240 days or more are directed to be automatically regularised. It was also observed that this has led to development of "good deal of illegal employment market resulting in a new source of corruption and frustration of those who are waiting in the employment exchange for years".

17. I would examine the question relating to regularisation of the appellants keeping the aforesaid in mind. Shri Shanti Bhushan submits that what was stated in paragraph 11 of Dharward's case about regularisation within a reasonable period being a constitutional goal has been accepted in Piara Singh's case also inasmuch as it has been state paragraph 51 that security of tenure is necessary which requires adoption of positive approach coupled with empathy for the person, because of which the view taken was that if a casual labourer continued for a fairly long spell-say 2 or 3 years - a presumption may arise that there is if a regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of this regularisation.

18. The learned counsel further contends that it was, as if to fulfil the constitutional obligation, that on the question of regularisation of employees like the appellants being taken up with the Government, it was stated by the Director of Health Services to all concerned in his letter of 25.11.1982 that casual labourers who had been appointed after 1974 and were serving continuously for 3 years be absorbed against the regularised posts. As to those working for less than 3 years, this letter stated that they should also be absorbed against the vacant sanctioned posts. It is, therefore, urged that no procedure at all was required to regularise those who had served for 3 years or more after 1974.

19. I would not agree with Shri Shanti Bhushan that no procedure at all was required to be followed, in view of the law as mentioned in Piara Singh's case, according to which, the adhoc/temporary employees have also to get selected, along with others, to get regularised, which apparently means that they must undergo a selection process which has to be according to a settled procedure. And the procedure for the cases at hand is the one mentioned in the aforesaid OM. It is, therefore, to be seen whether there are materials to show qua the appellants that the procedure mentioned in the O.M. of 3rd December was not followed while regularising them.

20 As to this facet of the case, Shri Shanti Bhushan has sought to rely strongly on the statement made by the concerned Minister on the floor of the Assembly on two occasions. The first was on 14.7.1987, when in reply to the question "(w)hether it is a fact that from the year 1985 to March, 87 about 200 persons were appointed in Class III and IV posts in different TB Institutes by the Incharge, Deputy Director, TB, without publication of interview. If yes, does the Government propose to make an inquiry into this ? If yes, why has it not been made till date ?", Minister Health and Family Welfare Department stated that the appointments were made "after following all procedure" which was contained in letters dated 17.2.1983, 25.3.1983, 24.7.1984, 17.10.1984, 31.12.1986 and 31.1.1987. The matter again came before the Assembly on 21.1.1987, when another M.L.A. desired to know from the Minister of Health and Family Welfare whether about 800 employees had been appointed

against different class III and IV posts illegally by the Director, TB, Dr. A. Mallik, between 1977 and 1987. The further question was if this were to be a fact, "does the Government propose to hold an inquiry against Dr. Mallik for Making illegal appointments and illegal accumulation of wealth. If not, why ?" The reply of the Minister was that appointment had been made "in regular manner against created sanctioned vacant posts.". The Minister further stated that, therefore, "question of illegal appointments does not arise".

21. Shri Verma would not like us to place much reliance on what was stated on the floor of the Assembly, because the questions had been answered, as per the State's case put up in counter-affidavit filed here, on the information furnished by Dr. A.A. Mallik himself. However, as on subsequent inquiry it was found that all informations furnished by Dr. Mallik were false, a fresh communication was addressed by the Department to the Assembly.

22. I would not accept this stance taken in the counter-affidavit for various reasons. The first is that it is beyond comprehension that a question relating to alleged illegal activities of Dr. Mallik would be answered by a Minister on the floor of House on the basis of information supplied by none else than Dr. Mallik. Secondly, the counter-affidavit has been sworn on behalf of the State by Director (Administration, Health Services, whereas an affidavit on behalf of the State is to be sworn by an officer of the Secretariat. Thirdly, there is nothing on record to satisfy that the fresh information collected on subsequent inquiry had really been furnished by the Department to the Assembly.

23. The aforesaid contention of Shri Shanti Bhushan was buttressed by other learned counsel appearing for the appellants by drawing by attention, inter alia, to a writ proceeding before the Patna High Court which shows that on a direction being given by the Court to pay to the writ petitioners in question their wages, if they had been regularly appointed, the High Court was informed that, on enquiry being made, it was found that the writ petitioners had been regularly appointed.

24. There are also on record of some cases minutes of Selection Committee consisting of Deputy Director, Health Service (TB), Assistant Director (Philoria Control); and Senior-most SC/ST officer working under the TB programme. This is the composition of the Selection Committee meant for making regular appointments to class III & IV posts under Tuberculosis Control Programme, as would appear from the Government communication of 25.3.1983, which is one of the letters mentioned by the Minister on 14.7.1987 when he answered the Assembly question. It is, of course, true, as pointed out by Shri Verma, that in the papers as filed, at the place of signatures "Sd/-" appears. The explanation of the concerned counsel is that this had happened because the signatures of the concerned person were not legible. It is also urged that the appellants, having had no custody of the original records, could lay their hands on a document of this nature only. The original of the document not being available to us, which may be because of the burning of all records in the fire which took place in the State Secretariat, it cannot be held that the concerned persons were regularised after proper selection. But then, in some cases Selection Committee did examine the candidature of concerned persons and they had come to be regularised pursuant to the recommendation of the selection committee.

25. In the aforesaid permises, i would not accept the

contention advanced on behalf of the State that the procedure visualised by the O.M. of 3rd December, 1980 was not followed at all while regularising the appellants. Of course, the materials on record do not permit to say that the procedure had been followed in case of all the appellants.

26. Whether non-advertisement of the posts introduced any infirmity?

Shri Shanti Bhushan contends that as per the law summed up in Piara Singh's case, advertisement is not a must. Shri Verma, submits that unless the posts are advertised, eligible persons would not know about the availability of post, and so, it has to be there. Para 47 of Piara Singh makes this position clear, as it states that a notice must be published in this regard in appropriate manner. This publication could be, in appropriate cases, on notice boards also, according to me.

27. The aforesaid being the position, I am statisfied that the posts were required to be advertised. This, however, is an ordinary requirement, which would be apparent from the word "ordinarily" finding place in para 47. This apart, it would appear that the news was published on the notice board of some offices. I would accept this as sufficient in the facts and circumstances of the present case. The non-advertisement of the posts in newspapers had, therefore, caused no infirmity to the regularisation.

28. Whether non-information to the employment exchange for filling up the posts caused any dent to the appointments ?

Para 47 of Piara Singh's case states that where an ad hoc or temporary employment is necessitated on account of exigency of administration, the incumbent should be drawn from the employment exchange. This requirement has a rider namely, "unless it cannot brook delay". As already stated, there was a pressing cause here, which is almost writ large on the face of the record. The non-information to the employment exchange had, therefore, caused no dent to the appointments.

29. Was there non-reservation of posts for Scheduled Castes/Scheduled Tribes? If so, whether the same introduced any legality in the appointment of general category candidates ?

The facts as unfolded in the present appeals show that posts had in fact been reserved. In one TB Centre, 16 Scheduled Castes, 5 Scheduled Tribes, 16 Backward I, and 14 backward II came to be appointed, along with 16 general category candidates. This tabulation is at page 143 of paper book in SLP(C) Nos.12934-35 of 1994. A perusal of the paper book in SLP(C) Nos.13203-13 of 1994 shows that Scheduled Castes/Scheduled Tribes candidates were appointed to the posts of B.C.G. Technicians. The annexure at Page 116 gives the names of such candidates, and the list at pages 117 to 119 shows that there were many Backward Class I and Backward Class II appointees also. This shows that there was not only reservation for Scheduled Castes and Scheduled Tribes but appointments too had been given. That this was the position in all the centres cannot, however, be known from material on record. The appellants' counsel are justified in saying that they could not have produced documents to show as to how this requirement was satisfied in all the centres. The burden of proving this conclusively cannot be thrown on the appellants, as after all it is the State which had terminated their services, inter alia, on this ground, and so, the burden has really to be discharged by the State, to do which virtually nothing has been done, may be because the Secretariat records having been burnt, nothing is available.

It may, however, be that the District Records could have perhaps thrown some light, but they were shown no light.

30. The materials available show there was reservation for SC/ST candidates. The question of illegality in appointment of general candidates on the ground of non reservation does not, therefore, arise.

31. Whether the regularisation had been made pursuant to recommendation of the Selection Committee visualised by the aforesaid OM ?

This aspect has already been dealt above. To reiterate, there are materials on record to show that in some cases regularisation was pursuant to the recommendation of a properly constituted Selection Committee. I am conscious that one swallow does not make a summer. But then, to have required the appellants to bring on record the proceedings of other Selection Committees, if there were any, would have placed an unjustified burden on them. What has been stated above about the State's burden applies qua this question also.

32. Whether non-preparation of any panel by the Selection Committee provided a good ground to regard the appointments as violative of the prescribed procedure?

A perusal of the O.M. of 3rd December, 1980 does show that the Selection Committee was required to prepare a merit list. That such a merit list/panel was prepared in some cases would be evident from a perusal of the paper book in SLP(C) Nos. 13203-13 of 1994. But then, it cannot be said that this was done in all cases. Even so, for the reasons already alluded which would apply proprio vigore to this aspect also, there is no justification in finding infirmity in all the appointments because of lack of materials on record to show that the appointments had been made without preparation of merit list/panel.

33. Whether natural justice had been complied with before termination of the services of the appellants?

What are the requirements of the natural justice cannot be laid down in any straight jacket. This is a well settled position in law. The facts and circumstances of the case in question would alone provide the answer whether natural justice has been complied with or not. This is so well settled position by now that I do not propose to advert to any case law on this subject.

34. It is equally well settled that where adverse civil consequences follow pursuant to an order of an authority, natural justice has to be complied with ordinarily. Law, however, permits exclusion of natural justice in some cases, like urgency. Shri Verma submits that present is a case where natural justice got excluded because of adoption of unfair means while seeking appoints. In support of this contention, strong reliance is placed on the decision of this court in Bihar School Examination Board vs. Subhash Chandra Sinha and others, 1970 (3) SCR 963. According to Shri Shanti Bhushan, this decision has not said anything contrary to the well settled principle that where adverse civil consequences follow natural justice has to be complied with.

35. Let it be seen which of the aforesaid contentions merits acceptance. In the aforesaid case this Court examined the question whether notice to the respondents was necessary before cancellation of their examination because of adoption of unfair means at an examination centre. The question of giving notice required examination, as it was contended that natural justice required the same. On the facts of that case it was held that notice was snot necessary. This view was taken because the Court was satisfied about adoption of

unfair means, relating to which an independent enquiry had been held by Unfair Means Committee of the appellant Board. Shri Verma states that as in the present case also the appellant has adopted unfair means, no notice was required to be given.

36. A close perusal of the judgment shows that that was not a case of any particular individual being charged with adoption of unfair means, but of the conduct of all the examinees or a vast majority of them at a particular centre. The Court raised a poser that as the question was not of charging any one individual with unfair means but to condemn the examination as ineffective for the purpose it was held, must the Board have given an opportunity to all the candidates to represent their cases? The Court thought it was not necessary, because the examination as a whole was being cancelled. It was further observed that as the Board had not charged any one with unfair means so that he could claim to defend himself. It was, therefore, concluded that it would be wrong to insist that the Board must hold a detailed enquiry into the matter and examine each case to satisfy itself which of the candidates had not adopted unfair means.

37. The facts of the present case are poles apart. Here the allegation is undoubtedly against each appellant. Even if it were to be that some among them had adopted unfair means, the appointments of others could not be set aside because of that. It was not a question of some illegality of the general nature like adoption of a wrong procedure in selection, like fixing of very high percentage marks for viva voce. It may be that a case where such illegality is committed, individual notice would not be necessary. I, therefore, do not think if the ratio in Subhash Chandra's case could assist the State to contend that individual notice was not necessary.

38. I may deal with another decision pressed into service by Shri Verma in this context. The same is S.K. Balasubramanian vs. State of Tamilnadu, 1991 (2) SCC 708. The learned counsel has read out to me from this decision paragraph 9 at pages 713 and 714 and contended that because what has been stated therein, it could be said that even if an order is invalid, there would be no question of affording an opportunity of hearing. I am afraid that the learned counsel has misunderstood the purport of what has been stated therein. I have said so because a perusal of that para shows that this Court had said about no question of affording an opportunity of hearing to the petitioners before passing the impugned order dated March 3, 1980, because the Court found that that order was founded on Government orders dated November 16, 1976 and June 15, 1977, which were invalid according to the Court as those orders had altered the principle of fixation of seniority contained in Rule 35 of the General Rules, which could have been done only by suitably amending the Rule, and not by issuing administrative instructions. Having found that the order in favour of the petitioners dated March 3, 1980 was founded on untenable principle of fixation of seniority, the court said, and with respect rightly, that no opportunity was required to be given to the petitioners who sought to support their seniority position on the principles as embodied in the Orders dated November 16, 1976 and June 15, 1977. the foundation of the order dated March 3, 1980 having fallen to the ground, no opportunity was necessary to be given to sustain the order dated March 3, 1980, as that order was founded on wrong principles of seniority. This being the position, I would indeed say that Shri Verma may

not have advanced this contention.

39. Having held that natural justice was not excluded, let it be known what was done to satisfy this in the present cases. Materials on record show that at first attempt was made to service individual notices, whereupon the serving persons were even mis-handled; so, recourse was taken to newspaper publication. This was done in some Hindi local newspapers. It is on record that pursuant to the notice so given good number of persons likely to be affected had appeared before the aforesaid Committee. It may be that some persons did not appear before the screening committee, despite knowledge of the same. From the materials on record, we are not in a position to know what is the total number of such persons.

40. To satisfy whether newspaper publication substantially complied with the requirement of natural justice, we had desired to know from Shri Verma which were these newspapers, what was their circulation and at which places the newspapers had circulation. Shri Verma could not throw any light on these aspects. His contention was that as some of the affected persons had known about the publication, we may presume that they must have informed their colleagues, and the news must have spread like a wild fire. I would demur to accept these contentions. It has also been noted that some of the incumbents had read only upto Class IV, which would show that they are not literate and enlightened enough to read newspapers as a habit.

41. So, despite my being satisfied that a case for newspaper publication was made out, as on effort being made to serve individual notices, there was non-handling of serving persons, the publication of the type undertaken did not, however, satisfy the call of natural justice. As no fetish should be made about natural justice, it should not be allowed to become farce also. The giving of opportunity to show-cause in the present cases having been made known through newspapers, I do think that the opportunity given was not adequate and reasonable. Even so, I have not felt inclined to set aside the termination order on this ground, as we ourselves heard the appellants, which can be taken as a sort of post-decisional opportunity, which could be said to have met the requirement of natural justice.

CONCLUSION

42. Having expressed my views on the questions of law and fact I would conclude as below.

43. Broadly stated, the position is that Dr. Mallik had undoubtedly out-stepped confines of his powers and had betrayed the confidence reposed in him. I have said so because it is clear that as against about 2500 sanctioned postes, he was instrumental in giving/directing appointments to about 6000 persons. But I am clear in my mind that all the persons so employed had not aided, abetted or instigated Dr. Mallik in doing so. The difficulty is that we are not in a position to find out who the aiders/abetters were. If the State could have made efforts to find this aspect, with reference to the records which should have been available at the District Headquarters/TB Centres, it should have been possible to find out, who among the 6000 and odd persons, had been legally or validly appointed. This has, however, not been done. The question is whether despite this in-action or non-action, there is justification in taking the view that the 1363 appellants before us were among those who were illegally appointed. The State counsel submits that we should hold so; Shri Shanti Bhushan contends that there is no basis to hold so.

44. I have given my considered thought to this all-

important aspect of the case and, according to me, as about 2500 persons could have been appointed by Dr. Mallik, and as there are materials on record to show that regular appointments had also been made (how many, we do not know) and as it is not possible to know who the regularly appointed persons were, facts permit to say that the appellants before us, whose number is 1363, may be among those who were regularly appointed. I have thought it fit to take this view because of the mandate in Article 21 of the Constitution, which would not permit taking away livelihood of so many of the incumbents unless satisfied that they were among the persons who had not been legally and validly appointed. It deserves to be pointed out that as the State has taken away the rights which had come to inhere in the appellants, the primary burden is on the State to establish that illegality had been committed in giving appointments to the appellants. This burden the State has undoubtedly failed to discharge qua the appellants. The benefit of the same has to be made available to them.

45. I would further say that in such matters there is (some) justification to keep human consideration also in mind, as urged by Shri Shanti Bhushan by referring to H.C. Puttaswamy vs. Hon'ble the Chief Justice, Karnataka High Court, 190 (Supp) 2 SCR 552. In that case this Court, despite having regarded the impugned appointment as invalid, refused to recognise the consequence which would have involved uprooting of the appellants, because of which it adopted a humanitarian approach, as it was felt that the appellants "seem to deserve justice ruled by mercy". Not only this, the Court went to the extent of giving all the benefits of past service after stating that the appellants shall be treated to have been regularly appointed. The learned counsel prays that we may view the cases at hand also similarly, as any adverse order would uproot 1363 families inasmuch as virtually all the appellants are from poorer section of the society and it may well be that the concerned families have no other bread-earner. I have felt inclined to bear this aspect also in mind, albeit tangentially. Having noted that materials on record do not permit to hold that the appellants were among those who were appointed beyond the sanctioned strength, my conscience does not permit to punish them for the wrong or sin which might have been committed by others.

46. According to me, therefore, the legal, just, fair and reasonable order to be passed in these appeals would be to say that all the 1363 appellants would be deemed to have been regularly appointed and I would, therefore, set aside the termination order qua them. It is made clear that this order would not in any way be taken advantage of by anybody except 1363 appellants before us.

47. The appeals are, therefore, allowed by setting aside the termination order qua the appellants alone and directing the reinstatement of all them. Appropriate orders in this regard would be passed within two months from today. The appellants would not, however, be paid any amount towards back wages/salaries, but they would get other service benefits.

48. Before parting, I would observe that nothing stated by me relating to the appellants would enure to the benefit of Dr. Mallik in the on going inquiry against him. It would be concluded as per the materials collected or to be collected and the inquiry against him would take its own course. Not only this, I would desire the conclusion of the inquiry against Dr. Mallik most expeditiously.