



2026:AHC:197811-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 924 of 2009

Rama Shankar Yadav and others

.....Appellant(s)

Versus

State of U.P. Through Principal Secy. Revenue and others

.....Respondent(s)

Counsel for Appellant(s)	: B.R.sharma, Mool Behari Saxena, Sanjiv Singh, Syed Wajid Ali
Counsel for Respondent(s)	: C.S.C.

Court No. – 2

Reserved
AFR

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

(Delivered by Hon'ble Indrajeet Shukla, J.)

1. Heard Mr. Syed Wajid Ali, learned counsel for the appellants and Mr. S.C. Upadhyay, learned Standing Counsel appearing on behalf of the State respondents.

2. The instant intra-court appeal, preferred under Chapter VIII, Rule 5 of the Allahabad High Court Rules, assails the judgment and order dated 14.05.2019 passed by the Hon'ble Mr. Justice S.U.Khan in Civil Misc. Writ Petition No. 26692 of 2006, whereby the writ petition instituted by the appellants was dismissed for the following reasons:

“Various reasons have been given in the impugned orders for holding that the initial appointments of the petitioners dated 09.02.1990 were illegal and in violation of provisions of U.P. Collection Amins Service Rules, 1974. It has been mentioned that detailed procedure is prescribed for filling up 35% posts of Collection Amins from Seasonal Collection Amins and for that selection committee is to be constituted. Admittedly, this procedure was not followed before appointing the petitioners. It is also mentioned in the impugned order that all the vacancies had been filled through Seasonal Collection Amins instead of 35%. Regarding confirmation order dated 13.03.1991, it is mentioned in the impugned order that confirmation could not be granted before completion of two years and the petitioners had completed only one year and 22 days, which was against Rule 22 of the 1974 Rules. However, in the end right of the petitioners was protected and it was observed that in future whenever vacancies arose, petitioners would be considered for appointment under 35% quota.

In this writ petition also, no stay order was granted. The order of termination is perfectly in accordance with law. The appointments of the petitioners were utterly illegal. Even provision of 35% quota for Seasonal Collection Amins was introduced in 1992-1993 by amending Rule 5 of the Rules of 1974. Admittedly no advertisement was made before the appointment and no selection procedure was followed. Merely on the basis of recommendation of Tehsildar, appointments were made hence appointments were illegal.

Accordingly, writ petition being utterly devoid of merit is dismissed.”

3. The brief facts giving rise to the writ petition are delineated hereinbelow:

4. The appellants, who are petitioners, were admittedly appointed as Seasonal Collection Amin in District Maharajganj on different dates. Appellant Nos. 1 to 3, namely, Ram Shanker Yadav, Mahesh Singh and Prahlad, were appointed on 21.01.1976. Appellant No. 4, Sita Ram Yadav, was appointed on 03.02.1976, whereas appellant Nos. 5 to 7, namely, Ram Narayan, Buchunu Prasad and Babu Lal, were appointed as Seasonal Collection Amin on 01.05.1976. The appellants claim that they were duly qualified for appointment to the post of

Amin, having rendered more than 14 years of service as Seasonal Collection Amin.

5. The Tehsildar, Farenda, District Maharajganj, submitted a report saying that, out of the 22 sanctioned posts of Collection Amin in the Tehsil, 8 posts had been lying vacant for more than 10 months on account of promotion of the various incumbents.

6. Further, 8 posts had fallen vacant due to the retirement of various incumbents. Pursuant to the report of the Tehsildar dated 01.02.1990, the process for appointment of the appellant-writ petitioners on an *ad hoc* basis was set in motion. The relevant portion of the report reads:

“चयन सूची की तैयारी एक ऐसी प्रक्रिया है जिसमें विलम्ब होने की सम्भावना रहती है। ऐसी स्थिति के लिए कार्यालय ज्ञाप सं० 41/5-71- नियुक्ति दिनांक 30-11-71 तथा शासनादेश सं० 15/18/85- कार्मिक-I 1986 दिनांक 29-3-86 द्वारा तदर्थ नियुक्ति की व्यवस्था की गयी है। जो अधिकतम एक वर्ष के लिए की जा सकती है। तहसील के संग्रह कार्यालय में वर्ष 1983 में तैयार की गयी सामयिक संग्रह अमीनों की एक वरिष्ठता सूची उपलब्ध है जिसमें क्रमांक- 22 बट्टी विशाल 35- महेश सिंह 36- रमाशंकर यादव, 39 प्रह्लाद यादव, 44 हरिद्वार मौर्य, 43 सीताराम यादव, 54 राम नारायण यादव, 66 बूचनु प्रसाद, 67 गौरी शंकर, 73 बाबू लाल, 87 श्रीकान्त दूबे, 105 त्रिनेत नारायण शर्मा, 110-रथ्यति सहायक के नाम अंकित है। जो इस समय भी सामयिक संग्रह अमीन के पद पर कार्यरत है। श्री बट्टी विशाल का कार्य गत वर्षों में ठीक नहीं रहा है, और इसलिए पिछले वर्ष सेवा में नहीं रखा गया था। ये सामयिक संग्रह अमीन सन 1975 से 1980 के मध्य से इस उम्मीद, विश्वास एवं प्रतीक्षामें सामयिक संग्रह अमीन के पद पर कार्य कर रहे हैं कि भविष्य में होने वाली रिक्तियों में इन्हें स्थान मिलेगा। परन्तु ऐसा न करके इनके साथ नैसर्गिक न्याय नहीं किया जा रहा है। कुल 22 पदों में अनुसूचित जाति के लिए आरक्षित पदों की सं० 3 पिछड़े वर्ग के लिए 3 होती है। पिछड़े वर्ग की संख्या पूरी है। उपरोक्त में केवल बाबू लाल ऐसा अनुसूचित जाति का अभ्यर्थी है जिसका कार्य सन्तोषजनक है।

अतः यदि सन्तुष्ट हो तो सरकारी कार्य के हित तथा उपरोक्त अंकित अभ्यर्थियों को नैसर्गिक न्याय देने के उद्देश्य से रिक्त पदों पर इनमें से 8 को वरीयता क्रम के अनुसार तदर्थ नियुक्त करने की कृपा करें।”

7. The recommendation of the Tehsildar appears to have been made on the basis of the exigency of work, the availability of vacancies, and the provisions contained in Government Order No. 15/18/85-Karmik-1986 dated 29.03.1986.

8. The Government Order dated 29.03.1986, providing for appointment on an *ad hoc* basis, was not issued with a view to changing the status of Seasonal Collection Amins to that of *ad hoc* employees. However, the recommendation of the Tehsildar was acted upon by the then Sub-Divisional Officer, Farenda, who was the appointing authority for the post of Collection Amin. Consequently, an appointment order dated 09.02.1990 was issued, appointing the appellant-writ petitioners to the posts of Collection Amin on an *ad hoc* basis. The said appointment order, on reproduction, reads as under:

“मैंने तहसीलदार की आख्या दिनांक 1-2-90 देखा। तहसील में 7 आठ संग्रह अमीनों के पद रिक्त है। इन रिक्त पदों पर नियुक्ति न होने से संग्रह कार्य पर प्रतिकूल प्रभाव पड़ता है। जिला स्तर पर चयन सूची उपलब्ध न होने के कारण तहसील कार्यालय में उपलब्ध वरिष्ठता सूची में से व योग्य अभ्यर्थियों की तदर्थ नियुक्ति किया जाना आवश्यक है।

श्री बालेश्वर शुक्ल संग्रह अमीन के स्थान पर श्री महेश सिंह, व मोहम्मद मुनीर के स्थान पर श्री रमाशंकर यादव, श्री रघुवीर प्रसाद के स्थान पर प्रहलाद यादव, श्री अवधराज यादव के स्थान पर श्री सीताराम यादव, श्री विश्वनाथ लाल के साथ श्री हरिद्वार श्री बंशीधर के स्थान पर श्री राम नरायन यादव, श्री रामप्रीत के स्थान पर श्री बुच्चनु प्रसाद, श्री गौरी प्रसाद सेवा निवृत्त के स्थान पर श्री बाबू लाल, को संग्रह अमीन के पद पर तदर्थ रूप में नियुक्त किया जाता है। यह नियुक्ति अस्थायी होगी।”

9. The Government of U.P. framed rules and brought Amendments to the U.P. Collection Amins Service Rules, 1974 for appointment of Collection Amin from the feeding cadre of Seasonal Collection Amin, titled as U.P. Collection Amins Service (Amendment) Rules, 1984 (in short ‘the Rules, 1984’). Rule 14 of the Rules, 1984 mandates the constitution of a Selection Committee, which had to prepare a list of eligible candidates in terms of Rule 17 and then, based on such exercise under the statutory rules, the Sub-Divisional Magistrate, being the appointing authority, was vested with the power to make appointments to the post of Collection Amin.

10. In the meantime, the District Magistrate Maharajganj, terminated the services of the appellant-writ petitioners vide order dated 31.03.1990 i.e., within two months from the date of appointment on *ad hoc* basis, stating therein that there was a ban imposed by the Government as well as restriction imposed by the Board of Revenue in filling up the vacant posts of Collection Amin.

11. Being aggrieved by the order of termination dated 31.03.1990, the appellant-writ petitioners instituted Writ Petition No. 10010 of 1990, titled *Mahesh Singh and others v. State of U.P. and others*. This Court stayed the operation of the order dated 31.03.1990 passed by the District Magistrate, Maharajganj, which was under challenge in the writ petition.

12. The termination order dated 31.03.1990 passed by the District Magistrate was recalled, treating it *coram non judice*, since the appointing authority of Collection Amins is the Sub-Divisional Magistrate.

13. In the meantime, confirmation order dated 13.03.1991 *qua* the appellant-writ petitioners was passed by the Sub-Divisional Magistrate Farenda, District Maharajganj but said fact inadvertently could not be mentioned in the proceedings before the learned Single Judge. The order dated 13.03.1991, confirming the appellant-writ petitioner and certain other employees by the Sub-Divisional Magistrate Farenda, District Maharajganj is reproduced hereinbelow:

"संग्रह अधिष्ठान तहसील फरेन्दा में निम्नलिखित कार्यरत संग्रह कर्मचारियों को उनके नाम के सम्मुख अंकित तिथि के स्थाई किया जाता है।

क्रमांक	नाम कर्मचारी	पद	स्थाईकरण की तिथि
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1.	सूर्य नारायण पाण्डेय	संग्रह अमीन	1-1-87
2.	जयन्त्री लाल	” ”	1-6-69
3.	राम नारायण यादव	” ”	1-3-91
4.	रमाशंकर यादव	” ”	1-3-91
5.	बाबूलाल	” ”	1-3-91
6.	महेश सिंह	” ”	1-3-91
7.	प्रहलाद यादव	संग्रह अमीन	1-3-91
8.	सीताराम यादव	” ”	1-3-91
9.	हरिद्वार मौर्य	” ”	1-3-91
10.	बुधनू प्रसाद	” ”	1-3-91
1.	राम कवल	संग्रह चपरासी	1-1-89
12.	छोटे लाल	” ”	1-1-89
13.	शारदा मिश्र	” ”	1-1-89
14.	मुख्तार अहमद	” ”	1-3-90
15.	बृजनारायण	” ”	1-3-91
16.	हरिहर मौर्य	” ”	1-3-91

14. The further case pleaded by the appellant-writ petitioners is that, on 15.06.1993, a consolidated seniority list of Collection Amins was published, inviting objections to the seniority position of the incumbents. The appellants claim that their names were mentioned therein at Serial Nos. 103 to 109.

15. It was on 06.11.1995 that the services of the appellant-writ petitioners were terminated by invoking the provisions of the U.P. Temporary Government Servant (Termination of Services) Rules, 1975 (hereinafter referred to as ‘the Rules, 1975’).

16. The appellant-writ petitioners claimed that they were made permanent as Collection Amin way back on 13.03.1991, and thus, the order of termination dated 06.11.1995, being illegal on the face of it, ought not have been passed. The said order dated

06.11.1995 was subjected to challenge in Writ Petition No. 32381 of 1995. After exchange of pleadings, the termination order dated 06.11.1995 was quashed, and the writ petition was allowed with liberty to the respondents pass a fresh order in accordance with law. The operative portion of the order dated 26.05.2004, allowing the writ petition is extracted hereinbelow:

“In the result, the writ petition succeeds and is hereby allowed.

The impugned order dated 6.11.1995 terminating the services of the petitioners is quashed. It would, however, be open to the respondents to pass appropriate order in accordance with law. There shall be no order as to costs.”

17. Alleging non-compliance of the order dated 26.05.2004, the appellants-writ petitioners filed Contempt Petition No. 2133 of 2004. On 25.01.2006, in pursuance of the order passed by this Court dated 26.05.2004 on the writ side, treating the same to be a remand order as liberty was granted to proceed afresh, the Sub-Divisional Officer, Tehsil Farenda, District Maharajganj, issued a show cause notice pointing out inherent flaws in the order dated 13.03.1991, by which status of permanence was accorded to the appellant being Seasonal Collection Amin/*ad hoc* Amins without any statutory rules.

“3- उप जिलाधिकारी के आदेश दिनांक 13.03.91 द्वारा दिनांक 01.03.91 से आपको स्थाई किया गया है, जिसमें निम्न विधिक त्रुटियां हैं:-

(क) संग्रह अमीन सेवा नियमावली-1974 के नियम-22 (1) में परीक्षा अवधि दो वर्ष वर्णित है, किन्तु आपके नियुक्ति आदेश दिनांक 09.02.90 में मात्र एक वर्ष के पश्चात ही दिनांक 01.03.91 को आपको स्थाई कर दिया गया, जो पूर्णतया: नियम विरुद्ध है।

(ख) माननीय उच्च न्यायालय ने महेश सिंह व अन्य 6 बनाम जिलाधिकारी महाराजगंज व अन्य मा० उच्च न्यायालय में याचिका विचाराधीन थी, जिसमें उक्त नियुक्ति आदेश दिनांक 09.02.90 के सम्बन्ध में अंतिम निर्णय मा० उच्च न्यायालय द्वारा नहीं लिया गया था। इस प्रकार उक्त नियुक्ति आदेश ही विवादित एवं विचाराधीन था। उक्त आदेश के आधार पर मात्र एक वर्ष बाद आपको स्थाई किया गया जो अनियमित है।

(ग) उक्त आदेश दिनांक 13.03.91 नियम विरुद्ध पारित किया गया था, जिसके लिए तत्कालीन परगनाधिकारी श्री मुख्तियार वर्मा को दण्डित किया गया। इस प्रकार यह सिद्ध है कि स्थाईकरण आदेश दिनांक 13.03.91 विधि विरुद्ध आपको लाभ पहुँचाने की मंशा से किया गया है, जिसके लिए आप उत्तरदायी है।

इस प्रकार आदेश दिनांक 13.03.91 निरस्त होने योग्य है, जिसके आधार पर आपको स्थाई कर्मचारी नहीं माना जा सकता और आप उक्त आदेश प्राप्त करने में परगनाधिकारी, तहसीलदार, वा०वा० नवीस से दुरभिसंधि करने के दोषी हैं।

मा० उच्च न्यायालय के आदेश दिनांक 26.05.2004 एवं उक्त विधिक प्राविधानों के परिपेक्ष्य में आपको कारण बताओ नोटिस दी जाती है कि क्यों न आपको उल्लिखित परिस्थितियों में आप द्वारा अनियमित एवं विधि विरुद्ध तरीके से प्राप्त नियुक्ति आदेश दिनांक 09.02.1990 एवं स्थायीकरण आदेश दिनांक 13.03.1991 निरस्त करते हुए सेवा से पृथक कर दिया जाय।

अतः आप अपना स्पष्टीकरण एक सप्ताह में अधोहस्ताक्षरी को उपलब्ध कराये अन्यथा यह समझा जायेगा कि उक्त के सम्बन्ध में आपको कुछ नहीं कहना है। इसके उपरान्त तदनुसार आदेश पारित कर दिया जायेगा।”

18. The reply to the show cause notice dated 25.01.2006 was submitted by the appellant-petitioners on 27.02.2006 and on 19.04.2006, the Sub-Divisional Magistrate Farenda, District Maharajganj, decided the matter holding the appointment and confirmation of the appellants to be ex-facie illegal. The appointment as well as confirmation order was annulled. The operative portion of the order dated 19.04.2006 reads as under:

“याचिका संख्या 10010/90 मा० उच्च न्यायालय में विचाराधीन होने के दौरान ही आपका स्थायीकरण तत्कालीन नियुक्ति प्राधिकारी/परगनाधिकारी द्वारा किया गया जो अनियमित तथा विधि विरुद्ध है। इस स्थिति में लम्बित याचिका के अन्तिम निस्तारण के उपरान्त ही कोई आदेश पारित किया जाना चाहिये, परन्तु ऐसा नहीं किया गया। किसी भी तदर्थ कर्मचारी को सर्वप्रथम मौलिक रूप से नियमित नियुक्ति नियमानुसार करते हुए ही परिवीक्षा पर रखे जाने के उपरान्त ही संतोषजनक कार्य एवं आचरण के आधार पर परिवीक्षा अवधि पूर्ण किये जाने पर ही स्थायीकरण किये जाने का प्राविधान है। माननीय उच्च न्यायालय में लम्बित याचिका के दौरान ही आपका स्थायीकरण आदेश नियमित एवं विधि विरुद्ध है।

भविष्य में शासनादेश/परिषदादेश के अनुक्रम में जब कभी सामयिक संग्रह अमीनों से नियमित संग्रह अमीन के पद पर नियुक्ति हेतु चयन प्रक्रिया की जायेगी तब चयन समिति का गठन करके रिक्तियों के सापेक्ष नियमानुसार पात्रता के आधार पर आपका आवेदन पत्र प्राप्त होने पर चयन किया जा सकता है।

याचिका सं० 32381/95 महेश सिंह व बनाम जिलाधिकारी महाराजगंज में मा० उच्च न्यायालय के आदेश दिनांक 26.5.2004 के अनुपालन में याचीगण को नियमानुसार जारी नोटिस, प्राप्त उत्तर तथा पत्रावली का परिशीलन करने के पश्चात् मैं इस निष्कर्ष पर

पहुंचता हूँ कि उपरोक्त कारण बताओ नोटिस दिनांक 25.01.2006 के बिन्दु 01, 02 व 03 पर आपका स्पष्टीकरण/जवाब दिनांक 27.02.06 असंगत/भ्रामक होने व तत्संबंधित प्रचलित नियमों के विपरीत नियुक्ति, स्थायीकरण अवैध/विधि विरुद्ध होने के कारण सेवा में आपको बनाये रखने का कोई विधिक औचित्य प्रतीत नहीं होता है। इसलिए नियुक्ति आदेश दिनांक 09.02.90 व स्थायीकरण आदेश दिनांक 13.03.91 नियमों के विरुद्ध पाये जाने के कारण निरस्त होने योग्य है।

अतः आपका नियुक्ति आदेश दिनांक 09.02.190 तथा स्थायीकरण आदेश दिनांक 13.03.1991 निरस्त किया जाता है और उपर्युक्त आधार/परिस्थितियों को दृष्टिगत रखते हुए आप श्री रमाशंकर यादव को संग्रह अमीन के पद की सेवा से पृथक किया जाता है। ”

19. Refuting the claim of the appellant-petitioners, the State respondents filed a counter affidavit by emphasizing that their initial appointment itself was *dehors* the Rules, perpetuated an illegality, and *non est*, being in contravention of provisions of the **U.P. Collection Amin Service Rules, 1974 (hereinafter referred to as ‘the Rules, 1974’)**

20. The Seasonal Collection Amin could be appointed as Collection Amin, the feeding cadre being only against the 35% quota fixed for them, and that too, through the Selection Committee; not otherwise. There is no provision for treating an *ad hoc* Collection Amin for confirmation just after a year as an *ad hoc* appointment can only be regularized through some statutory rules, but in place of following the Statutory Rules, a blanket confirmation order was passed on 13.03.1991 during the pendency of Writ Petition No. 10010 of 1990. The *ad hoc* appointment cannot be said to be service rendered by a probationer, as even a probationer having been appointed under the Rules, 1974 can only be confirmed after passage of two years.

21. A Seasonal Collection Amin can be made a confirmed Amin through the process of recruitment recognized under the Rules, 1974, by constituting a Selection Committee, which is

not the case of the appellant-writ petitioner; rather, they have claimed that they boarded altogether a different bus, which is appointment on *ad hoc* basis on the strength of the Government Order dated 29.03.1986 followed by their confirmation just after a year.

22. Being aggrieved by the order dated 19.04.2006, the appellant-writ petitioners invoked the writ jurisdiction of this Court by instituting Writ Petition No. 26692 of 2006. The said writ petition came to be dismissed, affirming the order dated 19.04.2006 whereby the appointment and confirmation of the appellant-writ petitioners had been annulled.

23. Aggrieved this Special Appeal has been preferred by the writ petitioners.

Submissions advanced on behalf of counsel for appellant

24. The learned counsel for the appellant-writ petitioners submitted that the learned Single Judge failed to consider the report of the Tehsildar dated 01.02.1990, which is the foundation of their initial appointment as Collection Amin, and later on approved/confirmed by the Sub-Divisional Officer Farenda, District Maharajganj, on 13.03.1991 being the appointing authority, after considering the vacancy position. Thus, neither the initial appointment of appellant-writ petitioners on *ad hoc* basis nor subsequent confirmation can be termed as *dehors* the rules.

25. A further submission advanced by the learned counsel for the appellants is that the source of the procedure for appointment as Collection Amin on an *ad hoc* basis is contemplated under Rules 14 and 17 of Collection Amin

Manual, as well as the Government Order dated 29.03.1986. It has also been emphasised that at the time of the appellants being appointed as Collection Amin on an *ad hoc* basis, they were the senior most in the district.

26. The learned counsel for the appellants strenuously urged that the appointment of the appellant-writ petitioners on an *ad hoc* basis was made against substantive vacancies pursuant to the Government Order dated 29.03.1986. Their appointment on 09.02.1990 was thus on a temporary basis and was made by the competent appointing authority, namely, the Sub-Divisional Magistrate concerned, who was the appointing authority for Seasonal Collection Amin. It was, therefore, submitted that the order dated 31.03.1990 passed by the District Magistrate, saying that there was a ban on *ad hoc* appointments imposed by the State Government and followed by the Board of Revenue, was *non est* in law, as the District Magistrate was not the appointing authority and, consequently, lacked jurisdiction to pass the said order.

27. The order of termination dated 31.03.1990 was challenged before this Court in Civil Misc. Writ Petition No. 10010 of 1990, wherein the operation of the said order was stayed vide order dated 18.04.1990. The District Magistrate, having realised that he had no authority to pass the order of termination, subsequently withdrew the order dated 31.03.1990 vide order dated 10.09.1990. In the meantime, the appellant-writ petitioners continued to discharge their duties and were thereafter confirmed on 13.03.1991 by the Sub-Divisional Magistrate, Farenda, District Maharajganj.

28. The learned counsel for the appellants laid much thrust upon the fact that the names of the petitioners figured in the consolidated seniority list prepared for Collection Amin in the District on 15.6.1993 bearing serial numbers 103 to 109. The interim order granted on 18.04.1990 in Writ Petition No. 10010 of 1990 continued to operate until 06.11.1997, and the same was made absolute. The passing of order of termination was on 06.11.1995, in the teeth of proceedings before the Writ Court and during subsistence of the interim order was a nullity. The services of the petitioners ought not have been terminated treating them as temporary employees in the exercise of powers under Rules of 1975. The termination order dated 06.11.1995 passed by the Sub-Divisional Magistrate concerned was found to be one without following the procedure established by law as the appellant-writ petitioners could not have been treated to be temporary employees in view of confirmation made on 13.03.1991. The operative portion of the order dated 26.05.2004 passed in Writ Petition No. 32381 of 1995 reads:

*“From the pleadings of the parties it is evident that by the order dated 9.2.1990 (Annexure-2), firstly, the petitioners were given ad hoc appointment on temporary basis against the substantive vacancies and thereafter vide order dated 13.3.1991 (Annexure-3) they were made permanent. Thus, their status could not be treated as temporary employee till the order dated 13.3.1991 giving them permanent status in service was continuing. In the counter-affidavit the stand of the department, briefly stated, is that the petitioners' continuation in service as well as confirmation were in violation of **Articles 14 and 15 of the Constitution** as well as the Rules and as such they do not have any right to the posts, hence their services, being illegal, has rightly been terminated. However, they do not dispute that the petitioners' appointment were subsequently regularized against the substantive vacancies and, therefore, I am of the view that the order of termination could not have been passed by invoking the provisions of the Rules.*

7. It is well-settled legal position that even in the matter of appointment de hors the Rules a finding has to be recorded that the appointment is contrary to the provisions of the Act and unless

such finding is recorded the termination cannot be made and to arrive at such conclusion, necessarily an inquiry will have to be made as to whether such appointment was contrary to the provision of the Act, in which such an employee has to be given notice. Reference may be made to the judgment of the Hon'ble Supreme Court in the case of **Basudeo Tiwari v. Sido Kanhu University**, (1998) 8 SCC 194 : AIR 1998 SC 3261, wherein the order of termination was passed without notice to the employee on the ground that the same is irregular or unauthorized. The Hon'ble Supreme Court while setting aside the order of termination held that if an employee concerned, whose right is affected, is not given notice of such a proceeding and a conclusion is drawn in his absence, such conclusion would not be just, fair or reasonable. Thus, in view of the above legal position, if the appointment of the petitioners were contrary to the provisions of the Act or the Rules, the authorities ought to have held an inquiry and only after giving notices to the petitioners, their appointment could have been terminated.

8. Besides that, in similar circumstances, the order of termination of Shri Gulam Hussain has been quashed by the learned single Judge of this Court in Civil Misc. Writ Petition No. 6537 of 1995, vide order dated 15.5.2001 and the facts of that case is identical to the facts of the case in hand inasmuch as in the list of permanent Collection Amins (Annexure-4) the said Gulam Hussain has been shown at serial No. 124 whereas the petitioners are at serial Nos. 107 to 113. I also agree with the view taken by the learned single Judge in the aforesaid case.

9. Having considered the facts of the case and also having appreciated the submissions made on both sides, this petition deserves to be allowed.

10. In the result, the writ petition succeeds and is hereby allowed. The impugned order dated 6.11.1995 terminating the services of the petitioners is quashed. It would, however, be open to the respondents to pass appropriate order in accordance with law. There shall be no order as to costs."

29. The learned counsel for the appellants further stressed that the appellants-writ petitioners were confirmed employees working as regular Collection Amins and were discharging their duties as such. They were enjoying the constitutional protection available to them being permanent employees by virtue of Article 311 (2) of the Constitution of India.

30. The learned counsel for the appellants contends that it is not the case of any of the parties that any fraud or misrepresentation on the part of the appellant-writ petitioners was practised for securing either an *ad hoc* appointment or thereafter the order of confirmation dated 13.03.1991. Thus, the order dated 13.03.1991 cannot be questioned at such a belated stage in the year 1995 vide order dated 06.11.1995, which too has been quashed by this Court.

31. The appellant-petitioners further stressed that their long and continuous service, particularly the services rendered by them as Seasonal Collection Amins from 1976 to 1990, i.e., 14 years and then thereafter *ad hoc* service for a shorter period followed by the service rendered under the strength of interim order could not altogether be brushed aside. The nature of the duties which the appellant-petitioners were performing are perennial in nature, and more so their appointments being against the substantive vacancies cannot be annulled in such a cursory manner.

32. The further contention advanced by the learned counsel for appellant-writ petitioners is that, even if any fault could be attributed to the appointing authority in making an *ad hoc* appointment followed by confirmation, then in that situation also, the appellant-writ petitioners cannot be victimised for a fault on the part of the State officials.

33. The learned counsel for the appellants further submitted that, even if the services of the appellant-writ petitioners are found to be *dehors* the rules, the long period of their service is required to be saved by extending consequential fruits in the

shape of permanence. The learned Counsel has relied upon the guidance of the Supreme Court in *Jaggo Vs. Union of India and others*, 2024 SCC OnLine SC 3826, *Bhikhani Devi and etc. Vs. Union of India and others*, 2026 INSC 612, *U.P. Power Corporation Limited Vs. Satyanarayan*, 2005 2 UPLBEC 1779, *Vikas Pratap Singh and others Vs State of Chhatisgarh and others* (2013) 14 Supreme Court Cases 494, *Kaluram Vs. State of U.P.* , 2000 1 UPLBEC 85, *Mohd. Zamil Ahmad Vs. State of Bihar*, 2016 (2) ESC 242 (SC), *Ram Devi Vs. Director Bal Vikas Sewa Avam Pushtahar and others*, 2005 0 Supreme (All) 1576, *Buddhi Nath Chaudhary Vs. Abhay Kumar and others*, (2001) 3 Supreme Court Cases 328, *Vivek Kaisth and another Vs. State of Himanchal Pradesh and others*, 2023 0 Supreme (SC) 1163, *Suresh Chandra Sharma Vs. Presiding Officer, Labour Court IV, Kanpur and others*, Neutral Citation No. 2003:AHC:469 and *Dr. Smt. Kuntesh Gupta Vs. Management of Hindu Kanya*, 1987 AIR 2186.

34. The learned counsel for the appellants lastly submitted that, although no formal order of regularization was passed by the competent authority, the services of the appellant-writ petitioners would be deemed to have been regularized *ipso facto* under the Uttar Pradesh Regularization of Ad-hoc Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979, as amended from time to time (hereinafter referred to as ‘the Rules, 1979’).

35. No other point has been pressed by learned counsel for the appellant.

**Submissions advanced by counsel for the State –
respondents**

36. Learned counsel for the State-Respondents invited the attention of this Court to the Rules, 1974 (Collection Amin) particularly Rule 3(h) 'member of service'; 3(i) 'Seasonal Amin'; 3(j) 'service' and 3(1) 'substantive appointment' and submitted that 'Seasonal Amin' do not come in the category of 'Cadre of Service', nor is there any provision for *ad-hoc* or officiating appointment from 'Seasonal Collection Amin' to 'Collection Amin'.

37. The further submission is that the Appellants/Petitioners were initially engaged as 'Seasonal Staff', pursuant to which, their names were placed in list of year 1983. At this juncture it would be relevant to say that District Maharajganj was carved out from District Gorakhpur on 02.10.1989. Therefore, if any list as mentioned under the provisions of Rule 17-A is to be maintained/drawn/prepared the same would be one after 4 'FASAL' i.e., not before the year 1991, which is 2 years after formation of new District. The list relied upon by the Appellants-Petitioners is one from District Gorakhpur whereas the *adhoc* appointment order is made by the Sub Divisional Magistrate, Farendia, Maharajganj. It has also been emphasized that initial engagement of the appellant- petitioners was as seasonal collection amin under the Uttar Pradesh Collection Manual which is a bundle of executive instructions without any statutory force.

38. The next submission advanced is that mere continuance every year of seasonal work would not lead to permanent status

for an employee, unless there exist posts and regularization is done which has admittedly not been done in the instant case. Reliance has been placed in this regard upon *State of Maharashtra Vs. R.S. Bhonde (2005) 06 SCC 751* following *Mahatam Phule Agricultural University Vs. Nasik Zila Sheth Kamgar Union, (2001) 07 SCC 346* and *Gram Sevak Prashikan Kendra Vs. Workmen*.

39. Learned counsel for the State-Respondents laid much emphasis on the fact that for permanent status of employment, the appointment must be against a substantive vacancy, in a substantive capacity done in according with recruitment or regularization rules, but all these conditions are missing in the case of the appellant-petitioners. Reliance has been placed upon *Union of India Vs. Ilmo Devi (2021) 20 SCC 290* and *State of Rajasthan Vs. Jagdish Narain Chaturvedi, (2009) 12 SCC 49*, wherein it has been held:

"...In order to become "a member of service" a candidate must satisfy four conditions, namely,

(i) the appointment must be in a substantive capacity;

(ii) to a post in the service i.e. in a substantive vacancy;

(iii) made according to rules;

(iv) within the quota prescribed for the source.

Ad hoc appointment is always to a post but not to the cadre/service and is also not made in accordance with the provisions contained in the recruitment rules for regular appointment..."

"...Apart from Haryana Veterinary case the position in law as stated in State of Punjab Vs. Ishar Singh and State of Punjab v. Gurdeep Kumar Uppal clearly lays down that while reckoning the required length of service the period of ad hoc service has to be excluded."

40. The further submission is that from a bare perusal of Paragraph 19 of the Uttar Pradesh Collection Manual, it is clear that the engagement of 'Seasonal Collection Amin' is a stop gap arrangement, done after due approval from the Commissioner of the concerned Division, and this engagement/appointment is only limited to that season/period only or for 89 days whichever is earlier. Upon expiry of the said season/period, the engagement/appointment automatically comes to an end. Furthermore, the initial engagement/appointment of the appellants/petitioners as "Seasonal Collection Amins" was neither a substantive appointment in accordance with the provisions of the Uttar Pradesh Collection Amins Service Rules, 1974, nor does the service rendered by them as "Seasonal Collection Amins" fall within the ambit of "service" as contemplated under the Uttar Pradesh Collection Amins Service Rules, 1974, as amended from time to time.

41. The learned counsel for the State laid emphasis that 1974 Rules, nowhere confers any power upon the Appointing Authority to make temporary, stop gap or ad-hoc appointments on the post of 'Collection Amin'. The Rules only lay down the procedure for appointment on the post of 'Collection Amin' by direct recruitment through competitive examination for 50% posts and 15% through promotion from the cadre of 'Collection Peons'; and the remaining 35% from 'Seasonal Collection Amins' are to be appointed in accordance with the Rules 1974.

42. The original record pertaining to appointment as a seasonal collection amin followed by ad hoc appointment followed by a

confirmation order and a termination order has been placed before this Court on being summoned.

43. The learned counsel for the State-Respondents submitted that the finding returned by the learned Single Judge is that the appellants-petitioners did not work after 08.11.1995. This fact is substantiated from a perusal of the old Bill Books available in the office records. No interim order was granted by this Court in the second round of litigation i.e., in Civil Misc. Writ Petition No. 32381 of 1995 and also in Civil Misc. Writ Petition No. 26692 of 2006.

44. Lastly, the learned Standing Counsel submitted that since the petitioner-appellants were never appointed in terms of Rule 20 of Rules, 1974, there is no question of them being on probation for two years as per Rule 22 and thereafter their confirmation. An ad hoc appointment can never lead to a confirmation in service but only regularization, which has not been done in case of the petitioner-appellants. The learned counsel for the State has brought to our notice the order dated 25.01.2006 by which the erring official who passed the confirmation order dated 13.03.1991 was punished. Thus, the order dated 13.03.1991 which is void ab initio may not be maintained by quashing the order impugned in the writ petition as quashing of same would revive and perpetuate an illegality.

Questions for Consideration

45. In the backdrop of the rival submissions advanced by the parties, the questions that arise for our consideration are :

(i) Whether the appellant-writ petitioners could have been made permanent/confirmed vide order dated 13.03.1991, i.e., after rendering only one year, one month and 26 days of *ad hoc* service, without following the statutory prescription contained in the Rules, 1979, as amended from time to time?

(ii) Whether the long and continuous service of the appellant-writ petitioners, initially as Seasonal Collection Amins for 14 years (1976–1990), thereafter on *ad hoc* basis from 09.02.1990, followed by their continuance in terms of the interim order dated 18.04.1990 passed by this Court, until termination of their services vide order dated 06.11.1995, and their subsequent continuance pursuant to the interim order which was made absolute 26.05.2004 passed in Writ Petition No. 32381 of 1995, would confer upon them any right to permanence or lien on the post of Collection Amin?

Analysis/Reasoning

46. The entire controversy hinges upon a pivotal point, i.e. the confirmation order dated 13.03.1991. If the order dated 13.03.1991 does not confer any right being *dehors* the rules, then of course the appellant-petitioners would acquire no enforceable right; and that too, enforceable in the equitable jurisdiction of this Court under 226 of the Constitution.

47. The first question that has cropped up before this Court is being examined in the light of the admitted facts that the initial appointment claimed to be an *ad hoc* one made on 09.02.1990, followed by confirmation vide order dated 13.03.1991 although no statutory recruitment or regularisation provision has been identified as the source of such confirmation, and the officer

who passed the said order was subsequently proceeded with against for his misconduct.

48. This Court now proceeds to examine whether the confirmation made vide order dated 13.03.1991 would operate as an estoppel, precluding the State Government to question the continuance of the appellant-writ petitioners based on the order dated 13.03.1991, and if, the same is declared void by the State, would be treated as a review of an administration decision.

49. According to *Webster's Encyclopedic Unabridged Dictionary of the English Language*, '*ad hoc*' means "for this (special purpose); with respect to this (subject or thing)."

50. Before examining the nature of the appointment the meaning of the expression *ad-hoc* is required to be delved into as it has not been defined under the statutory rules. According to *Law Lexicon* by P. Ramanath Aiyar, the expression *ad hoc* means "for a particular purpose; made, established, acting or concerned with a particular purpose."

51. An *ad hoc* appointment refers to a temporary position filled outside the standard recruitment process. Such appointments are typically made to address immediate or unforeseen staffing needs and do not guarantee long-term employment or benefits unless regularized through prescribed procedures. An *ad hoc* appointment refers to a temporary position filled outside the standard recruitment process. Such appointments are typically made to address immediate or unforeseen staffing needs and do not guarantee long-term employment or benefits unless regularized through prescribed procedures.

52. Appointment made in violation of the statutory mandate and the constitutional scheme governing public employment is a nullity in the eye of law and cannot confer any legally enforceable right upon the appointee. The principle has been succinctly explained by this Court in ***Kashi Prasad Chature v. State of U.P.***, 2011 SCC OnLine All 2331. The relevant remarks in ***Kashi Prasad Chature*** (supra) are reproduced hereinbelow:

*“22. Hon'ble Apex Court in the case of State of Karnataka v. Uma Devi, (2006) 4 SCC 1 : (AIR 2006 SC 1806) has dealt with in detail viz-a-viz the status of daily wagers, temporary employee and ad-hoc employees and has clearly ruled, that Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate by-passing of constitutional and statutory mandates. Said judgment has again been extensively dealt with in the case of Uttaranchal Jal Sansthan v. Laxmi Devi, (2009) 7 SCC 205 : (AIR 2009 SC 3121), by mentioning that before **person claims status of Government servant, not only his appointment may be made in terms of recruitment rules, he must otherwise fulfil criteria provided for. Appointment made in violation of constitutional scheme is nullity. Rendition of service for a long time, it is well known does not confer permanency, it is furthermore not a mode of appointment.***

23. The expressions ‘regular service’ has not been defined either under the provisions of the Act or rules framed thereunder or under U.P. Fundamental Rules contained in Chapter 2, Vol. 2, Parts II to IV of Financial Handbook, which defines various general conditions of Government service, therefore, it is necessary to examine the content and import of the aforesaid expressions by taking help of dictionary meaning assigned to the aforesaid expressions and other recognised mode of interpretation of statute.

24. In Law of Lexicons the expression ‘regular’ and ‘regular services’ have been as signed meanings at page 1638–1639 as under:

“Regular-Webster defines “regular” to mean conformable to a rule; methodical; periodical.

“REGULAR” is derived from “regular”, meaning “rule”, and its first and legitimate signification, according to Webster, is “conformable to a rule” agreeable to an established rule, law, or

principle, to a prescribed mode, or according to established, customary forms.”

Regular-Conformable to rule; periodical; recurring or repeated at fixed times or uniform intervals; properly constituted; normal; marked by steadiness or uniformity of action, procedure or occurrence.

Regular services-The expression ‘regular forces’ mean officers and soldiers who by their commission, terms of enlistment, or otherwise are liable to render continuously for a term military service to His Majesty in every part of the world or in any specified part of the world. R. v. Governor of Wormwood Scrubbs Prison, (1948) 1 All ER 438, 441 (KBD). [Army Act. S. 190(8)]”

25. From a bare reading of the dictionary meaning of aforesaid expressions, it appears that expression ‘regular’ has been assigned various meanings, therefore, it is very difficult to find out appropriate meaning of the expressions ‘regular service’ from dictionary meaning so as to enable the court to come to a definite conclusion.

XXXX

30. Service can be said to be “regular”, only when it is conformable to Rule, i.e. when the appointment is taken within the fold of relevant service rules, framed under Article 309 of the Constitution or as the case may be, the regular prescribed procedure issued by Government in respect of particular service. At this juncture the view point of Hon'ble Apex Court in the case of State of Karnataka v. Uma Devi ((2006) 4 SCC 1 : AIR 2006 SC 1806) (supra) is again also being looked into and extracted below:

“16. In B.N. Nagarajan v. State of Karnataka [(1979) 3 SCR 937] ((1979) 4 SCC 507 : AIR 1979 SC 1206), this court clearly held that the words “regular” or “regularization” do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. This court emphasized that when rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 of the Constitution in contravention of the rules. These decisions and the principles recognized therein have not been dissented to by this Court and on principle, we see no reason not to accept the proposition as enunciated in the above decisions. We have, therefore, to keep this distinction in mind and proceed on the basis that only, something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the

process, can be regularized and that it alone can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization.

17. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure, even though a non-fundamental element of that process or procedure has not been followed. This right of the executive and that of the court, would not extend to the executive or the court being in a position to direct that an appointment made in clear violation of the constitutional scheme, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.”

53. The undisputed fact is that the appellant-writ petitioners claims appointment on an *ad-hoc* basis under the aegis of the Government Order dated 29.03.1986, followed by their so-called confirmation vide order dated 13.03.1991, passed by the then Sub-Divisional Officer, Farenda, Maharajganj, extracted hereinabove in its entirety. The last mentioned does not indicate the authority/power and the rules under which it has been made. It further does not depict/refer to any applicable recruitment rules, service rules, or regularization rules, which gives the impression that the order is one by ‘a monarch’ in place of a Statutory Authority under a democratic setup.

54. In any view of the matter, in the interest of justice, we intend to examine the confirmation order dated 13.03.1991, which is claimed by the State respondents to be void *ab-initio* to find out whether such order could be saved by any authority of law or by the application of any yardstick of a justice-oriented approach.

55. Harking back to the year 1991 a confirmation made on the Post of a Collection Amin from a seasonal collection amin / *ad-*

hoc Collection Amin could be tested on anvil of the Uttar Pradesh Collection Amins' Service Rules, 1974 (Rules, 1974), as amended in the year 1984 or the Regularization of *Ad-hoc* Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979 (in short 'Rules, 1979').

56. The enquiry would first proceed to test the validity of the confirmation order dated 13.03.1991 on the post of Collection Amin, if tested on the anvil of the statutory requirements contained in the Rules, 1974, it comes out that Part III thereof deals with the recruitment process. Rule 5 prescribes the sources of recruitment, which include 35% of the vacancies to be filled by selection from amongst the Seasonal Collection Amins.

57. Seasonal Collection Amins are appointed under Paragraph 19 of the U. P. Collection Manual. Paragraph 19 provides that the Sub-Divisional Magistrate shall keep a close watch, on the need for appointment of Seasonal Amins for assistance of the appointed Amins, on an annual basis. It further provides that the Sub-Divisional Magistrate shall submit a report to the Collector seeking sanction for the appointment of additional Seasonal Amins employees by showing cause therefor and presenting region - wise data of the demands to be recovered under various categories, the sanction for the seasonal posts being granted by the Divisional Commissioner on basis of the Collector's report, founded in turn, on the Sub-Divisional Magistrate's submission about the requirement. For ready reference paragraph 19 is reproduced hereinbelow:

“24. Rule 3, Clauses (h), (i) and (j) of U. P. Collection Amins' Service Rules, 1974 (hereinafter referred to as 'the Rules of

1974') defines the terms 'members of service', 'seasonal amins' and 'service' as follows: - "(h) **“Member of the service”** means a person substantively appointed under these rules or the rules or orders in force before the commencement of these rules to a post in the cadre of the service. (i) “Seasonal Amin” means an Amin appointed for Rabi or Kharif or for both the seasons; (j) “Service” means the Uttar Pradesh Collection Amins’ Service.” 25. Rule 4 of the aforesaid Rules defines the term ‘strength of service’ as follows: - “4. Strength of Service. - (1) the strength of service shall be such as may be determined by the Governor from time to time. (2) The permanent strength of the service shall, until orders by reading the same have been passed under subrule one, be as given below: collection Amin is (ordinary grade) 5341 collection Ameens (selection grade) 593; Provided that – (a) the Collector may leave and failed or the Governor may hold in appearance anywhere can’t post without thereby entitling any person to compensation; and (b) the Governor may create such additional permanent or temporary posts as may be considered necessary.”

26. Rule 5 of the aforesaid Rules contains the following provision for the source of recruitment “5. Source of recruitment. - (1) Recruitment to posts in the ordinary grade of the service shall be made on the result of a competitive examination as provided in part V of these Rules: Provided that subject to availability of suitable candidates, up to fifteen per cent of the vacancies shall be filled by promotion from amongst such substantively appointed Collection Peons – (a) who have passed at least High School Examination of the board of High School and Intermediate Education, Uttar Pradesh, or an Examination recognised by the government as equivalent thereto; and (b) who have worked in the Collection Organization of the Revenue Department for a period of at least six fasls: Provided that...” 27. It is relevant to note that the Rules of 1974 contain no provision for making appointment on seasonal basis. Although a certain percentage of posts of ordinary cadre of the service are reserved for being filled in by Seasonal Collection Amins, the Seasonal Collection Amins themselves are not included amongst the strength of service as defined in Rule 4 of the Rules of 1974. Therefore, a mere mention of Seasonal Amins in the Rules, without any provisions for appointment of the Seasonal Amins, will not make the appointment of Seasonal Collection Amins as per Rules of 1974. 28. Two things are significant to note regarding appointment of seasonal collection Amins. First is that the provision for their appointment is contained in the U. P. Collection Manual, which is merely a collection of Executive Instructions which is neither a Statute nor Rules framed under any Statute. Second, the seasonal posts are sanctioned by the Divisional Commissioner on the request made by the Collector in furtherance of a report submitted by the Sub-Divisional Magistrate, whereas the strength of service of collection Amins under the U. P. Collection Amins’ Service Rules,

1974, is determined by the Governor, as provided in Rule 4 of the Rules of 1974.”

58. Having examined the statutory scheme envisaged under the Rules, 1974, the possibility of any exercise undertaken for passing the order dated 13.03.1991 under the Rules, 1974 is ruled out as the said order does not pass muster of statutory recruitment. Upon being confronted with the aforesaid position, learned counsel for the appellant candidly admitted that the recruitment exercise under the 1974 rules *qua* the appellant-petitioners has not been undertaken; then the same has to be based on a regularization done under the applicable rules i.e., the Rules, 1979.

59. The order dated 13.03.1991, having failed to pass muster of the requirements contained in the Rules, 1974, would now be tested on the only applicable rules of regularization available in the year 1991 i.e., Regularization of *Ad-hoc* Appointments (On Posts Outside the Purview of the Public Service Commission) Rules, 1979 (in short ‘Rules, 1979’).

60. The Rules, 1979, have been amended four times. The first amendment was brought in March 1984, by which the cut-off date initially fixed as 01.01.1977 was replaced by 1.05.1983. The second amendment was brought vide notification dated 7.08.1989, by changing the cut-off date extending to 1.10.1986. The third amendment was brought in the year 2001 with the title The Uttar Pradesh Regularization of Ad-hoc Appointments (on Posts Outside the Purview of the Public Service Commission) (Third Amendment) Rules, 2001 (in short ‘Rules, 2001’) by which the cutoff date was extended to 30.06.1998. The fourth amendment was brought in the year 2001, known as

Uttar Pradesh Regularization of Ad-hoc Appointments (on Posts Outside the Purview of the Public Service Commission) (Fourth Amendment) Rules, 2021, vide which the cutoff date was extended to 1.12.2001.

61. The claimed regularization/confirmation dated 13.03.1991 falls within the period of time when the second amendment to the Rules, 1979 was in force, and the cut-off date for regularization of *ad hoc* appointees was 1.10.1986; and till 1991, the third amendment (Rules 2001) was not in existence which extended the cut-off date as 30.06.1998. Thus, as on 13.03.1991, the regularization under Rules 1979 was not feasible.

62. The *ad hoc* appointment of the appellant-writ petitioners being made in the year 1990, could have been considered for regularization under the Rules, 2001, as the cutoff date was extended to 30.06.1998 and not at any point of time prior to enforcement of aforesaid rules, on 20.12.2001. The claim for regularization by the appellant- writ petitioners could have been considered at any time after 20.12.2001, as their appointment on *ad hoc* basis being made in the year 1990 was well within the cut-off date fixed by the Rules, 2001, subject to their continuance on the date of enforcement of rules last mentioned and fulfilling the requisite qualification for the post in question, by constituting a Selection Committee and the drawing up of a seniority list. But, no such exercise had ever been undertaken and the appellant- petitioners had never come forward claiming consideration of regularization under the Rules, 2001.

63. It is not in dispute that the appellant- writ petitioners were initially appointed on an *ad-hoc* basis in the year 1990. It is further not in dispute that they have been regularized/confirmed on the post of Collection Amin, without specifying the regularization/ recruitment rules, though at the relevant point of time i.e., in the year 1991, the provisions of the U.P. Regularization of Ad hoc Appointments (on posts outside the purview of the Public Service Commission) Rules, 1979, as amended on 7.8.1989, was occupying the field and in force for the purposes of Regularization. By virtue of Rule 2 of the Rules, 1979, they have overriding effect, notwithstanding anything to the contrary contained in any other rules or orders.

64. Rule 4 of the Rules, 1979 deals with the regularization of *ad hoc* appointments and reads as under:

*"4. Regularisation of ad hoc appointments.-(1) Any person who-
(i) was directly appointed on ad hoc basis before January 1, 1977 and is continuing in service, as such, on the date of commencement of these rules;*

(ii) possessed requisite qualifications prescribed for regular appointment at the time of such ad hoc appointment; and

(iii) has completed or, as the case may be, after he has completed three years continuous service; shall be considered for regular appointment in permanent or temporary vacancy as may be available on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

(2) In making regular appointment under these rules, reservation for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories, shall be made in accordance with the orders of the Government in force at the time of recruitment.

(3) For the purpose of sub-rule (1), the appointing authority shall constitute a Selection Committee and consultation with the Commission shall not be necessary.

(4) The appointing authority shall prepare an eligibility list of the candidates, arranged in order of seniority as determined, from the date of order of appointment and, if two or more persons are appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee along with their character rolls and such other records, pertaining to them, as may be considered necessary to judge their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4).

(6) The Selection Committee shall prepare a list of the selected candidates, the names in the list being arranged in order of seniority, and forward it to the appointing authority."

65. The aforesaid Rules were further amended by the notification dated 23.3.1984, whereby Rule 9 was added in the original Rules, 1979, and the rules were extended and made applicable to any person directly appointed on an *ad hoc* basis on or before 01.05.1983 and continuing in service as such, on the date of commencement of the U.P. Regularization of Ad-hoc Appointments (On Posts Outside the Purview of the Public Service Commission) (Amendment) Rules, 1984. The aforesaid rules were further amended by the notification dated 07.08.1989, whereby Rule 10 was inserted and made applicable *mutatis mutandis* to any person directly appointed on an *ad hoc* basis on or before 1.10.1986 and continuing in service as such on the date of commencement of the U.P. Regularization of *Ad hoc* Appointments (On Posts Outside the Purview of the Public Service Commission) (Second Amendment) Rules, 1989, i.e., till 07.08.1989.

66. Rule 5 of the Rules, 1979 deals with the appointments on recommendation of Selection Committee constituted under Rule 4(3) of the Rules, 1979. Rule 6 provides that the

appointments made under these Rules shall be deemed to be under the relevant Service Rules or orders, if any.

67. For a better appreciation of the controversy, it would be expedient to extract the relevant provisions of Rules 5, 6, 9 and 10 of the Rules, 1979, as amended from time to time:

"5. Appointments. - The appointing authority shall, subject to the provisions of sub-rule(2) of Rule 4 made appointments from the list prepared under sub-rule (6) of the said rule in the order in which their names stand in the list.

6. Appointments to be deemed under the relevant service rules, etc. - Appointments made under these rules shall be deemed to be under the relevant Service Rules or orders, if any.

9. The provisions of these rules shall apply, mutatis mutandis, also to any person directly appointed on ad- hoc basis on or before May, 1 1983 and continuing in service as such as the date of commencement of the Uttar Pradesh Regularization of Ad hoc Appointments (on Posts Within the Purview of the Public Service Commission), (Amendment) Rules 1984.

10. Extension of the rules. - The provisions of these rules shall apply mutatis mutandis also to any person directly appointed on ad hoc basis on or before October 1, 1986 and continuing in service as such, on the date of commencement of the Uttar Pradesh Regularization of Ad hoc Appointment(on Posts Outside the Purview of the Public Service Commission)Second Amendment) Rules, 1989."

68. From a collective reading of Rules 4 to 10 of the Rules, 1979, as amended vide notification dated 7.8.1989, it is clear that any person who was directly appointed on *ad hoc* basis on or before 01.10.1986 and continuing in service as such on the date of commencement of Rules, 1979 (Second Amendment), possessed the requisite qualification prescribed for regular appointment at the time of such *ad hoc* appointment and has completed or as the case may be, after he has completed three years continuous service, shall be considered for regular appointment in permanent or temporary vacancy as may be

available on the basis of his record and suitability and before any regular appointment was made against such vacancy in accordance with the relevant service rules or orders.

69. The undisputed facts that emerge based on the pleadings are that the appellant – writ petitioners did not qualify the cutoff date fixed by the then applicable regularization Rules, 1979, (second amendment), as they were not appointed prior to 1.10.1986. Apart from this, they could also not complete the statutory requirement of three years continuous *ad hoc* service on 13-3-1991 (as they were appointed on *ad hoc* basis on 9-2-1990). Thus, the order dated 13.03.1991, being against the mandate of the statutory rules for regularization is void *ab initio* and cannot be termed as an order made under the Rules, 1979.

70. Besides that, the appellant-petitioner's appointment being one made on 09.02.1990 (*ad hoc* basis), his consideration for regularization under the Rules, 1979, (Second amendment) there being cut-off date as 1.10.1986 was not possible on 13.03.1991 since, by that time Rules, 1979, (third amendment – 2001) were not in existence prescribing the cut-off date as 30.06.1998. Thus, the order dated 13.03.1991 cannot be said to be an order traceable to the Rules 1979.

71. An initial *ad hoc* appointment made dehors the prescribed recruitment rules remains a stop-gap arrangement and cannot, by itself, mature into a regular appointment merely by virtue of a subsequent executive order of confirmation. Regularization or permanent appointments must have sanction of the applicable statutory rules and cannot be founded solely upon an executive confirmation order.

72. An *ad hoc* employee must first undergo the formal Regularization Procedure (evaluation by a Selection Committee, screening of records, and checking availability of a substantive vacancy). Once regularized, they are placed on probation, after which they can be "confirmed". Directly confirming an *ad hoc* appointee skips this mandatory legal gateway, which is the case of the appellant-petitioner. Without adhering to the rigorous procedure laid down in the regularization rules and being directly confirmed in service from an *Ad-hoc* appointee, makes the order 13.03.1991 *void ab initio*.

73. In service jurisprudence, confirmation ordinarily presupposes a substantive appointment, which is not the case of the appellant-writ petitioners. At no point have the appellant-writ petitioners claimed to have entered service through a substantive appointment; rather, their case rests upon an *ad hoc* appointment followed by the purported order of confirmation dated 13.03.1991. Such a course, in the absence of any statutory provision authorizing direct confirmation of an *ad hoc* appointee, is impermissible. The very concept of a substantive appointment is distinct from, and cannot be equated with, an *ad hoc* appointment.

74. The confirmation order dated 13.03.1991, having not been passed under any applicable recruitment rules, Service Rules or statutory regularization rules, is also liable to be tested on the touchstone of Articles 14 and 16 of the Constitution of India. An appointment made in such manner, without adherence to the prescribed statutory procedure, cannot confer any legally

enforceable status upon the person so appointed. A public appointment made de hors the prescribed recruitment procedure cannot be sustained in derogation of the equality clause enshrined in Articles 14 and 16.

75. In ***Shesh Mani Shukla v. District Inspector of Schools, Deoria***, (2009) 15 SCC 436, the Supreme Court reiterated that an appointment made in contravention of the statutory scheme cannot be treated as a valid appointment merely because the incumbent has continued for a considerable long period of time. In ***Shesh Mani Shukla*** (supra) the following observations were made by the Supreme Court.

"19. It is true that the appellant has worked for a long time. His appointment, however, being in contravention of the statutory provision was illegal, and thus, void ab initio. If his appointment has not been granted approval by the statutory authority, no exception can be taken only because the appellant had worked for a long time. The same by itself, in our opinion, cannot form the basis for obtaining a writ of or in the nature of mandamus; as it is well known that for the said purpose, the writ petitioner must establish a legal right in himself and a corresponding legal duty in the State. (See Food Corpn. of India v. Ashish Kumar Ganguly, (2009) 7 SCC 734. Sympathy or sentiments alone, it is well settled, cannot form the basis for issuing a writ of or in the nature of mandamus. (See State of M.P. v. Sanjay Kumar Pathak, (2008) 1 SCC 456)."

76. The principle that an appointment contrary to statutory rules cannot be validated merely by a subsequent executive fiat is also firmly embedded in the service jurisprudence that has the imprimatur of the Supreme Court. In ***Pramod Kumar v. U.P. Secondary Education Services Commission***, (2008) 7 SCC 153, the Supreme Court held that an appointment made contrary to the statute or statutory rules is void in law and that an illegality

cannot be regularized. In **Pramod Kumar** (supra) it has been remarked by then Lordships :

"18....An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularized, particularly, when the statute in no unmistakable term says so. Only an irregularity can be. [See Secy., State of Karnataka v. Umadevi (3), (2006) 4 SCC 1, National Fertilizers Ltd. v. Somvir Singh (2006) 5 SCC 493 and Post Master General, Kolkata v. Tutu Das (Dutta), (2007) 5 SCC 317.]"

77. The same principle has recently been reiterated by the Supreme Court in **Hemant Kumar and others Vs. State of Haryana and others, 2026 INSC 88**, wherein it was emphasized that an illegality is something contrary to law and wrong from its inception, and that such illegality cannot be cured merely by lapse of time or by subsequent absorption or regularization where the initial appointment itself is contrary to the statutory rules. The distinction is crucial in the present case: the appellant-writ petitioners are not seeking enforcement of a right arising from a valid substantive appointment; rather, they seek to derive their right from the very order dated 13.03.1991 whose statutory foundation is absent. In **Hemant Kumar** (supra) it was observed :

"115. We are afraid the High Court fell in grave error in allowing the aforesaid four officers to continue their services in the PW(B&R) Department even after declaring their deputation and absorption as illegal and bad in law. Illegality means something which is contrary to law; something which is wrong right from the inception. It is void ab initio. Illegality cannot be cured and made legal and valid by lapse of time. Illegality, which is distinct and different from irregularity, cannot be regularized by taking a sympathetic view on the ground of long continuance in service. This position has been explained by a Constitution Bench of this Court in Uma Devi. If the appointment itself is in infraction of the rules, in this case the 1965 Rules, it is an illegality. Such an illegality cannot be cured by resorting to the novel method of absorption which has been explained as appointment by transfer."

78. One of the submissions of the learned counsel for the petitioners is that one Gulam Hussain, whose services had been terminated in a similar circumstances, as that of the appellant-writ petitioners, approached this Court by means of Writ Petition No. 6537 of 1995 and the termination order was quashed, and therefore the parity may be extended to the appellant-petitioner.

79. Even if the termination order of Gulam Hussain was quashed, who was similarly circumstanced as the appellant-writ petitioners, no benefit would accrue in favor of appellant-writ petitioners, if they cannot stand on their own legs justifying the alleged confirmation order dated 13.03.1991 which itself is under a cloud. The jurisprudence on negative equality as of now is as clear as daylight that even if in some cases appointments have been made by mistake or wrongly, that does not confer any right on another set of persons who are not entitled in their own right. Negative equality which has no place in Constitutional scheme cannot be permitted to perpetuate and flourish. Article 14 of the Constitution of India does not envisage negative equality, and if the State committed a mistake, it cannot be forced to perpetuate the same mistake. *(See: Snehprabha v. State of U.P. & Ors. (AIR 1996 SC 540), Secretary, Jaipur Development Authority, Jaipur, v. Daulat Mal Jain & Ors. (1997 (1) SCC 35), State of Haryana and Ors. v. Ram Kumar Mann (1997 (3) SCC 321), Faridabad C.T. Scan Centre v. D.G. Health Services & Ors. (1997 (7) SCC 752), Jalandhar Improvement Trust, V. Sampuran Singh (AIR 1999 SC 1347), State of Punjab and Others v. Dr. Rajeev Sarwal (1999 (9) SCC 240), Yogesh Kumar and Ors. v. Govt. of*

NCT, Delhi and Ors. (2003 (3) SCC 548), Union of India and Anr. v. International Trading Co. and Anr. (2003 (5) SCC 437) and Kastha Niwarak G.S.S. Maryadit, Indore v. President, Indore Development Authority (JT 2006 (2) SC 259).

80. In *Chandigarh Administration Vs. Jagjit Singh AIR 1995 SC 705*, the Supreme Court held that merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over and over again. An illegal/unwarranted action must be corrected if it can be done according to law – indeed, wherever possible. The Court should direct the appropriate authority to correct such wrong orders in accordance with law, but even if that cannot be done, it cannot be made the basis for a repetition. By refusing to direct respondent authorities to repeat the illegality, the Court is not condoning the earlier illegal act or order, nor can such illegal order constitute the basis for a legitimate complaint of discrimination; giving effect to such pleas would be prejudicial to the interest of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law.

81. A similar view was taken by the Supreme Court in several subsequent decisions. In *State of Bihar Vs. Kameshwar Prasad Singh AIR 2000 SC 2306*, the Supreme Court held that the concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced negatively. Where an authority is shown to have committed any illegality or irregularity in favor of any individual or group of individuals, others cannot claim the same illegality or

irregularity on the ground of denial thereof to them. Similarly, a wrong judgment passed in favor of one individual does not entitle others to claim a similar benefit. The pertinent observations made by the Supreme Court in **Kameshwar Prasad Singh** (*supra*) citing several earlier decisions, are extracted hereinbelow:-

“30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh v. NDMC, (1996) 2 SCC 459 : (1996 AIR SCW 749 : AIR 1996 SC 1175) held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed (Para 9): “ Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that this claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.” Again in Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain, (1997) 1 SCC 35 this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding: 32 “Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents.” In State of Haryana v. Ram Kumar Mann, (1997) 3 SCC 321 : (1997 AIR SCW 1574) this Court observed (Para 3): “ The doctrine of discrimination is founded upon existence of an enforceable right. He was

discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetuate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously "No". In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right."

82. The Learned counsel for the appellant made an attempt to emphasize that with respect to status of the appellant as a permanent employee, the order dated 26.05.2004 passed in Writ Petition No. 32381 of 1995 would operate as constructive *res judicata* but the purport and spirit of the said order has to be appreciated in its correct perspective and legal context. At the time when the said writ petition was decided, the order dated 13.03.1991 passed by the Sub-Divisional Magistrate in favour of the appellant-writ petitioners, whereby they were purportedly accorded permanent status, was subsisting. Proceeding on the basis of the then-existing position, the learned Single Judge construed the appointment of the appellant-writ petitioners to be against substantive vacancies and observed that, even in a case of appointment dehors the Rules, a finding was required to be recorded that such appointment was contrary to the provisions of the governing Act and that, before taking any consequential action for

termination, the affected employee was required to be afforded a reasonable and fair opportunity of hearing. The learned Single Judge, accordingly, remitted the matter to the competent authority for consideration afresh in accordance with law after following the prescribed procedure of at least observing the principles of natural justice.

83. The order dated 26.05.2004, therefore, cannot be construed as a final adjudication upholding the legality of the order dated 13.03.1991 or as conferring finality upon the alleged permanent status of the appellant-writ petitioners. On the contrary, the matter concerning the legality of their appointment and continuance was expressly relegated to the competent authority for a fresh determination after due notice and opportunity. Thus, the question whether the appellant-writ petitioners had acquired any legally sustainable status by virtue of the order dated 13.03.1991, remained open for examination in the remanded proceedings. It was in pursuance of such remand that the Sub-Divisional Magistrate issued the show-cause notice dated 25.01.2006 and, after considering the reply submitted by the appellant-writ petitioners, passed the order dated 19.04.2006. The exercise undertaken by the Sub-Divisional Magistrate, therefore, was not without jurisdiction merely because the order dated 13.03.1991 had been passed by his predecessor; rather, it was undertaken pursuant to the liberty and direction flowing from the order dated 26.05.2004.

84. The order of the learned Single Judge dated 26.05.2004 reflects that the appellant-petitioners were treated to be permanent employees during the subsistence of the order

13.03.1991, and no proceedings against them could have been undertaken under Temporary Government Servant (Termination of Services) Rules, 1975 (hereinafter referred to as 'the Rules, 1975'). But, at the same time, the learned Single Judge opened a proper window for examination of the validity of appointment followed by the confirmation order dated 13.03.1991 made in favour of the petitioner-appellants by observing that in the matter of appointment dehors the rules, a finding has to be recorded that appointment is contrary to the provision of the law, with a further stipulation that unless such finding is recorded the termination order cannot be allowed to stand. The inquiry is to proceed to unveil the character of appointment and confirmation by giving notice to the employee. The necessary inquiry to unveil the character of appointment and confirmation was directed to be followed in terms of judgment of the Supreme Court in ***Basudeo Tiwari v. Sido Kanhu University, (1998) 8 SCC 194***, a reference to which is made in the order of the learned Single Judge. Thus, the only requirement to unveil the character of appointment followed by the confirmation order dated 13.03.1991 was compliance of natural justice by putting the employees/appellant- petitioners to notice and after considering their stand an appropriate order could be passed. Thus, the order dated 19.04.2006 passed by the Sub Divisional Magistrate, Farenda, Maharajganj cannot be faulted for a procedural lapse. The argument of the appellant- petitioners that this Court while passing the judgment and order dated 26.05.2004 had concluded with regard to the appellant-petitioners' status that they were permanent is moonshine. The observation of this Court treating the appellant- writ petitioners

permanent and not letting the State take recourse of 1975 Rules, was there until inquiry was conducted with regard to the confirmation order dated 13.03.1991, which has been done vide the order dated 19.04.2006 impugned in writ petition decided by the learned Single Judge vide the judgment order impugned in this appeal.

85. Even assuming, for the sake of argument, that the Sub-Divisional Magistrate had no power to review the order of his predecessor dated 13.03.1991 and order dated 19.04.2006 passed by him is without jurisdiction (though this court vide order dated 26.05.2004 passed in Writ Petition No. 32381 of 1995, did open a small window for examination of order dated 13.03.1991) even then we are not inclined to interfere in the said order dated 19.04.2006 for the reason that it is just and proper and in consonance with the law laid down by the Supreme Court referred herein before, and the earlier order dated 13.03.1991 passed by the Sub Divisional Magistrate was contrary to law.

86. The contention advanced on behalf the appellant-petitioners that administrative authorities cannot review an order of their predecessor even if such order is without jurisdiction or against the settled canons of law is specious. The contention is completely ill founded and misplaced. Even an administrative order against the statute or codified law is a nullity and no estoppel would operate against a statute/codified law. Our view of aforesaid legal proposition is fortified by the authority of the Supreme Court in *State of U.P. v. U.P. Rajya*

Khanij Vikas Nigam S.S, (2008) 12 SCC 675. The relevant remarks are reproduced hereinbelow:

“44. It is settled law that there can be no estoppel against a statute. If the field was occupied by statutory rules, the employees could get right only under those rules. The High Court was equally bound to consider those rules and to come to the conclusion whether under the statutory rules, the retrenched employees were entitled to absorption either in Government Department or in any other Public Sector Undertaking. Statement, assurance or even undertaking of any officer or a counsel of the respondent-Corporation or of the Government Pleader of the State is irrelevant. The High Court, in our view, ought to have considered the prayer of the Corporation and decided the question if it wanted to dispose of the matter on merits in spite of availability of alternative remedy to the employees.”

87. Applying the aforesaid principle to the present case, the appellant-writ petitioners cannot press the doctrine of estoppel into service to defend the order dated 13.03.1991, passed by the Sub-Divisional Magistrate, purporting to confirm the appellants in service. Since the said order is not traceable to any power conferred under the Rules, 1974 or the Rules, 1979, the same would not create a substantive right in favor of the appellant-writ petitioners. After all it is so contrary to the statutory as well as the constitutional scheme. An order which has no sanction of the law cannot become lawful merely by reason of its implementation or continuance over a period. The doctrine of estoppel, therefore, cannot be invoked to sustain the purported confirmation dated 13.03.1991 or defeat the statutory mandate governing appointments and regularization.

88. In case, this order were to be set aside by this Court, in that eventuality the earlier illegal order of the Sub-Divisional Magistrate dated 13.03.1991 would be restored. The aforesaid view taken by us also finds support from the holding of the Supreme Court in ***Mohammad Swallah Vs. IIIrd Additional***

District Judge, Meerut AIR 1988 SC 94, which was also reiterated in *M.C. Mehta Vs. Union of India AIR 1999 SC 2583*. In these authorities the Supreme Court held that the Court under Article 32 or Article 226 of the Constitution of India, would refuse to exercise its discretion of striking down the order, if such striking down results in restoration of another illegal order passed earlier in favor of the petitioner.

89. The aforesaid approach finds support from the judgment of the Supreme Court in *Employees' State Insurance Corporation and another v. Jardine Henderson Staff Association and others, (2006) 6 SCC 581*, wherein the Supreme Court recognized that the Court, while exercising its discretionary jurisdiction, should not pass an order which would have the effect of reviving or resurrecting an earlier illegal or unsustainable order. The jurisdiction under Article 226 is not intended to be exercised in a manner that restores illegality merely because a subsequent order suffers from some procedural or technical infirmity. Applying the said principle to the present case, even if the order dated 19.04.2006 were assumed to be vulnerable on the ground of want of power of review, interference therewith would necessarily revive the order dated 13.03.1991, which has already been found to be unsupported by any statutory authority. We, therefore, decline to exercise our discretionary jurisdiction to bring back to life an order which is otherwise contrary to law.

90. Similarly, the Supreme Court in *M/s AL-Can Export Pvt. Ltd Vs. Prestige H.M. Polycontainers Ltd. and another, (2024) 9 SCC 94*, has held:

“74. It is well settled principle in law that issuance of a writ or quashing/setting aside of an order if revives another pernicious or wrong or illegal order then in that eventuality the writ court should not interfere in the matter and should refuse to exercise its discretionary power conferred upon it under Article 226 of the Constitution of India. The writ court should not quash the order if it revives a wrong or illegal order. Vide : Gadde Venkateswara Rao v. Government of Andhra Pradesh, AIR 1966 SC 828; Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar, (1999) 8 SCC 16; AIR 1999 SC 3609; 1999 AIR SCW 3623; M.C. Mehta v. Union of India, (1999) 6 SCC 237; AIR 1999 SC 2583; Mallikarjuna Mudhagal Nagappa v. State of Karnataka, (2000) 7 SCC 238; AIR 2000 SC 2976; 2000 AIR SCW 3289; ana Chandra Singh v. State of Rajasthan, (2003) 6 SCC 545; AIR 2003 SC 2889; 2003 AIR SCW 3518 and Raj Kumar Soni v. State of U.P., (2007) 10 SCC 635.”

91. The much-emphasized reliance on the length of service rendered by the appellant-writ petitioners is also unfounded, as petitioners' services were terminated in the year 1990, which was subject to decision of Writ Petition No. 10010 of 1990 and thereafter confirmation during pendency of writ petition, vide order dated 13.03.1991 without any source, power or authority to pass that order, itself is an institutional fraud practiced by an officer i.e., the concerned Sub-Divisional Magistrate who has been punished for his such misdeed. The so-called confirmation dated 13.03.1991, that has no statutory backing, is null and void. The mere passage of time or continuance pursuant to interim orders cannot validate an order which was void from its inception.

92. The answer to the second question as to 'whether any interim order can render any relief of permanence upon an employee lies in the law declared by the Constitution Bench judgment of the Supreme Court in *Uma Devi (supra)*, wherein the Supreme Court has treated such employees as litigious employees. The relevant observation reproduced hereinbelow:

“Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.”

(emphasis added)

93. A similar issue on the basis of long service founded on an interim order has been answered by a Five-Judge Full Bench of this Court in *Jahaj Pal v. District Inspector of Schools, 2019 SCC OnLine All 6998*. The Full Bench examined, *inter alia*, whether continuance of an ad hoc appointee under an interim order could confer any substantive right or furnish a basis for regularization. The ratio of the said judgment squarely applies to the present case, where the appellant-writ petitioners seek to derive permanence and substantive status from their prolonged continuance during the pendency of successive proceedings and under the protection of interim orders. The relevant observations of the Full Bench in *Jahaj Pal (supra)* are extracted hereinbelow:

“173. The argument in fact ask to ignore a blatant breach of law that the beneficiaries of such breach should be given benefit. The mere fact of continuing in service ignoring statutory provision is of no legal consequence. None can claim a benefit arising from an illegality which continued to be flouted by them. In the cases where continuance was on account of interim orders passed by Court, argument suggests that the principle of Actus Curiae Neminem Gravabit should be ignored and an interim order of Court should be read as if it has conferred different right upon the beneficiary though ultimately his continuance was found erroneous and illegal and contrary to statutory provision contained in Para 3 of Second Order. We have no hesitation in rejecting this submission.

175. Even otherwise, no interpretation of statutory provision can be made, which may encourage blatant breach of statute. When a person is bound to cease to continue as ad-hoc appointee, if any condition under Para 3 of Second Order is attracted, he could not have validly continued thereafter, at all. His legal termination comes into effect by operation of law. A declaration has been made in statutory provision about cessation and that has to be given effect to if rule of law has to prevail.

177. The question, whether an interim order can confer a new right, which is not otherwise ultimately found in favour of such beneficiary and the case found liable for dismissal, has been considered time and again and issue has been answered against

such beneficiaries. We do not propose to burden this judgment with all such authorities and we refer to a judgment of Apex Court dealing with this issue directly. In Raghvendra Rao etc. Vs. State of Karnataka and others, JT 2009 (2) SC 520 Court has observed: "It is now a well-settled principle of law that merely because an employee had continued under cover of an order of Court, he would not be entitled to any right to be absorbed or made permanent in the service."

(emphasis added)

94. The appellant placed reliance upon judgment of the Supreme court in case of *Jaggo (supra)* particularly relying upon paragraph nos. 10,11,12,13 and 20 which reads hereinbelow:

"10. Having given careful consideration to the submissions advanced and the material on record, we find that the appellants' long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside merely by labelling their initial appointments as part-time or contractual. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route.

11. The appellants, throughout their tenure, were engaged in performing essential duties that were indispensable to the day-to-day functioning of the offices of the Central Water Commission (CWC). Applicant Nos. 1, 2, and 3, as Safaiwalis, were responsible for maintaining hygiene, cleanliness, and a conducive working environment within the office premises. Their duties involved sweeping, dusting, and cleaning of floors, workstations, and common areas—a set of responsibilities that directly contributed to the basic operational supraf functionality of the CWC. Applicant No. 5, in the role of a Khallasi (with additional functions akin to those of a Mali), was entrusted with critical maintenance tasks, including gardening, upkeep of outdoor premises, and ensuring orderly surroundings.

12. Despite being labelled as "part-time workers," the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. Their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants' tenure, underscoring the indispensable nature of their work.

13. The claim by the respondents that these were not regular posts lacks merit, as the nature of the work performed by the appellants was perennial and fundamental to the functioning of the offices. The recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled. It is also noteworthy that subsequent outsourcing of these same tasks to private agencies after the appellants' termination demonstrates the inherent need for these services. This act of outsourcing, which effectively replaced one set of workers with another, further underscores that the work in question was neither temporary nor occasional.

20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular," and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in Vinod Kumar v. Union of India⁵, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:

"6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgment in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had

followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case...”

The aforesaid authority does not save illegal appointments. The petitioner-appellants have not been denied the benefits due to their initial label of engagement; rather their entry as confirmed employees vide order dated 13.03.1991 is void in view of what we have held on facts and the law hereinabove. Further, the entry of appellant- writ petitioners vide order dated 13.03.1991 itself is illegal and one through a surreptitious route.

95. It is also significant that, even on the premise that long continuance in service could, in an appropriate case, be a relevant consideration for extending the benefit of regularisation, the appellants-petitioners do not stand on the same footing as the employees in **Jaggo** (*supra*). The appellants-petitioners were appointed on an *ad hoc* basis only on 09.02.1990 and their services were terminated on 06.11.1995, thereby leaving them with less than six years of such *ad hoc* service. In contrast, the employees in **Deepak Bajaj** (*supra*) had rendered long and uninterrupted service extending well beyond ten years. Thus, the factual circumstance of prolonged and uninterrupted service, which weighed with the Supreme Court in **Jaggo** (*supra*), is conspicuously absent in the present case.

96. Similarly, reliance has been placed by the appellants upon the case of **Bhikhani Devi** (*supra*) particularly paragraph nos. 35, 36, 37, 40 and 41 of the report which read:

“35. Further, in Vinod Kumar (supra), this Court recognised that where employees have rendered continuous service, performing duties indistinguishable from those discharged by regular employees, the distinction between temporary and permanent employment becomes substantively illusory and the failure to

recognise the true nature of such service would be contrary to the principles of equity and fairness.

36. In Jaggo (supra), this Court reiterated that employees labelled as temporary or part-time, but who have in fact rendered continuous and essential service over long periods, cannot be denied benefits available to regular employees merely on account of nomenclature. The Court held that such engagement is neither sporadic nor casual, but is in the nature of regular employment, thereby necessitating extension of all corresponding service benefits.

37. In this context, the principle laid down by this Court in Yashwant Hari Katakhar v. Union of India⁶ also assumes significance, wherein this Court held that where an employee has rendered long years of service and there is no justifiable reason for not conferring permanent status, it would be a travesty of justice to deny pensionary benefits merely on the ground of absence of formal regularisation, and such an employee is liable to be treated as having attained permanent status.

40. The concept of the State as a model employer, read in conjunction with the aforesaid constitutional mandate, reinforces the obligation upon the State to extend fair and equitable treatment to employees who have rendered long and continuous service and that the State cannot extract services of a permanent nature while denying corresponding benefits.

41. At this stage, it is also necessary to note that pension is not a bounty but a vested and enforceable constitutional right. This Court in State of Jharkhand v. Jitendra Kumar Srivastava⁷ has categorically held that pension is a hard-earned benefit amassed by an employee by virtue of long and continuous service and is in the nature of “property” within the meaning of Article 300A of the Constitution of India.”

97. **Bhikhani Devi** (*supra*) takes note of the various earlier authorities of the Supreme Court wherein it was held that there would be travesty of justice to deny pensionary benefits merely on the ground of absence of formal regularization and such an employee is liable to be treated as having attained permanent status. Thus, it can safely be inferred that the aforesaid authority being one related to pensionary benefits does not in any manner sanctify illegal appointment which is the case in hand. Despite bestowing our thoughtful consideration to the

matter we could not trace a valid source and authority for the order dated 13.03.1991, which is said to be a blanket confirmation, that lead it to pass muster of any of the recruitment rules or regularization rules. We regret that no benefit is extendable to appellant-petitioners on the strength of aforesaid authorities upon which the appellants have placed emphatic reliance.

98. Reliance has next been placed by the petitioner upon *Satyanarayan (supra)* where the Supreme Court in a case related to employment, the employee being underage held both the State and the employee to be at fault. Thus this authority is of little assistance to the petitioners.

99. The appellant relied upon the *Vikas Pratap Singh (supra)*, wherein, having regard to the long continuance of the employees in service, their appointments were protected by the Supreme Court, particularly in the backdrop of procedural irregularities in the matter of appointment and the absence of any fraud or misrepresentation on the part of employees. The procedural lapse was attributable to the State itself. The said precedent, however, has no application to the facts of the present case. In the instant matter, the very order dated 13.03.1991, on the strength of which the appellants-petitioners seek to claim confirmation, was annulled by an order passed in the year 1995, and the dispute has remained the subject matter of litigation ever since. It is, therefore, not a case where the appellants-petitioners continued in service for a long period solely on account of the State's inaction, nor can such

continuance be said to have been allowed to operate uninterruptedly to their prejudice.

100. Similarly, the next authority relied upon by the appellant, namely, ***Kaluram*** (*supra*), involved a challenge to the appointment itself after a lapse of 35–36 years, which is clearly not the factual position in the present case. Likewise, ***Mohd. Zamil Ahmad*** (*supra*) concerned a situation where the State sought to question the initial appointment after a prolonged period of nearly 15 years, thereby seeking to disturb an appointment after having remained in a state of prolonged inaction. The factual foundation underlying the aforesaid authorities is, therefore, materially different from that of the present case. Consequently, none of the aforesaid precedents can be invoked to sustain the claim of the appellants-petitioners in the factual and legal matrix obtaining here.

101. The next authority relied upon is **Buddhi Nath Chaudhary** (*supra*), wherein the question was about qualification which was condoned on, ground of long continuance having translated into experience of long continuance for more than many decades by observing that the lack of experience, if any, at the time of recruitment is made good by efflux of time. But, here is the question of an appointment that is void ab initio in character. Thus the said authority is hardly of any assistance to the appellants. Similarly, in **Vivek Kaisth** (*supra*), a judicial officer having rendered service for more than 10 years was found to be rich in experience and his appointment was not the product of favoritism, nepotism or due to any act which could even remotely be called ‘blameworthy’. In that background the

appointment was saved but in the case in hand the so called confirmation was not under the statutory rules of regularization or recruitment and the Appointing Authority himself having been punished the appointment cannot be said to be free from blemish. Hence, the said authority also does not come to the assistance of the appellant- writ petitioner.

102. The appellant- petitioners have also relied upon **Dr. Smt. Kuntesh Gupta (*supra*)**, where it was held that a quasi-judicial authority cannot review its own order, unless the power of review is expressly conferred upon it by statute. The said authority has been relied upon to latter the respondents from delving into the validity of the order dated 13.03.1991 and declaring the appointment void but the order dated 13.03.1991, having been found illegal and void ab initio by us cannot be permitted to perpetuate through any order by us in our writ jurisdiction.

103. Lastly, the learned Counsel for the appellant laid greater thrust upon the guidance of the Supreme Court in ***Debashish Mohapatra and others vs District and Session judge, Jagatsinghpur and others, 2026 INSC 743***, and relied upon paragraph nos. 18, 19, 20, 21, 28, 29 and 30. The said case relates to an employee had been confirmed in service and his termination was under challenge before the High Court of Orissa. The employee there was confirmed in service admittedly having been appointed after an advertisement through a selection process, including written examination. Upon completion of recruitment process the result was declared and he stood appointed on 8.03.2019, followed by confirmation

in service. He had been appointed against a substantive post and acquired the status of a confirmed government servant. Thus, the Supreme Court ruled in his favor that his termination was bad without holding a departmental inquiry, being violative of Article 311 (2) of the Constitution of India. It is pertinent to mention that the constitutional protection guaranteed under Article 311 (2) of the Constitution of India is for confirmed employees who have been substantively appointed through some statutory rules or regularized in service in accordance with the regularization rules. As such the protection is not available to an employee whose appointment/confirmation is not traceable to any statutory rules and defeats the very spirit of Article 14 read with Article 16 of Constitution of India which is the heart and soul of public employment. Thus, by no stretch of imagination the appellant-writ petitioners whose appointment is void can be equated with civil servants who enjoy the constitutional protection of Article 311 of the Constitution of India. The orders impugned, therefore, cannot be said to be faulty in the peculiar facts of this case.

104. A little difference in the facts or additional facts changes precedential value of an authority. Thus, the ratio of any decision has to be understood in the background of the facts of the case. The Court should not place reliance upon a decision without discussing as to how the factual edifice fits in with the fact situation of the decision on which reliance is placed. The judgment of a Court is not to be read mechanically as the *Euclid's theorem* nor as if it were a statute. Decisions of cases by blindly relying upon a precedent may lead to a improper

decision. (*See: Deepak Bajaj vs State of Maharashtra, AIR 2009 SC 628*). In *Deepak Bajaj* (supra) it was remarked:

"7. It is well settled that a judgment of a Court is not to be read mechanically as a Euclid's theorem nor as if it was a statute. 8. On the subject of precedents Lord Halsbury, L.C., said in *Quinn vs. Leathem*, 1901 AC 495 :

9 "Now before discussing the case of *Allen Vs. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all." We entirely agree with the above observations.

9. In *Ambica Quarry Works vs. State of Gujarat & others* (1987) 1 SCC 213 (vide paragraph 18) this Court observed : "The ratio of any decision must be understood in the background of the facts of that case. It has been said a long time ago that a case is only an authority for what it actually decides and not what logically follows from it". 10. In *Bhavnagar University vs. Palittana Sugar Mills Pvt. Ltd.* (2003) 2 SCC 111 (vide paragraph 59), this Court observed : "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision". 11. As held in *Bharat Petroleum Corporation Ltd. & another vs. N.R. Vairamani & another* (AIR 2004 SC 4778), a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed : "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They

interpret words of statutes; their words are not to be interpreted as statutes". (emphasis supplied)

12. In *London Graving Dock Co. Ltd. vs. Horton* (1951 AC 737 at page 761), Lord Mac Dermot observed : "The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge".

13. In *Home Office vs. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid Said, "Lord Atkin's speech ... is not to be treated as if it was a statute definition; it will require qualification in new circumstances, Megarry, J. in (1971) 1 WLR 1062 observed : "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament".

14. And in *Herrington vs. British Railways Board* (1972 (2) WLR 537) Lord Morris said : "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become *locus classicus* : Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive. Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and¹¹ branches. My plea is to keep the path of justice clear of obstructions which could impede it." (emphasis supplied)

15. The same view was taken by this Court in *Sarva Shramik Sanghatana (K.V.), Mumbai vs. State of Maharashtra & Ors.* AIR 2008 SC 946 and in *Government of Karnataka & Ors. vs. Gowramma & Ors.* AIR 2008 SC 863."

105. In the case of ***Bharat Petroleum Corpn. Ltd. and another vs. N.R. Vairamani and another*** - (2004) 8 SCC 579, the Supreme Court has held hereinbelow:

*"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: "The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge." In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition it will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: 12 "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case." Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus: "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive." *** *** ****

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

106. Likewise, in the case of *Oriental Insurance Co. Ltd. vs. Smt. Raj Kumari and others*, AIR 2008 SC 403, the Supreme Court has held:

“11. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judges decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts;¹³ (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. V. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. 12. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclids theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving

*Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: "The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."*¹⁴ *13. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, Lord Atkins speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances. Megarry, J in (1971) 1 WLR 1062 observed: One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament. And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: "There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."* ¹⁴. *Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. 15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."* *** *** *** *"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."*

107. None of the judgments relied upon by the appellant-writ petitioners deals with an appointment void *ab initio* or a purported confirmation made without statutory authority. The said authorities, therefore, have no application to the present case and cannot be relied upon to sustain an appointment which is *dehors* the statutory scheme.

108. In view of the material facts marshalled hereinabove and the findings recorded by us, the order dated 13.03.1991, whereby the appointment of the petitioners was purportedly

confirmed, being *dehors* the statutory rules and without lawful authority, is void ab initio and non est in the eye of law. Consequently, the said order could not confer any legally enforceable right upon the petitioners. The consequential order, being founded upon and flowing from the aforesaid void order dated 13.03.1991, cannot acquire an independent legal existence and, therefore, must also fall with its foundation.

109. It is well settled that if the basic order goes the consequential order automatically becomes inoperative. In ***Badrinath v. Government of Tamil Nadu, (2000) 8 SCC 395***, the Supreme Court held:

“This flows from the general principle applicable to “consequential orders”. Once the basis of a proceeding is gone, may be at a later point of time by order of a superior authority, any intermediate action taken in the meantime-like the recommendation of the State and by the UPSC and the action taken thereon-would fall to the ground. This principle of consequential orders which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders.”

110. In the factual backdrop as aforesaid, the legal maxim ‘*sublato fundamento cadit opus*’ is attracted which means that if the foundation is removed being flawed, the superstructure would automatically collapse and this legal principle squarely applies to the present case. (***See State of Punjab Vs. Davinder Pal Singh Bhullar and others, (2011) 14 SCC 770***).

111. In ***C. Albert Morris Vs. K.Chandrasekaran and others, (2006) 1 SCC 228***, the Supreme Court held that a right in law exists only and only when it has a lawful origin. Similarly, in ***Mangal Prasad Tamoli (dead) by Lr. Vs. Narvadeshwar Mishra (dead) by Lrs. And others, (2005) 3 SCC 422***, the Supreme

Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be *non-est* and have to be necessarily set aside.

112. In view of what we have found hereinabove, it can easily be inferred that the appellant-writ petitioners themselves admit that their initial appointments dated 09.02.1990 was made on an *ad hoc* basis, followed by their confirmation dated 13.03.1991 which was neither the product/result of any exercise undertaken by the procedure prescribed under the statutory rules viz Rules, 1974, and simultaneously, it also does not pass muster of regularization under the Rules, 1979. The petitioner-appellants appointment being *ad hoc* and not substantive under recruitment rules or the regularization rules, the question of confirmation does not arise. Thus, the inescapable conclusion is that the alleged confirmation order dated 13.03.1991 does not confer any legally enforceable right being *de-hors* the statutory prescription and is void *ab initio*.

113. In view of what we have held hereinabove, no error of principle seems to have been crept into the order impugned. We find no such fault with the view taken by the learned Single Judge, so as to merit interference in appeal.

114. This Special appeal fails and is, accordingly, **dismissed**.

115. Parties shall bear their own costs.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

September 7,2026

Pratima