

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Judgment reserved on 23/07/2019****Judgment delivered on 25/09/2019****Writ Appeal No. 243 of 2019**

Prahlad Kumar Soni, S/o Shri Ramnath Ji Soni, aged about 38 years, presently working as Assistant Marshal, R/o Near Kaliji Mandir, Bramhinpara, Rajnandgaon, Chhattisgarh

---- Appellant**Versus**

1. Secretary, Vidhan Sabha Sachivalaya Chhattisgarh Vidhan Sabha Baloda Bazar Road, Vidhan Nagar, Raipur, Chhattisgarh
2. Anil Kumar Dwivedi, S/o Shri Ramakant Dwivedi, aged about 33 years, R/o Near Shanti Offset, Near Civil Court, Civil Lines, Ward No.21, Dongargarh, District Rajnandgaon, Chhattisgarh
3. Dashrath Soni, S/o Shri Devlal Soni, aged about 35 years, R/o Mahavirpapa, Ward No.9, Dongargarh, District Rajnandgaon, Chhattisgarh
4. Sayyad Abrar Ali, S/o Shri Sayyad Anwar Ali, aged about 34 years, R/o village Sanwa, Post Sargaon, Tahsil Mungeli, District Bilaspur (now Mungeli) Chhattisgarh
5. Deepak Awasthi, aged about 36 years, working as Assistant Marshal, R/o Zonal Market, Sector 10, Bhilai, District Durg Chhattisgarh
6. Virendra Singh Chandel, S/o Shri Devendra Singh Chandel, aged about 36 years, working as Assistant Marshal, R/o Station Road, Polsaipar, District Durg Chhattisgarh
7. Manish Chandrakar, aged about 30 years, working as Assistant Marshal, R/o village Mujhagahan, Post Sejbahar, District Raipur Chhattisgarh
8. Dinesh Singh Thakur, S/o Shri Girish Singh Thakur, aged about 30 years, working as Assistant Marshal, R/o Govindpara, Kanker, Chhattisgarh
9. Rajesh Kumar Singh, S/o Shri Laxmi Shankar Singh, aged about 34 years, working as Assistant Marshal, R/o Kirana Store, Ramnagar, Supela, Bhilai, District Durg Chhattisgarh
10. Sushil Kumar, aged about 35 years, working as Assistant Marshal, R/o Bajrangpara, Near Vinay Singh Garage, District Durg Chhattisgarh

---- Respondents

Writ Appeal No.248 of 2019

1. Dinesh Singh Thakur, S/o Girish Singh Thakur, aged about 40 years, working as Assistant Marshall, R/o Govindpura, Kanker, District Bastar Chhattisgarh
2. Rajesh Kumar Singh, S/o Shri Laxmi Shankar Singh, aged about 46 years, working as Marshall, R/o near Kirana Store, Ramnagar, Supela, Bhilai, District Durg, Chhattisgarh
3. Sushil Kumar, S/o Shri Sugam Lal, aged about 48 years, working as Assistant Director, R/o Near Vijay Singh Garage, District Durg Chhattisgarh
4. Virendra Singh Chandel, S/o Shri Govind Singh Chandel (wrongly written as WP as Devendra Singh Chandel), working as Assistant Marshall, R/o Station Road, Polsaipar, District Durg Chhattisgarh

---- Appellants

Versus

1. Secretary, Vidhan Sabha Sachivalaya Chhattisgarh Vidhan Sabha Baloda Bazar Road, Vidhan Nagar, Raipur, Chhattisgarh
2. Anil Kumar Dwivedi, aged about 33 years, S/o Shri Ramakant Dwivedi, R/o Near Shanti Offset, Near Civil Court, Civil Lines, Ward No.21, Dongargarh, District Rajnandgaon, Chhattisgarh
3. Dashrath Soni, aged about 35 years, S/o Shri Devlal Soni, R/o Mahavirpapa, Ward No.9, Dongargarh, District Rajnandgaon, Chhattisgarh
4. Sayyad Abrar Ali, aged about 34 years, S/o Shri Sayyad Anwar Ali, R/o village Sanwa, Post Sargaon, Tahsil Mungeli, District Bilaspur Chhattisgarh
5. Prahlad Kumar Soni, S/o Shri Ramnath Ji Soni, aged about 38 years, working as Assistant Marshal, R/o Near Kaliji Mandir, Bramhinpara, Rajnandgaon, Chhattisgarh
6. Deepak Awasthi, S/o Late Shri Durga Charan Awasthi, aged about 36 years, working as Assistant Marshal, R/o Zonal Market, Sector 10, Bhilai, District Durg Chhattisgarh
7. Manish Chandrakar, S/o late Shri Kuber Chandrakar, aged about 30 years, working as Assistant Marshal, R/o village Mujhagahan, Post Sejbahar, District Raipur Chhattisgarh

---- Respondents

Writ Appeal No.271 of 2019

1. Shri Deepak Awasthi, S/o Late Shri Duga Charan Awasthi, aged about 48 years, working as Assistant Marshal, R/o Zonal Market, Sector 10, Bhilai, District Durg Chhattisgarh

2. Shri Manish Chandrakar, S/o late Shri Kuber Chandrakar, aged about 43 years, working as Assistant Marshal, R/o village Mujhagahan, Post Sejbahar, District Raipur Chhattisgarh

---- Appellants

Versus

1. Secretary, Vidhan Sabha Sachivalaya Chhattisgarh Vidhan Sabha Baloda Bazar Road, Vidhan Nagar, Raipur, Chhattisgarh.
2. Shri Anil Kumar Dwivedi, S/o Shri Ramakant Dwivedi, aged about 33 years, R/o Near Shanti Offset, Near Civil Court, Civil Lines, Ward No.21, Dongargarh, District Rajnandgaon, Chhattisgarh
3. Shri Dashrath Soni, aged about 35 years, S/o Shri Devlal Soni, R/o Mahavirpapa, Ward No.9, Dongargarh, District Rajnandgaon, Chhattisgarh
4. Sayyad Abrar Ali, aged about 34 years, S/o Shri Sayyad Anwar Ali, R/o village Sanwa, Post Sargaon, Tahsil Mungeli, District Bilaspur Chhattisgarh
5. Shri Prahlad Kumar Soni, S/o Shri Ramnath Ji Soni, aged about 38 years, working as Assistant Marshal, R/o Near Kaliji Mandir, Bramhinpara, Rajnandgaon, Chhattisgarh
6. Shri Virendra Singh Chandel, S/o Shri Devendra Singh Chandel, aged about 36 years, working as Assistant Marshal, R/o Station Road, Polsaipar, District Durg Chhattisgarh
7. Shri Dinesh Singh Thakur, S/o Shri Girish Singh Thakur, aged about 30 years, working as Assistant Marshal, R/o Govindpura, Kanker Chhattisgarh
8. Shri Rajesh Kumar Singh, S/o Shri Laxmi Shankar Singh, aged about 34 years, working as Assistant Marshal, R/o Kirana Store, Ramnagar, Supela, Bhilai, District Durg, Chhattisgarh
9. Shri Sushil Kumar, aged about 35 years, working as Assistant Marshal, R/o Bajrangpara, Near Vinay Singh Garage, District Durg Chhattisgarh

---- Respondents

Writ Appeal No.268 of 2019

1. Anil Kumar Dwivedi, S/o Shri Ramakant Dwivedi, aged about 40 years, R/o Near Shanti Offset, Near Civil Court, Civil Lines, Ward No.21, Dongargarh, District Rajnandgaon, Chhattisgarh
2. Sayyad Abrar Ali, S/o Shri Sayyad Anwar Ali, aged about 41 years, R/o village Sanwa, Post Sargaon, Tahsil Mungeli, District Mungeli, Chhattisgarh

---- Appellants

Versus

1. Secretary, Vidhan Sabha Sachivalaya Chhattisgarh Vidhan Sabha Baloda Bazar Road, Vidhan Nagar, Raipur, Chhattisgarh
2. Shri Prahlad Kumar Soni, S/o Shri Ramnath Ji Soni, aged about 45 years, working as Assistant Marshal, R/o Near Kaliji Mandir, Bramhinpara, Rajnandgaon Chhattisgarh
3. Shri Deepak Awasthi, aged about 43 years, working as Assistant Marshal, R/o Zonal Market, Sector 10, Bhilai, District Durg Chhattisgarh
4. Shri Virendra Singh Chandel, S/o Shri Devendra Singh Chandel, aged about 43 years, working as Assistant Marshal, R/o Station Road, Polsaipar, District Durg Chhattisgarh
5. Shri Manish Chandrakar, aged about 37 years, working as Assistant Marshal, R/o village Mujhagahan, Post Sejbahar, District Raipur Chhattisgarh
6. Shri Dinesh Singh Thakur, S/o Shri Girish Singh Thakur, aged about 37 years, working as Assistant Marshal, R/o Govindpara, Kanker, Chhattisgarh
7. Shri Rajesh Kumar Singh, S/o Shri Laxmi Shankar Singh, aged about 41 years, working as Assistant Marshal, R/o Kirana Store, Ramnagar, Supela, Bhilai, District Durg Chhattisgarh
8. Shri Sushil Kumar, aged about 42 years, working as Assistant Marshal, R/o Bajrangpara, Near Vinay Singh Garage, District Durg Chhattisgarh
9. Dashrath Soni, S/o Shri Devlal Soni, aged about 42 years, R/o Mahavirpapa, Ward No.9, Dongargarh, District Rajnandgaon, Chhattisgarh

---- Respondents

Writ Appeal No.243 of 2019

For Appellant	: Mr. Rajeev Shrivastava, Advocate
For Respondent No. 1	: Mr. Abhishek Sinha, Advocate
For Respondents No.2 & 4	: Mr. Prateek Sharma, Advocate
For Respondent No.3	: None
For Respondents No.5 & 7	: Mr. B. Gopa Kumar and Mr. Vaibhav P. Shukla, Advocates
For Respondents No.6 & 8 to 10	: Mr. Kishore Bhaduri, Mr. Pankaj Singh & Ms. Swati Upadhyay, Advocates

Writ Appeal No.248 of 2019

For Appellants : Mr. Kishore Bhaduri, Mr. Pankaj Singh
& Ms. Swati Upadhyay, Advocates

For Respondent No. 1 : Mr. Abhishek Sinha, Advocate

For Respondents No.2 & 4 : Mr. Prateek Sharma, Advocate

For Respondent No.3 : None

For Respondents No.5 : Mr. Rajeev Shrivastava, Advocate

For Respondents No.6 & 7 : Mr. B. Gopa Kumar and Mr. Vaibhav
P. Shukla, Advocates

Writ Appeal No.271 of 2019

For Appellants : Mr. B. Gopa Kumar and Mr. Vaibhav
P. Shukla, Advocates

For Respondent No. 1 : Mr. Abhishek Sinha, Advocate

For Respondents No.2 & 4 : Mr. Prateek Sharma, Advocate

For Respondent No.3 : None

For Respondents No.5 : Mr. Rajeev Shrivastava, Advocate

For Respondents No.6 to 9 : Mr. Kishore Bhaduri, Advocate

Writ Appeal No.268 of 2019

For Appellants : Mr. Prateek Sharma, Advocate

For Respondent No. 1 : Mr. Abhishek Sinha, Advocate

For Respondents No.2 : Mr. Rajeev Shrivastava, Advocate

For Respondents No.3 & 5 : Mr. B. Gopa Kumar and Mr. Vaibhav
P. Shukla, Advocates

For Respondents No.4 & 6 : Mr. Kishore Bhaduri, Mr. Pankaj Singh
to 8 & Ms. Swati Upadhyay, Advocates

For Respondent No.9 : None

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V JUDGMENT

Per Parth Prateem Sahu, Judge

1. This batch of writ appeals arise out of a common order dated 11.03.2019 passed by learned writ Court in Writ Petition (S) No.2337 of 2012, therefore, all the writ appeals are being disposed of by this common judgment.

2. Writ Appeal No.243 of 2019 is filed by one of the Respondents i.e. Respondent No.2 in Writ Petition (S) No.2337 of 2012, in which, he has challenged the impugned order on the ground that the writ petition has been filed with delay, therefore, no relief could have been granted to the Petitioners therein. The Speaker of the Legislative Assembly has powers to appoint Assistant Marshal and accordingly, appointment order has been issued to the Appellant also. The Appellant alongwith other six persons have been appointed by the Speaker of the Legislative Assembly, they have worked for considerable period and were also promoted, therefore, appointments could not have been cancelled. Earlier writ petition bearing Writ Petition (S) No.3134 of 2007 was withdrawn in the year 2012 and they have again filed a writ petition causing serious injuries to the Appellants due to delay in disposal of the writ petition.

3. In Writ Appeal No.248 of 2019, the order passed by the learned writ Court was challenged on the ground that the challenge to the Writ Petition (S) No.2337 of 2012 challenge is to the appointments made in the year 2005, therefore, the challenge in that writ petition could not have been considered on the ground of delay and laches. The appointments of the private Respondents in the writ petition have been made in accordance with the provisions of Chhattisgarh Vidhan Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1990 (hereinafter referred to as 'Rules of 1990'), which is in

accordance with law and learned writ Court committed error in interfering with the appointments of Appellants and other private Respondents in writ petition. The powers exercised by the Speaker of the Vidhan Sabha for making appointment of Assistant Marshals, who are Appellants and other private Respondents in writ petition is vested under the statute and it cannot be termed as residuary powers of the President of Assembly.

4. In Writ Appeal No.271 of 2019, Appellants have raised a plea that the recruitment of private Respondents in writ petition has been done in accordance with Rules of 1990 and challenged the cancellation of recruitment process of the year 2003. The appointment of private Respondents in writ petition could not have been challenged as there will be no strict application of Articles 14 and 16 of the Constitution of India in the facts and circumstances of the case where the employment is to be made by the President/Speaker of the Legislative Assembly, in which, Speaker has been given all the powers of recruitment of an employee under the Rules of 1990.

5. The brief facts of the case, in nutshell, are that, after reorganization of the State of Madhya Pradesh and creation of a new State of Chhattisgarh on 01.11.2000, new Vidhan Sabha came in existence. The Secretary, Chhattisgarh Vidhan Sabha issued an advertisement on 25.06.2001 for filling up different posts including the post of Assistant Marshal (Male) six in

number, and Assistant Marshal (Female) two in number. The selection process which was initiated by issuance of advertisement reached up to the stage of interview, but thereafter, it did not proceed further and subsequently, private Respondents in the writ petition have been appointed as Assistant Marshals. On an application filed by the Petitioners in writ petition with respect to the stage of earlier recruitment process, they were informed that the recruitment proceedings initiated through the advertisement was cancelled and private Respondents were appointed. Anil Kumar Dwivedi and Dashrath Soni have initially filed Writ Petition (S) No.3134 of 2007 challenging the appointments of the private Respondents and sought following relief(s) :

“7.1 The petitioners above named most respectfully pray to this Hon'ble Court to call for the entire records of the case.

7.2 The petitioners above named most respectfully pray to the Hon'ble Court to hold an enquiry into the affairs of the selection of the respondents No.2 to 8 to the post of Assistant Marshal.

7.3 The petitioners most humbly and respectfully pray to the Hon'ble Court to issue appropriate directions holding that the appointment of the respondents No.2 to 8 to the post of Assistant Marshal is not in accordance with law and liable to be cancelled.

7.4 The petitioners most humbly and respectfully pray to the Hon'ble Court to direct the respondents No.1 to issue fresh advertisement to the post of Assistant Marshal and make appointments thereafter, in accordance with law, as aforesaid.

7.5 Any other relief, which may be suitable in the facts and circumstances of the case, may also be granted to the petitioners.”

6. The said writ petition was subsequently withdrawn on 12.04.2012 with a liberty to file a fresh petition, if cause of action still survives or arise. Thereafter, within a period of two months, a fresh writ petition bearing Writ Petition (S) No.2337 of 2012 was filed by the Petitioners therein with inclusion of one new writ Petitioner, namely, Sayyad Abrar Ali. The Petitioners in subsequent writ petition have specifically pleaded with respect to earlier writ petition and withdrawal of order dated 12.04.2012 with liberty to file writ petition a fresh petition, if cause of action still survives or arise. They have also pleaded the reason for delay and prayed for following relief(s) :-

“10.1 It is therefore prayed that this Hon'ble Court may kindly be pleased to quash the appointment of respondents No.2 to 8 on the post of Assistant Marshal as being contrary to the rules.

10.2 The Hon'ble Court may kindly be pleased to issue a writ of and/or in the nature of Mandamus directing the respondent No.1

to conduct the selection afresh in accordance with the rules thereby, directing the respondent No.1 to consider afresh the case of the petitioners for appointment on the post of Assistant Marshal.

10.3 Any other relief as this Hon'ble Court may deem fit and proper.”

7. The private Respondents in the writ petition submitted their reply and pleaded that they were appointed in accordance with the Rules of 1990, some of the private Respondents have been promoted and there was delay in filing the writ petition. They have further pleaded that earlier selection process started in the year 2001 stood cancelled by the President/Speaker of the Vidhan Sabha, therefore, writ Petitioners do not have any right or locus to challenge their appointments.

8. Respondent No.1/Employer also filed a reply to the writ petition and pleaded that writ petition has been filed with inordinate delay, the writ Petitioners have already participated in the selection process of 2001, which was cancelled in the year 2003, therefore, they were not having any locus to challenge the appointments of private Respondents, who were appointed in the year 2005.

9. Looking to the nature of pleadings in earlier writ petition bearing Writ Petition (S) No.3134 of 2007 and subsequent petition bearing Writ Petition (S) No.2337 of 2012, it cannot be

said that both the writ petitions arise out of same cause of action, the writ Petitioners became overaged, therefore, the relief(s) sought for in the writ petition cannot be granted to them.

10. Learned writ Court after considering the pleadings made in the writ petition as well as the arguments raised by the learned counsel for the respective parties, allowed the writ petition for the reasons mentioned therein and held that appointment of Respondents No.2 to 8 (private Respondents) was bad in law as it was made without issuance of advertisement and following procedure of appointment and set aside/quashed the same. Respondent No.1/Employer was directed to initiate fresh recruitment process for filling up the posts of Assistant Marshal in accordance with the Rules of 1990 and till the fresh selection is completed, the private Respondents No.2 to 8 shall be permitted to continue. It was further ordered that when a fresh selection process is initiated, all the Petitioners, if they had participated in the advertisement that was issued on 25.06.2001 for the post of Assistant Marshal, and the private Respondents No.2 to 8 be permitted to participate in the selection process by relaxing their age subject to they have other minimum eligibility criteria including qualification.

11. Mr. Kishore Bhaduri, learned counsel appearing in Writ Appeal No.248 of 2019 submits that ample power has been vested on Speaker/President of Vidhan Sabha for appointing

the employees and officers of the Vidhan Sabha and appointments came to be made through Departmental Promotion Committee constituted under the Rules of 1990. He further submits that mode of selection is provided by way of written test or interview or both. He further submits that private Respondents No.2 to 8 were appointed by three members committee constituted under the Rules of 1990. The appointment letters have been issued by the Secretary of the Vidhan Sabha on different dates in the year 2005. He further submits that mere non-issuance of advertisement cannot make the entire selection process to be illegal, in fact, it can only be termed to be irregular and the services of private Respondents can very well be regularized. He places his reliance on the decisions of the Hon'ble Supreme Court in the cases of **Accountant General and Another v. S Doraiswamy and Others¹**, **Inderpreet Singh Kahlon and Others v. State of Punjab and Others²** and **State of Karnataka and Others v. M.L. Kesari and Others³**. He also submits that there was delay in filing the first writ petition itself as the same has been filed in the year 2007 whereas recruitment/appointment of the private Respondents in the writ petition has been made in the year 2005. He submits that once the writ petition filed in the year 2007 was withdrawn, second writ petition on the same cause of action could not be maintainable, more so, when in the

1 (1981) 4 SCC 93

2 (2006) 11 SCC 356

3 (2010) 9 SCC 247

subsequent writ petition, one new Petitioner has been added, therefore, second writ petition could have been dismissed on the ground of delay and laches itself.

12. Mr. Rajeev Shrivastava, learned counsel appearing in Writ Appeal No.243 of 2019 submits that the writ jurisdiction is an equitable jurisdiction wherein delay, if any, in seeking any relief by way of filing a writ petition plays a vital role. The appointment orders of the private Respondents in the writ petition were issued in the year 2005, which was challenged by way of filing a writ petition in the year 2012. There was inordinate delay in filing writ petition, therefore, the writ petition ought to have been dismissed on the ground of delay and laches itself. He places his reliance in one of the judgments passed by the Co-ordinate Bench of this Court in Writ Appeal No.170 of 2013 decided on 11.09.2014 to support his contention. He further submits that Petitioner No.1-Anil Kumar Dwivedi could not qualify in the physical test and therefore, was not called for interview. There is no pleading with respect to appearing and clearing physical test by Petitioner No.2-Dashrath Soni. He also submits that alongwith Petitioner No.1, three persons made complaint with regard to illegality committed in the selection process, therefore, the said selection process, in which, Petitioner No.1- Anil Kumar Dwivedi and Petitioner No.2-Dashrath Soni participated, has been stayed. He further submits that as Chhattisgarh Vidhan Sabha is newly constituted Vidhan Sabha and there were no

Assistant Marshal available for running smooth session of Legislative Assembly, therefore, in administrative exigency, appointments of the private Respondents in writ petition have been made in the year 2005 on different dates. The Speaker has all the powers to appoint, whenever the administrative exigency, accrues. He also submits that if writ petition could not have been withdrawn, the same could have been decided within that period itself and now, the private Respondents have completed their long period of service and some of them were also promoted in higher post, therefore, equality lies to the private Respondents. He places his reliance on the decisions of the Hon'ble Supreme Court in the cases of **Rabindra Nath Bose and Others v. Union of India and Others**⁴, **Life Insurance Corporation of India and Others v. Jyotish Chandra Biswas**⁵, **Chennai Metropolitan Water Supply and Sewerage Board and Others v. T.T. Murali Babu**⁶, especially paragraph-16 and **State of Jammu and Kashmir v. R.K. Zalpuri and Others**⁷ to support his submission of delay and laches.

13. Mr. B. Gopa Kumar, learned counsel appearing in Writ Appeal No.271 of 2019 reiterated the arguments advanced by Mr. Kishore Bhaduri and Mr. Rajeev Shrivastava, learned

⁴ AIR 1970 SC 470

⁵ (2000) 6 SCC 562

⁶ (2014) 4 SCC 108

⁷ (2015) 15 SCC 602

counsel in the respective writ appeals.

14. Mr. Prateek Sharma, learned counsel appearing in Writ Appeal No.268 of 2019 supported the order passed by the learned Single Judge stating that the appointments of Respondents were without issuing any advertisement and following rules of appointment. He submits that cancellation of recruitment process, in which, writ Petitioners have participated came to their knowledge only when the information has been provided by the Respondent/Employer under Right to Information Act. He submits that Petitioner No.1-Anil Kumar Dwivedi succeeded in physical test. He further submits that even the documents of Vidhan Sabha show that written tests have taken place in the selection process started by way of advertisement in the year 2001. He refers the documents filed as additional documents in support of his argument that the appointments of private Respondents in the writ petition have been made on the post of Assistant Marshal without taking any physical test and without assessing their physical ability as well as qualification as provided under the Rules of 1990. He also submits that as per rule of appointment, all the eligibility tests of an employee are required to be conducted prior to issuance of appointment orders, but that did not take place and appointment orders were issued and the same are illegal in the eyes of law, therefore, the appointments have been rightly set aside. He also submits that as the advertisement was issued for filling up the

post of Assistant Marshal in the year 2001 and till 2005, no steps have been taken for completing the appointment procedure initiated in the year 2001, therefore, it cannot be said that there was some administrative exigency to fill up the posts immediately without issuance of advertisement and undergoing any written test or physical test etc. He also submits that as soon as Petitioners No.1 and 2 got knowledge about cancellation of selection process, in which, they have participated and appointments of private Respondents are made without any advertisement, and in contravention of Rules of 1990, they have immediately filed a writ petition in the year 2007. Said writ petition was withdrawn by the counsel appearing at that relevant point of time with a liberty to file a fresh petition, if any cause of action still survives or arise and he submits that the direction be issued for appointment of writ Petitioners/ Appellants and within very short time, the writ petition was filed.

15. Mr. Abhishek Sinha, learned counsel appearing for Respondent No.1/Employer in all the writ appeals, submits that there was inordinate delay in filing the writ petition as order of appointments of private Respondents were issued in the year 2005. He further submits that on the date of filing of writ petition, all the writ Petitioners and private Respondents became overaged, therefore, no relief could have been granted to them *dehorse* the Rules of 1990. He also submits that fresh

recruitment process has been initiated after reserving the case for orders by the writ Court. He places on record the note-sheets of the appointment proceedings of Assistant Marshals.

16. We have heard learned counsel appearing for the respective parties and perused the records carefully.

17. Appointment of officers and employees in the Chhattisgarh Vidhan Sabha has been provided under the Chhattisgarh Vidhan Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1990. Rule 2 of Rules of 1990 provides for mode of appointment, in which, it has been provided for by way of promotion, by deputation, by direct recruitment and by way of absorption. Rule 3 of Rules of 1990 provides the qualification for getting appointment on different posts in Vidhan Sabha Sachivalaya. Clause-18 of Rule 3 mentions 'Assistant Marshal' and the qualification, which has been specified that the candidate should be graduate from any University and he should possess the physical qualification to hold the post of Sub-Inspector in the Police Departmental. Rule 4 of Rules of 1990 provides for mode of appointment on the different posts of service in the Chhattisgarh Vidhan Sabha Sachivalaya and in Clause-35 of Rule 4, it has been provided that the post of 'Assistant Marshal' is required to be filled up by way of direct recruitment. Rule 13 of the Rules of 1990 provides for Appointing Authority. Rule 13(a) provides for the President/Speaker to be the Appointing Authority for

appointment on the post of Executive Class and Rule 13(b) provides for Chief Secretary or Secretary under the President/Speaker to be Appointing Authority for all other posts. Posts of direct recruitment is to be filled up by calling applications from eligible and interested candidates, more so, when recruitment is made by the Government or Government agency.

18. Learned writ Court has considered the issue and importance of issuance of advertisement calling upon eligible and interested candidates to participate in the selection process for the post advertised or to be recruited. The learned Single Judge recorded the following :-

“(A) It is not that such observations of the Supreme Court were new. As early as in 1996 in case of **Malkapatnam, Krishna District, A.P. v. K.B.N. Visweshwara Rao and Others⁸**, a three Judge Bench of the Supreme Court held as under:-

“.... It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment

⁸ (1996) 6 SCC 216

exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates.”

(B) A similar view had been also propounded by the Supreme Court in the case of **Arun Kumar Nayak v. Union of India**⁹, in the following words :-

“This Court in Visweshwara Rao, therefore, held that intimation to the

⁹ (2006) 8 SCC 111

employment exchange about the vacancy and candidates sponsored from the employment exchange is mandatory. This Court also held that in addition and consistent with the principle of fair play, justice and equal opportunity, the appropriate department or establishment should also call for the names by publication in the newspapers having wider circulation, announcement on radio, television and employment news bulletins and consider all the candidates who have applied. This view was taken to afford equal opportunity to all the eligible candidates in the matter of employment. The rationale behind such direction is also consistent with the sound public policy that wider the opportunity of the notice of vacancy by wider publication in the newspapers, radio, television and employment news bulletin, the better candidates with better qualifications are attracted, so that adequate choices are made available and the best candidates would be selected and appointed to subserve the public interest better.”

(C) Now coming back to the recent past again, Supreme Court in case of **State of Bihar v. Upendra Narayan Singh**¹⁰, referring to the earlier decision on the field laid down or reiterated the earlier principles of

¹⁰ (2009) 5 SCC 65

law. The Supreme Court in paragraph 16 of the said judgment has held as under:-

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

(D) The Supreme Court on the same issue in case of **State of Orissa v. Mamta Mohanti**¹¹, in its judgment in Paragraphs 35 to 37 held as under :-

“35. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be

11 (2011) 3 SCC 436

followed. In other words there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution.

36. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not

entitled to any relief including salary. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit.

37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. 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. A right in law exists only and only when it has a lawful origin. (vide: *Upen Chandra Gogoi v. State of Assam & Ors.*, AIR 1998 SC 1289.”

(E) Again in case of **Chairman-cum-Managing Director, Coal India Ltd. & Others v. Ananta Saha & Others**¹², the Supreme Court in paragraph 32 has held as

¹² (2011) 5 SCC 142

under:-

“32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact-situation, the legal maxim "*sublato fundamento cadit opus*" is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.”

19. Thus, from the aforementioned law laid down by the Hon'ble Supreme Court, it is clear that when any recruitment is to be made by the Government or its agency, then the post shall be properly advertised in the newspapers having wider circulation, announcement on radio, television and employment news bulletins, etc. so as to afford equal opportunity to all eligible candidates in the matter of public employment.

20. In the instant case, Respondent No.1/Employer after staying/cancelling the recruitment proceeding initiated by issuance of advertisement, have not issued fresh advertisement providing opportunity to all eligible and interested candidates to participate in selection process, but the appointments have been made only on the basis of applications submitted by the appointed candidates. The aforesaid action of Respondent/Employer is violative to the Articles 14 and 16 of the Constitution of India. The appointments of the Appellants/private Respondents in writ petition are illegal and

cannot be protected.

21. Learned writ Court has also considered other judgments passed by the Hon'ble Supreme Court on this issue. Learned writ Court also considered the judgments, on which, learned counsel for the Respondents in the writ petition, have placed their reliance and distinguished the same on facts. We do not find any error in the reasoning given by the learned writ Court declaring the action of Respondent/Employer in giving appointments to private Respondents to be illegal for want of issuance of advertisement before filling up the vacancies.

22. The next ground which is raised in these appeals is delay in challenging the appointments. The case law relied upon by Mr. Rajeev Shrivastava in support of his submission on delay are on following facts:

(A) In case of **Rabindra Nath Bose** (supra) issue involved in that case is with regard to claim of seniority by confirmed Assistant Commissioner of Income Tax Department and they challenged the 1952 Seniority Rules after lapse of 15 years before Hon'ble Supreme Court under Article 32 of the Constitution of India.

(B) The judgment of **Jyotish Chandra Biswas** (supra) deals with filing of writ petition after inordinate delay of 6 years from dismissal of his service, there was no explanation in the writ petition whatsoever for this inordinate delay.

(C) In case of **Chennai Metropolitan** (supra), the petitioner was dismissed from service after Departmental Enquiry and his appeal was also dismissed. The employee challenged the order of appeal before the High Court after lapse of more than four years.

(D) The judgment of **R.K. Zalpuri** (supra) deals with challenge of termination of an employee after lapse of about 5^{1/2} years. In both the cases, employees were aware of their termination order, but they did not challenge their order of termination before the High Court within the prescribed time and in that circumstances, the Hon'ble Supreme Court held that inordinate delay of such a long period of 5-6 years is fatal, therefore, the Hon'ble Supreme Court held that the writ Petitioners therein before the High Court cannot be granted relief.

23. In the case at hand, private Respondents in the writ petition were given appointments without following rules and more so, without issuing advertisement, therefore, the appointments of private Respondents in the writ petition are not known to public at large/eligible interested candidates, who could have submitted their applications for appointment on the post of 'Assistant Marshals'.

24. Perusal of pleadings made in the writ petition, wherein it has been very specifically pleaded that earlier writ petition was

filed in the year 2007 bearing Writ Petition (S) No.3134 of 2007 and the same was withdrawn on 12.04.2012, with liberty to file a fresh petition, if cause of action survives or arises. The order of withdrawal of earlier writ petition is enclosed as Annexure P/7 in the writ petition. Subsequent, writ petition bearing Writ Petition (S) No.2337 of 2012 has been filed on 27.06.2012 immediately within a period of two months from the aforementioned order as the liberty was granted to file a fresh writ petition and looking to continuous pendency of writ petition since 2007 to 2012 of earlier writ petition, it cannot be said that the second writ petition has been filed with inordinate delay of seven years. Though on the date of withdrawal of writ petition with liberty, counsel for many of the Respondents were present, but they did not raise any objection. Therefore also it cannot be said that there is delay in challenging the appointment of the private respondents in writ petition. The case laws relied upon by Mr. Rajeev Shrivastava, learned counsel are on different facts and therefore, they are of no help to the appellants/private respondents in writ petition.

25. So far as other ground raised by learned counsel for the Appellants that the Appellants i.e. private Respondents in the writ petition, have already completed long period of service since 2006 to 2019, the learned writ Court ought to have protected their services because the irregularity committed, if any, in giving appointments to them was by the Appointing

Authority. Now, they are overaged to compete and obtain the other services. The learned writ Court has taken into consideration the judgment passed by the Hon'ble Supreme Court in this regard wherein the Hon'ble Supreme Court has considered the length of service of wrongly appointed candidates and held that no protection could be granted to wrongly appointed employees, which is made in violation to mandate of Articles 14 and 16 of the Constitution of India.

26. The case of **Inderpreet Singh Kahlon** (supra) is to be discussed for the prayer of protection of service of writ Appellants, in which, Hon'ble Supreme Court held as under :

“118. Undoubtedly, in the selection process, there have been manipulations and irregularities at the behest of R.S. Sidhu, the then Chairman, Punjab Public Service Commission. On a careful scrutiny of the facts and circumstances of the case, in my considered opinion, the High Court ought to have made a serious endeavour to segregate the tainted from the non-tainted candidates. Though the task was certainly difficult, but by no stretch of imagination, was it an impossible task.

119. The peculiar facts of this case which need to be highlighted are that some of the candidates have worked for about three years and their services were terminated only on the basis of criminal investigation which

was at the initial stage. The termination of their services as a consequence of cancellation of selection would not only prejudice their interests seriously, but would ruin their entire future career.”

27. The case of **Inderpreet Singh Kahlon** (supra) is on different facts and therefore, the appellant could not get any benefit from the said judgment of Hon'ble Supreme Court. In that case the termination was on the ground of serious charges of corruption. Here en-mass cancellation was made only on the ground of criminal investigation of recruitment process which was at initial stage.

28. Mr. Kishore Bhaduri, learned counsel appearing for the Appellants in Writ Appeal No.248 of 2019 placed his reliance on the decision of the Hon'ble Supreme Court in the case of **M.L. Kesari** (supra) to support his contention that looking to the period of service rendered by them, their services may be protected. The judgment rendered by Hon'ble Supreme Court is with respect to the employees who after putting number of years of the service have filed an application for regularization of their services. The Hon'ble Supreme Court considering the judgment of **Secretary, State of Karnataka and Others v. Umadevi (3) and Others**¹³ has passed an order of consideration as one time measure due to their omission in the process of regularization subject to fulfillment of paragraph-53

13 (2006) 4 SCC 1

of **Umadevi (3)** (supra). The case of the Appellants/private Respondents in writ petition are not one arising out of the proceedings by filing an application for regularization of the service, but their appointments on the post of Assistant Marshal itself has been challenged by the private Respondents/writ Petitioners on the ground that their appointments are *dehorse* the constitutional provisions for public employment. The judgment relied upon by the learned counsel for the Appellants is distinguishable on facts.

29. The Hon'ble Supreme Court in the matter of **R.N. Nanjundappa v. T. Thimmiah and Another**¹⁴ has considered the constitutional illegality committed during the course of appointment and held thus :

“26. The contention on behalf of the State that a rule under Article 309 for regularisation of the appointment of a person would be a form of recruitment read with reference to power under Article 162 is unsound and unacceptable. The executive has the power to appoint. That power may have its source in Article 162. In the present case the rule which regularised the appointment of the respondent with effect from February 15, 1958 notwithstanding any rules cannot be said to be in exercise of power under Article 162. First, Article 162 does not speak of rules whereas Article 309 speaks of rules.

14 (1972) 1 SCC 409

Therefore, the present case touches the power of the State, to make rules under Article 309 of the nature impeached here. Secondly, when the Government acted under Article 309 the Government cannot be said to have acted also under Article 162 in the same breath. The two Articles operate in different areas. Regularisation cannot be said to be a form of appointment. Counsel on behalf of the respondent contended that regularisation would mean conferring the quality of permanence on the appointment whereas counsel on behalf of the State contended that regularisation did not mean permanence but that it was a case of regularisation of the rules under Article 309. Both the contentions are fallacious. If the appointment itself is in infraction of the rules or if it is in violation of the provisions of the Constitution illegality cannot be regularised. Ratification or regularisation is possible of an act which is within the power and province of the authority but there has been some non-compliance with procedure or manner which does not go to the root of the appointment. Regularisation cannot be said to be a mode of recruitment. To accede to such a proposition would be to introduce a new head of appointment in defiance of rules or it may have the effect of setting at naught the rules.”

30. In case of *Surinder Prasad Tiwari v. U.P. Rajya Krishi Utpadan Mandi Parishad and Others*¹⁵, Hon'ble Supreme

¹⁵ (2006) 7 SCC 684

Court while dealing with the issue of employees appointed without following due procedure laid down under the provisions of Constitution, held thus :

“27. Admittedly, the appellant has not been appointed in terms of the relevant rules or in adherence to Articles 14 and 16 of the Constitution.

31. In a recent judgment in **National Fertilizers Ltd. v. Somvir Singh**¹⁶, this Court had an occasion to examine the matter after pronouncement of the aforementioned judgment by the Constitution Bench. The Court in this case has laid down that it is now trite law that "State" within the meaning of Article 12 of the Constitution is bound to comply with the constitutional requirements as adumbrated in Articles 14 and 16 thereof. When the Recruitment Rules are made, the employer would be bound to comply with the same. Any appointment in violation of such Rules would render them as nullities. It is also well settled that no recruitment should be permitted to be made through back door.

32. In **National Fertilizers Ltd. (supra)**, this Court referred to the decision in **Union Public Service Commission v. Girish Jayanti Lal Vaghela**¹⁷, wherein the Court had observed as under: (SCC p.490, para 12)

"The appointment to any post under the State can only be made after a proper

¹⁶ (2006) 5 SCC 493

¹⁷ (2006) 2 SCC 482

advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution."

37. Our constitutional scheme clearly envisages equality of opportunity in public employment. The Founding Fathers of the Constitution intended that no one should be denied opportunity of being considered for public employment on the ground of sex, caste, place of birth, residence and religion. This part of the constitutional scheme clearly

reflects strong desire and constitutional philosophy to implement the principle of equality in the true sense in the matter of public employment.

38. In view of the clear and unambiguous constitutional scheme, the courts cannot countenance appointments to public office which have been made against the constitutional scheme. In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of the person who is working either as daily-wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment.”

31. The Hon'ble Supreme Court in its series of judgments has held in very unequivocal terms that only irregular appointments can be regularized, but not illegal appointments. The appointments made by the State without following the Constitutional scheme as well as the Recruitment Rules framed by the employer, are held to be illegal appointments. The argument raised by Mr. Kishore Bhaduri, Advocate appearing in Writ Appeal No.248 of 2019 that looking to the long time spent in their service, protection may be granted is not sustainable. As

held in aforementioned judgment illegality are not to be protected and can be made to other mode of appointment.

32. The facts of the case are very clear that before appointing the Appellants/private Respondents in writ petition herein, Respondent No.1/Employer has not published any notice inviting applications from the eligible candidates and there apart, even they have been issued appointment orders without conducting their for physical test, which is one of the mandatory requirements to qualify the post in question i.e. 'Assistant Marshal'.

33. In the instant case, when initially the post of Assistant Marshal has been advertised and most of the process of selection has also been completed, but after staying the recruitment process, Appellants/private Respondents in the writ petition have been appointed without advertising the posts afresh only on the submission of applications, which clearly shows that they have given a back-door entry. Looking to the glaring facts and circumstances of the case wherein the appointment of the private Respondents have been made without following the known procedure of law for giving appointment in public employment by the State Government, we do not find any error in the judgment passed by learned writ Court as it is based on the law laid down by the Hon'ble Supreme Court on this issue.

34. Learned Single Judge has taken a balanced and judicious decision in granting permission to the writ Petitioners as well as private Respondents in the writ petition giving an opportunity for participating in the fresh selection process, after giving them age relaxation.

35. So far as Writ Appeal No.268 of 2019 preferred by the writ Petitioners making a relief that Respondent/Employer be directed to appoint the writ Petitioners on the post of Assistant Marshal from 2001 with all consequential benefits and in alternative, to consider their candidature for the post of Assistant Marshal from the stage of interview, cannot be granted as this relief has not been sought for in the writ petition itself. In the writ appeal, they cannot be permitted to seek a new relief, which is not a part of original prayer or relief sought for in the writ petition.

36. In view of above discussions, we do not find any illegality or infirmity in the order passed by learned writ Court. The writ appeals being devoid of any substance, are liable to be and are hereby dismissed. However, looking to the facts and circumstances of the case, we direct that the respondent No.1 shall initiate the process for recruitment of Assistant Marshal in accordance with law within a period of four months from today.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge