

GAHC020006402024

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : WA/27/2024

SMTI. ZHABOUNUO AND 37 ORS
ASI O/O Superintendent of Police Kohima,
D/o Vilie-o Zumu

2: SHRI. IMCHALONG
ASI O/O SUPERINTENDENT OF POLICE MOKOKCHUNG.
S/O I.TOSHI JAMIR

3: SHRI. EYINGO PATTON
UBSI
IGP (INT)
S/O LT. NCHUMBEMO PATTON

4: SHRI. KAKUM OZUKUM
ASI PHQ KOHIMA.
S/O R. ATSUNG

5: ER. JAMES KIKON
UBSI PHQ KOHIMA.
S/O KHOBEN KIKON

6: SHRI. BENJAMIN KIKON
ASI(GD) DEF MOKOKCHUNG
S/O W. YANBAMO KIKON

7: SHRI. PANGNAN KONYAK
UBSI O/O SUPERINTENDENT OF POLICE-MON
S/O- C. JOHN KONYAK

8: SHRI. IKATO N AYEMI
ASI O/O COMMISSIONER OF POLICE DIMAPUR.
S/O- NIHOTO AYEMI

9: SHRI. VIKATO ACHUMI
ASI O/O SUPERINTENDENT OF POLICE ZUNHEBOTO
S/O XESHEPU ACHUMI

10: SHRI. ATING KONYAK Y
ASI DEF MON.
S/O YANPONG KONYAK

11: SHRI. HEVI KINIMI
ASI DEF ZUNHEBOTO.
S/O LT. HENITO KINIMI

12: SHRI. ARON
ASI DEF TUENSANG
S/O - VIHOTO

13: SHRI. YANGPOTHUNG EZUNG
ASI DEF MON
S/O- YILOBEMO EZUNG

14: SMTI. LITHUNGBENI PATTON
ASI DEF WOKHA.
D/O- LOJAMO PATTON

15: SHRI. KITОВI YEPTHO
ASI PHQ KOHIMA
S/O- AKUTO YEPTHO

16: SHRI. WOBENTHUNG ODYUO
ASI IGP (INT)
S/O- ASHIO ODYUO

17: SMTI. SACHUMLO KIKON
ASI DEF KOHIMA.
D/O MHONCHAN KIKON

18: SMTI. SENBEN K SHITIO
UBSI DEF MON.
D/O- LT. KHOSHAK SHITIO

19: SMTI. VENUS KIKON
ASI DEF MON
D/O-P.NCHUMBEMO KIKON

20: SHRI. KAKUGHA T JAKHA
ASI DEF- KIPHIRE.
S/O- TOHOVI JAKHA

21: SHRI.SATAMKAVA PHOM
ASI DEF TUENSANG.
S/O- KUPLEN PHOM

22: SHRI. CHUMBEN KIKON
UBSI DEF LONGLENG
S/O- N. KHOPENTHUNG LOTH

23: SHRI. NZANTHUNG W SHITIRI
ASI IGP (INT)
S/O WOMOMO SHITIRI

24: SHRI Y. SULANTHUNG ODYUO
ASI IGP (INT)
S/O- YONTOMO ODYUO

25: SHRI. MHONYAMO N ODYUO
UBSI DEF WOKHA.
S/O- NRAO ODYUO

26: SHRI WILLIAM LOTH
UBSI IGP (INT)

27: SHRI. ENDILONG LONGKUMER
UBSI DEF MOKOKCHUNG
S/O- IMRONG LONGKUMER

28: SHRI. SUNTHUNGO R PATTON
UBSI DEF MON.
S/O- RHANLAMO PATTON

29: SHRI. CHUMREMO J NGULLIE
ASI DEF TUENSANG.
S/O- JENITHUNG NGULLIE

30: SHRI. E SOTHUNGO MURRY
ASI DEF MOKOKCHUNG.
S/O- EYINGBEMO MURRY

31: SHRI. HETOKA CHOPHI
ASI DEF TUENSANG.
S/O- GHOTOVI CHOPHY

32: SHRI. S LIPENTHUNG EZUNG
ASI DEF MON.

33: SHRI. IMLITEMSU
UBSI DEF TUENSANG

S/O- S.LIMA JAMIR

34: SMTI. KHRIEVONO
ASI DEF KIPHIRE
D/O-MELHOULIE

35: SHRI. T. AKABA AIER
SI DISTRICT COMMANDANT HOME GUARD AND CIVIL DEFENCE
TUENSANG
S/O TOSHITSUNGBA AIER

36: SHRI. TINGKAM KONYAK
SI DISTRICT COMMANDANT HOME GUARD AND CIVIL DEFENCE
ZUNHEBOTO.
S/O WANGLI KONYAK

37: SHRI. CHUBANUNGBA
UBSI DEF ZUNHEBOTO
S/O IMTITUBA

38: SHRI. LIPOKRI LONGCHARI
UBSI PHQ KOHIMA.
S/O IMCHACHETB

VERSUS

THE STATE OF NAGALAND AND 19 ORS
REPRESENTED BY THE CHIEF SECRETARY
GOVT. OF NAGALAND

2:THE HOME COMMISSIONER
NAGALAND KOHIMA.797001

3:THE DGP
NAGALAND KOHIMA.797001

4:DY. INSPECTOR GENERAL OF POLICE (ADMINISTRATION)
NAGALAND KOHIMA. 797001

5:DIRECTOR GENERAL
HOME GUARD AND CIVIL DEFENCE NAGALAND KOHIMA. 797001

6:SHRI. KEZHALESA KUOTSU
R/O CHUMOUKEDIMA WARD NO.1 NAGALAND.797103

7:SHRI. NEWTON ZHIMOMI
R/O AG COLONY KOHIMA 797001

8:SHRI.KEKHRIESILIE RICH
R/O CHUMOUKEDIMA WARD-2 NAGALAND.797103

9:SHRI. KIHEUKIGUMBE RIAME
R/O CHUMOUKEDIMA WRD-7
NAGALAND.797103

10:SHRI. NGAMPAI L KONYAK
R/O CHUMOUKEDIMA WARD-7 NAGALAND. 797103

11:SHRI. BENRITHUNG NGULLIE
R/O CHUMOUKEDIMAWARD NO.7 NAGALAND 797103

12:SHRI. DZIESELHOUTUO
R/O CHUMOUKEDIMA WARD NO.9 NAGALAND. 797103

13:SMTI. MHONCHUMI Y TSANGLAO

R/O CHUMOUKEDIMA WARD-6 NAGALAND. 797103

14:SHRI. T YONGSEBA SANGTAM
R/O CHUMOUKEDIMA WARD NO.1 NAGALAND. 797103

15:SHRI. KEZHAWELIE RICH
R/O CHUMOUKEDIMA WARD NO.2 NAGALAND. 797103

16:SHRI. R HAYITHUNG NGULLIE
R/O CHUMOUKEDIMA WARD NO-7 NAGALAND. 797103

17:SHRI. SUNGJEMINBA
R/O CHUMOUKEDIMA WARD NO-7 NAGALAND. 797103

18:SHRI. MUKAM
R/O CHUMOUKEDIMA WARD NO-9 NAGALAND. 797103

19:SHRI. IMKONGNOKTANG
R/O CHUMOUKEDIMA WARD NO.7
NAGALAND
797103

20:SHRI. EPOVEYI TETSEO
R/O CHUMOUKEDIMA WARD NO.6
NAGALAND
79710

Advocate for the Petitioner : C. T. JAMIR, SR. ADV, JAWAMONG YADEN,IMTILA
PONGEN,ASA RUTSA,NUNGSANG AIER,ALIBA OZUKUM,KROVI TSUKRU,I
IMCHEN,TOSHI JAMIR,WATI JAMIR

Advocate for the Respondent : GOVT ADV NL, L T SANGTAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

HON'BLE MR. JUSTICE ANJAN MONI KALITA

For the Appellants : Shri CT Jamir, Senior Advocate &
Shri Toshi Jamir, Advocate.

For the Respondents : Shri LT Sangtam, Addl. AG, Nagaland,
R/1;
Shri TB Jamir, GA, Nagaland, R/2 to 5 &
Ms. Z Zhimomi, Advocate, R/6 to 20.

Date of Hearing : 29.10.2025.

Date of Judgment : 30.10.2025.

JUDGMENT & ORDER

(SK Medhi, J.)

This intra-court appeal has been preferred against a judgment dated 26.09.2024 passed by the learned Single Judge in WP(C)/317/2023. By the impugned judgment, the writ petition preferred by the present private respondent nos. 6 to 20 has been allowed whereby the appointments of the appellants were set aside and certain directions were given to hold a fresh selection process.

2. As per the facts projected in the writ petition, the writ petitioners were having the qualifications to be recruited as Sub-Inspector, Assistant Sub-Inspector etc. in the Home Department of the State of Nagaland. Their grievance was against the appointment of the present appellants in the aforesaid posts during the period 2019-2020. The primary ground of challenge canvassed in the writ petition was that the recruitment process was not preceded by any advertisement which is a requirement of law. The writ petitioners had also relied upon an Office Memorandum dated 07.07.1976 of the State Government as per which, no direct recruitment should be made without publicly inviting applications. It is the specific case of the writ petitioners that 40 nos. of persons were appointed in the aforesaid category through backdoor whereby, the petitioners and other eligible candidates were deprived of a fair opportunity to compete and participate in the selection process. It transpires that a similar challenge was also made in 11 nos. of writ petitions which were registered as WP(C)/189/2022 to WP(C)/199/2022 pertaining to the recruitment of Constables in the same Department and the said writ petitions were allowed by a learned Single Judge of this Court vide judgment dated 20.09.2024 by interfering with the appointments of the incumbents who were appointed as Constables. It also transpires that the aforesaid judgment was put to challenge directly in the Hon'ble Supreme Court in SLP No. 59017/2024. This Court has also been apprised that the aforesaid SLP was dismissed on 21.01.2025 whereafter a writ appeal was preferred against the aforesaid judgment with certain IAs. The said writ appeal along with all the interlocutory applications has also been dismissed on withdrawal on 23.10.2025. It transpires that when the present writ petition was taken up for consideration, the learned Single Judge was apprised of the judgment dated 20.09.2024 passed in the cases of Constables and following the ratio and the findings made in the said judgment,

the present impugned judgment has been passed on 26.09.2024 which is the subject matter of challenge.

3. We have heard Shri CT Jamir, learned Senior Counsel assisted by Shri T Jamir, learned counsel for the appellants; Shri LT Sangtam, learned Addl. AG, Nagaland for the respondent no. 1; Shri TB Jamir, learned State Counsel, Nagaland for the respondent nos. 2 to 5. We have also heard Ms. Z Zhimomi, learned counsel for the respondent nos. 6 to 20, who were the writ petitioners.

4. Shri CT Jamir, learned Senior Counsel for the appellants has admitted that there was no advertisement preceding the induction of his clients as Sub-inspector, Assistant Sub-Inspector etc. However, such induction cannot be termed as illegal and would, at best, be termed as irregular appointments which can be cured / rectified. He has submitted that though the impugned judgment dated 26.09.2024 has been passed relying on the earlier judgment dated 20.09.2024 pertaining to the cases of Constables, there are significant differences in the facts of the present writ petition and the facts in the cases of the Constables inasmuch, as the nature of duties and service conditions are different. He has also drawn the attention of this Court to the Nagaland Police Manual Part-III, more particularly, Rule 8 thereof, which gives the power to the DGP and IGP to make direct recruitment.

5. The learned Senior Counsel for the appellants has also submitted that calling for advertisement may not be feasible in all cases as the duties entrusted to the Sub-Inspectors and Assistant Sub-Inspectors are of urgent nature and the exigencies may require recruitment without such advertisement and the same cannot be faulted with. He has also raised the issue that out of 15 nos. of writ petitioners, there was no consent given by two of the writ petitioners and

this fact came to be known to the appellants only at the time of preferring the appeal. He has also submitted that amongst the respondents in the writ petition, there were two incumbents who were recruited after a duly held selection process and in spite of that, those persons were arrayed as respondents. He accordingly submits that the approach to the writ court by the writ petitioners was without any *bona fide* and clean hands and therefore, the writ petition was not maintainable at all. The learned Senior Counsel has also submitted that the impugned judgment dated 26.09.2024 clearly appears to have been passed on certain concessions made by the Advocate General as well as by the counsel representing the present appellants. He has submitted that there were no such instructions given to the counsel by his clients and based on the said concessions, the impugned judgement has been passed. In this connection, he has relied upon a decision of the Hon'ble Supreme Court in the case of *Rafiq & Anr. Vs. Munshilal & Anr.*, reported in (1981) 2 SCC 788.

6. The learned Senior Counsel for the appellants is also critical with the limitations in the directions made by the learned Single Judge wherein certain conditions have been laid down. He has submitted that while there is a relaxation of the age of the present appellants who had served the Department for 5 to 6 years, there is no direction for relaxation with regard to the aspect of physical fitness inasmuch, as his clients may not be able to compete with fresh candidates on the said aspect. He has also submitted that his clients are involved in the investigation of a large number of criminal cases and about 600 cases are charge-sheeted wherein their participations in the trial would be necessary. It is also submitted that the case laws relied upon by the learned Single Judge are not applicable in the facts and circumstances of the case. He accordingly submits that the instant appeal is required to be allowed. He has informed this Court that vide an order dated 13.11.2024 *status quo* was

directed to be maintained which was also made absolute vide a subsequent order.

7. *Per contra*, Shri TB Jamir, learned State Counsel appearing for the respondent nos. 2 to 5 has submitted that admittedly, there was no advertisement preceding the recruitment process. He has also submitted that no affidavit was filed in the writ petition as it was held not necessary in view of the fact that in the similar writ petition, being WP(C)/189/2022 pertaining to the recruitment of Constables, affidavit was filed which would cover the issue. He has clarified that the present appellants have not raised any dispute that the issue involved was not the same, namely, the legality and validity of the appointments made without advertisement.

8. Shri Sangtam, learned Addl. AG, Nagaland has endorsed the submissions of Shri TB Jamir, learned State Counsel for the respondent Nos. 2 to 5.

9. Ms. Zhimomi, learned counsel for the respondent nos. 6 to 20 (writ petitioners) has strenuously opposed the appeal. She has submitted that it is a matter of fact that two of the writ petitioners had subsequently withdrawn themselves from the writ petition which was due to utter pressure given to them. She has submitted that such pressure, by unscrupulous elements continued even during the present proceeding. As regards to the other two persons, who were arrayed as respondents in spite of they facing a selection process before the recruitment, the learned counsel has clarified that information was sought regarding the recruitment from the competent authority and such information was not given for a long period of two years and having no other alternative, the said two persons were also arrayed as respondents. She has informed this Court that initially the Nagaland Tribal Union,

Chumukedima Town and 28 others had instituted writ petition, WP(C)/108/2020 on the recruitment process and the said writ petition was closed by the Court by directing the petitioners therein to enclose the appointment orders. She has also drawn the attention of this Court to the fact that such information was not furnished by the concerned information officer and the direction was given by the Commission which was also unsuccessfully challenged by the DGP in a writ petition filed before this Court.

10. Ms. Zhimomi, learned counsel for the respondent nos. 6 to 20 has drawn the attention of this Court to Article 13 of the Constitution of India and has submitted that there cannot be any administrative order or any provision in the Police Manual which is against the rights guaranteed under Part-III of the Constitution of India. She has also highlighted the aspect that the law in this field is well settled by the Hon'ble Supreme Court India that all recruitment has to be preceded by a duly conducted selection whereby all the eligible candidates are required to be given a fair and equal opportunity. She has submitted that under Article 141 of the Constitution of India, the law laid down by the Hon'ble Supreme Court of India is binding on all. On the submission that the impugned appointments were irregular and not illegal, the learned counsel has categorically submitted that where admittedly, the appointments were not preceded by any advertisement, those cannot be termed to be mere irregular appointments but are illegal appointments. It is submitted that such appointments without advertisement are *non est* in law and *void ab initio*. In support of her submissions, the learned counsel for the respondent nos. 6 to 20 has relied upon the following cases:

1. *State of Karnataka Vs. Uma Devi (3)*, (2006) 4 SCC 1;

2. *State of Karnataka Vs. ML Kesari*, (2010) 9 SCC 247;

3. *State of Bihar & Ors. Vs. Chandreswar Pathak*, (2014) 13 SCC 232;

4. *Narendra Kumar Tiwari & Ors. Vs. The State of Jharkhand & Ors.*, (2018) 8 SCC 238 &

5. *Amrit Yadav Vs. State of Jharkhand & Ors.*, 2025 SCC OnLine 280.

11. In the case of *Uma Devi (3) (supra)*, the Hon'ble Supreme Court has laid down the principles governing public recruitment as well as the aspect of regularization wherein a cut-off date was given as 10.04.2006 pertaining to irregular appointments. In the cases of *ML Kesari (supra)* and *Narendra Kumar Tiwari (supra)*, the principles laid down by the Hon'ble Supreme Court in the earlier case of *Uma Devi (3)*, has been clarified.

12. In the case of *Chandreswar Pathak (supra)*, where termination was done after 15 years was not interfered with by the Hon'ble Supreme Court as it was illegally done. In the case of *Amrit Yadav*, the Hon'ble Supreme Court has laid down the following principles:

“39. At this juncture, before parting, we deem it fit to note that public employment is a duty entrusted by the Constitution of India with the State. Therefore, it becomes imperative that the rigours of Articles 14 and 16 are not ignored by the State in relation to the matter concerning public employment. Arbitrariness in public employment goes to the very root of the fundamental right to equality. While no person can claim a fundamental right to appointment, it does not mean that the State can be allowed to act in an arbitrary or capricious manner. The State is accountable to the public at large as well as the Constitution of India, which guarantees equal and fair treatment to each person. Public employment process thus, must always be fair, transparent, impartial and within the bounds of the Constitution of India. Every citizen has a

fundamental right to be treated fairly and impartially, which is an appendage of right to equality under Article 14 of the Constitution of India. A violation of this guarantee is liable to judicial scrutiny as well as criticism.”

13. The learned counsel has also submitted that the aspect of Rule 8 of the Police Manual has also been dealt with by the learned Single Judge. She accordingly submits that the writ appeal be dismissed and the order of *status quo* be vacated.

14. Shri CT Jamir, learned Senior Counsel in his rejoinder, has however submitted that the order of *status quo* passed on 13.11.2024 was made absolute, subsequently. He has also highlighted the aspect that the interlocutory applications filed by the private respondents did not contain the names of certain original incumbents who were writ petitioners. He has reiterated the ground of maintainability of the writ petition due to lack of *bona fide*.

15. The rival Submissions have been duly considered and the materials on records have also been carefully perused.

16. To appreciate the rival contentions, it would be beneficial to examine the grounds of challenge in the present appeal and the directions given by the learned Single Judge in the impugned judgment dated 26.09.2024. The learned Single Judge in paragraph 5 of the impugned judgment has come to a finding that neither the State nor the private respondents had filed any counter-affidavit in the present writ petition. It is, however, correct that there is also finding that in the meantime, the writ petitions pertaining to the recruitment of Constables were already disposed of vide a judgment dated 20.09.2024. It also transpires

that there was a consensus that the observations and directions given in the aforesaid case of Constables would also govern the present issue and there is a clear concession recorded by the learned Single Judge in paragraph 5 which are extracted herein below:

“5. Mr. Sangtam, learned Additional Advocate General, Nagaland representing the respondent no. 1 as well as Mr. Jamir, learned counsel representing the respondent nos. 2 to 19 have submitted that no counter affidavit on behalf of the State respondents has been filed in this writ petition as in the batch of writ petitions involving similar issue, W.P.[C] no. 189/2022 to W.P.[C] no. 199/2022, a comprehensive affidavit-in-opposition on behalf of the State respondents was filed and the stands taken in the said comprehensive affidavit-in-opposition would also cover the issue involved in the instant writ petition. They have submitted that the said batch of writ petitions, W.P.[C] no. 189/2022 to W.P.[C] no. 199/2022 was disposed of by a common Judgment and Order dated 20.09.2024. They have also submitted that as there is no difference, in essence, between the facts and circumstances obtaining in the said batch of writ petitions, W.P.[C] no. 189/2022 to W.P.[C] no. 199/2022 and the present writ petition, the observations and directions made in the common Judgment and Order dated 20.09.2024 would also govern in this writ petition. The learned counsel for the respondent nos. 6 to 45 has also submitted in similar lines adopting the submissions of the learned State Counsel and no counter affidavit has been filed on behalf of the respondent nos. 6 to 45.”

17. In the cases of the Constables which were decided in 11 nos. of writ petitions by the common judgment and order dated 20.09.2024, the impugned appointments were interfered with and certain directions were given. The learned Single Judge in the present judgment dated 26.09.2024 which is under

appeal, while considering the issue, had taken note of the said directions and after discussing the law holding the field, had made the following directions while allowing the writ petition:

“15. In the above facts and circumstances obtaining in the case in hand, the present writ petition is disposed of with the following observations and directions.

[i] The appointments of the respondent no. 6 to respondent no. 45, challenged in the writ petition, to the post of Sub-Inspector of Police [SI]/Unarmed Branch Sub-Inspector of Police (UBST)/Assistant Sub-Inspector of Police [ASI]/Instructor Havildar who were appointed on different dates in the years 2019 and 2020, as reflected in their Orders of Appointments, which are annexed as Annexure-B to Annexure-B-37 to this writ petition, by the State respondent authorities without any advertisement are all set aside and quashed. The Orders of Appointments of the respondent no. 6 to respondent no. 45 enclosed as Annexure-B to B-37 are set aside and quashed.

[ii] The State respondents are directed to take steps for holding fresh selection of the posts of Sub-Inspector of Police [SI]/Unarmed Branch Sub-Inspector of Police [UBSI]/Assistant Sub-Inspector of Police [ASI]/Instructor Havildar, which become vacant due to setting aside and quashing of the orders of appointment issued in respect of the respondent no. 6 to respondent no. 45, by issuance of advertisement in newspapers which are widely circulated throughout the State of Nagaland. The said selection be held in accordance with law. It is further observed that the process of recruitment shall be conducted

following the principles enshrined in Article 14 and Article 16 of the Constitution of India.

[iii] The process of selection shall be completed at the earliest and preferably within 6 [six] months from the date of the present order.

[iv] The respondent no. 6 to respondent no. 45 herein whose appointments have been set aside by this judgment would be eligible to participate in the fresh selection process.

[v] The upper age limit of the respondent no. 6 to respondent no. 45 as well as the petitioners herein shall be given relaxation. However, there shall be no relaxation in the matter of basic qualifications as well as the Departmental physical criteria. As held in the common Judgment and order dated 20.09.2024 [supra], there shall be no concession/relaxation as sought for in terms with Annexure-A of the affidavit filed by the State of Nagaland on 20.08.2024 in the batch of writ petitions, W.P.[C] no. 189/2022 to W.P. [C] no. 199/2022, this Court likes to observe in similar manner, though the affidavit dated 20.08.2024 is not part of the records of this case.

[vi] The respondent no. 6 to respondent no. 45 may be allowed by the State respondents to continue in-service for a period of 6 [six] months from the date of the instant order or till such time fresh appointments are made pursuant to the selection directed hereinabove, whichever is earlier.

[vii] It is further observed that during the continuance of service

of the respondent no. 6 to respondent no. 45 as observed in para [vi] above, they are required to maintain discipline required on the part of the members of the Nagaland Police Force and in case of any act of indiscipline on their part, the State respondent authorities would be at liberty to deal with such act of indiscipline in accordance with law.”

18. The learned Senior Counsel for the appellants has clearly admitted that there was no advertisement preceding the recruitment process and has tried to justify the same by stating that the same would come under the ambit of “irregular” appointment and not “illegal” appointment. This Court is, however, unable to accept the said proposition inasmuch, as all public employment has to be preceded by an advertisement whereby all eligible candidates would be given a fair and reasonable opportunity to participate in the same. The aforesaid requirement would be *in sync* with Articles 14 and 16 of the Constitution of India which requires giving of an equal opportunity in case of public employment. There cannot be two opinions on the requirement of an advertisement before such public employments. Such requirement is even more necessary in view of the vast unemployment, the country is facing.

19. The second submission made on behalf of the appellants is that the case of the Constables is different from the present case as the nature of duties and service conditions are different. We are, however, unable to accept the said submission as the issue involved has got nothing to do with the nature of the duties and services to be rendered. The issue is with the aspect of induction into the service which mandates giving equal and fair opportunity to all eligible candidates. As regards the submission made that Rule 8 of the Nagaland Police Manual does not mention of any advertisement, we are of the view that though there is no specific mention of such recruitment being preceded by an

advertisement, such requirement has to be read into the Rules. In this regard, we have noted that the learned Single Judge in paragraph 29 has dealt with the issue and has made the following observations in paragraph:

“29. Taking into account that issuance of an advertisement or calling for applications from eligible candidates is the mandate of Articles 14 and 16 of the Constitution for filling up vacancies of employment under the State, the necessity therefore, is that in order to make Rule 20 of Part III of the NP Manual in consonance with the provisions of Articles 14 and 16 of the Constitution, the aspect of having an advertisement or inviting applications from eligible candidates has to be ingrained to Rule 20 of Part III of the NP Manual. Under such circumstances, this Court therefore in order to save Rule 20 of the Part-III of the NP Manual from being constitutionally invalid, has to read the necessity of issuance of advertisement or inviting applications from eligible candidates as being ingrained in Rule 20 of the Part II of NP Manual.”

20. We are in agreement with the aforesaid findings of the learned Single Judge.

21. The learned Senior Counsel for the appellants has raised an issue of maintainability of the writ petition. We have, however, noticed that the said issue of maintainability has been raised for the first time in the appeal. It is not a case that the writ petition was disposed of *ex parte qua* the present appellants and, in fact, the present appellants were duly represented by their learned counsel. Rather, the learned counsel had given a concession that the issue was covered by the earlier decision dated 20.09.2024 passed in the case of the Constables. The concession not to file an affidavit in the present writ petition has also been recorded in the impugned judgment and such findings

are not the subject matter of challenge. The only issue which has been tried to be raised is that there was a miscommunication of the present appellants with the learned counsel. On a pointed query by us as to whether any action has been taken against the counsel, Shri Jamir, the learned Senior Counsel has replied in the negative. Even without going into those technicalities and the objection on the maintainability of the writ petition, the same is taken up on merits. The submissions advanced on behalf of the appellants is that two of the petitioners had subsequently expressed their intention not to pursue with the writ petition and rather, has feigned any knowledge of their being petitioners. We have, however, noticed that the writ petition was instituted by 15 nos. of writ petitioners and even if two are out of the challenge, the writ petition would still be maintainable.

22. Ms. Zhimomi, the learned counsel has made a statement in the Bar that there has been constant pressure upon the writ petitioners to withdraw from the writ petition and in that context, such intention by two of the petitioners cannot be held to be fatal to the maintainability of the writ petition. As regards the aspect that two of the respondents, who were duly selected and appointed, were also made parties, this Court has noted the explanation that information and details were sought for by the writ petitioners which were not given for a long period of two years and only thereafter, the writ petition was filed. It also transpires that after passing of the impugned order dated 26.09.2024, the aforesaid two incumbents had filed a review petition and the issue was clarified. In our considered opinion, the said aspect would not adversely affect the maintainability of the writ petition. As regards the observations made by the learned Single Judge on the aspect of giving exemption, the learned Senior Counsel has submitted that exemption has to be given on the physical fitness also as the petitioners in the meantime has spent about 5 to 6 years in service.

We are, however, unable to accept the same submission inasmuch, as it is only in the aspect of age where an exemption has to be given and the fitness aspect cannot, in any manner, be relaxed *qua* the nature of the duties which are to be discharged by the incumbents who would be appointed as police personnel. As regards the case laws relied upon by the learned counsel for the appellants, there is no dispute to the proposition laid down by the Hon'ble Supreme Court, both on the aspect of maintainability of the writ petition and requirement of *bona fide* on the part of the petitioners approaching this Court. However, in the facts and circumstances of this case, we do not find that there was any lack of *bona fide* on the part of the writ petitioners to institute the present challenge.

23. The aspect of illegal and irregular appointment has been clearly explained by the Hon'ble Supreme Court in a catena of decisions. The requirement to have an advertisement before a public recruitment is a *sine qua non* and in absence of the same, all appointments made cannot but be held to be illegal and *non est* in law.

24. The ground sought to be urged that for induction as police personnel, advertisement may not be required in case of exigencies. The said ground, however, is neither supported by facts that any urgency had arisen to dispense with the normal recruitment process. We are of the view that even if any such urgency requires to do away with a full-fledged process of recruitment, such induction into the services can only be for a temporary period till such exigency is over and cannot be a mode of entry into the services on permanent basis.

25. We are also of the view that the case of *Rafiq (supra)* relied upon by the appellants would not come to their aid inasmuch, as the facts are completely distinguishable. In the said case, the counsel of the appellant did not appeal

which led to an *ex parte* dismissal. However, in the instant case, the concession was made not only by the learned counsel of the appellants but also by the State Counsel which was mainly due to the fact that an identical issue was decided in a batch of writ petitions vide judgment dated 20.09.2024.

26. The scope of interference in an intra-court appeal is limited and such interference may be possible only when there is an error apparent on the face of it or the conclusion is perverse to the facts and circumstances. In this connection, one may gainfully refer to the decision of the Hon'ble Supreme Court in the case of *The Management of Narendra & Company Pvt. Ltd. Vs. The Workmen of Narendra & Company*, reported in (2016) 3 SCC 340 the relevant observations of which are extracted hereinbelow:

“4. ... Be that as it may, in an intra-court appeal, on a finding of fact, unless the appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief.”

27. We do not find any reason to disagree or differ with the finds and directions of the Hon'ble Single Judge given in the impugned judgment dated 26.09.2024. Rather, we are in agreement with the findings of the learned Single Judge in interfering with the appointments and setting those aside. We are also of the view that the directions given by the learned Single Judge in the impugned judgment on the aspect of having a fresh recruitment wherein the incumbents may be given a relaxation of age is in accordance with law.

28. The writ appeal is accordingly dismissed. The order of *status quo* stands vacated.

29. Costs made easy.

JUDG

JUDGE

Comparing Assistant