

(2014) 06 JH CK 0019

Jharkhand High Court

Case No: L.P.A. Nos. 10, 11, 13 and 14 of 2012 and 182, 183, 187, 189, 190, 191, 192 of 2013

State of Jharkhand

APPELLANT

Vs

Anil Kumar Mehta

RESPONDENT

Date of Decision: June 27, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 16(1), 162, 309

Citation: (2014) 3 AJR 403 : (2014) 3 JLR 346

Hon'ble Judges: R. Banumathi, C.J; S. Chandrashekhar, J

Bench: Division Bench

Advocate: Ajit Kumar, AAG and K. Sunderam, JC to AAG, Advocate for the Appellant; Ajay Kumar Pathak and Ajit Kumar Dubey, Advocate for the Respondent

Judgement

R. Banumathi, C.J.

These Letters Patent Appeals are directed against the judgments passed by the learned Single Judge in various writ petitions, in and by which the learned Single Judge has quashed the Clause in the Advertisement imposing a condition that a candidate will be allowed to apply from only one district and issued direction to the State of Jharkhand to consider the case of respondents-writ petitioners for appointment as Police Driver who were found disqualified on the ground that they applied for the post of Police Driver in more than one district.

2. The facts giving rise to these Letters Patent Appeals are that Palamau Range Police Recruitment Board invited applications for filling up the post of Police driver in three districts of Palamau Range, namely, Palamau (48 vacancies), Garhwa (60 vacancies) and Latehar (30 vacancies). In the Advertisement, a restriction/condition was stipulated to the effect that the applicant shall submit his/her application for only one district and in case of submission of application for more than one district, he/she shall be disqualified. As per the Declaration Form contained in the Format of

the application, the candidates were to declare that they have submitted only one application for the particular district only against the advertisement and in case of finding anything incorrect the candidature and appointment can be cancelled without any notice.

3. In contravention of the condition stipulated in the advertisement the writ petitioners/respondents filed applications in more than one district. The details of writ petitioners, who applied for more than one district are as follows:

4. All the writ petitioners/respondents participated in the physical test and also in the written examination and passed the examination. But all of them were disqualified on the ground that they have submitted applications for more than one district. Stating that they have secured marks more than cut off marks of the selected candidates in the respective district, the writ petitioners filed the writ petitions. The learned Single Judge allowed the writ petitions, W.P.(S) No. 2228/2011 and other writ petitions, holding that no prejudice is caused to the State even if the writ petitioners have applied for two different districts especially when there is no rule prohibiting such type of application by a candidate. The learned Single Judge further held that such condition cannot be imposed in the public advertisement and that it tantamounts to arbitrary condition. The learned Single Judge held that valuable rights guaranteed under Articles 14 and 16 have been taken away by inserting a condition in the advertisement which has no backing or background of any rule or regulation nor any executive instruction.

5. Some of the writ petitions, like W.P.(S) Nos. 5347/2012, 3594/2012 were allowed by a brief order by following the order passed in W.P.(S) No. 1459/2011 and W.P.(S) No. 2228/2011 and orders passed in similar other writ petitions.

6. Being aggrieved by allowing of the writ petitions, the State has preferred these Letters Patent Appeals.

7. The learned Additional Advocate General - Mr. Ajit Kumar has drawn our attention to the advertisement and also the format of application and submitted that there had been a specific Clause in the advertisement stipulating the condition that the candidate shall submit its application only for one district and if the candidate has applied for more than one district by submitting more than one application, his candidature shall be cancelled and the respondents accepted the said condition as laid down in the Advertisement but failed to abide by the same. It was further submitted that the candidates had also given a false declaration before the authorities at the time of submission of the form and in view of the false declaration the respondents forfeited their candidature and no right of appointment can be claimed by them. Learned Additional Advocate General contended that the conduct of the respondent in making such false declaration ought to have been frowned upon and the learned Single Judge did not keep in view the contravention of the condition in the advertisement which the candidates have consciously acceded to. In

support of his contention, the learned Additional Advocate General placed reliance upon the decision rendered in the case of [K.G. Ashok and Others etc. Vs. Kerala Public Service Commission and Others,](#) .

8. Learned Senior Counsel, Mr. Pathak, at the outset submitted that there is no wrong or illegality in the order passed by the learned Single Judge. Learned Senior Counsel contended that the respondents have secured more than the cut-off marks secured by the selected candidates in the respective district and while so, the respondents have been unjustly deprived of the opportunity of getting selected and such depriving of opportunity without any backing of statutory rules or regulations is arbitrary and violative of Article 14 of the Constitution of India and the learned Single Judge rightly allowed the writ petitions and impugned orders warrant no interference.

9. Mr. Ajay Kumar Pathak, learned counsel appearing for the some of respondents submitted that even though the respondents applied for two districts, they have appeared in the physical test, written test and also interview and obtained the marks above the cut off marks in the respective district and having allowed the respondents to participate in all the tests, their candidature cannot be cancelled at a later stage. The learned counsel further submitted that by preventing the candidates from applying in more than one district, their valuable rights guaranteed by Article 14 as well as 16 have been taken away by inserting such a condition in the advertisement.

10. We have carefully considered the submissions and the orders of the learned Single Judge and the materials on record.

11. In the Advertisement No. 1/2010 dated 17.2.2010 (Annexure-1 to the writ petition), for recruitment of Police Driver in Palamau Range, there had been a specific clause in the advertisement that the candidate shall submit the application only from one district and the candidature shall be cancelled if more than one application is submitted by a candidate. The said clause reads as under:

12. As per the above condition in the advertisement, the application to be submitted to only one District and if the application is submitted to more than one District, the candidature shall be cancelled. The candidates including the respondents accepted the above condition in the advertisement and applied thereafter but failed to abide by the same. It may be noted that before applying for the post, none of the candidate had chosen to challenge the said condition stipulated in the advertisement.

13. The format of the application also contains a declaration as per which a candidate has to declare that he has submitted only one application for one district and in case it is found incorrect his candidature and appointment shall be cancelled without further notice. The copy of the application forms submitted by the respondent - Md. Kudus Ansari (respondent in LPA No. 189 of 2013) for two districts

i.e. Palamau and Garhwa were produced before us which we have perused. All the respondents had submitted their application forms in more than one district with the said declaration. The Hindi version of the said declaration reads as under:

14. Since the writ petitioners/respondents applied in more than one district and submitted double forms, they have failed to abide by the condition stipulated in the advertisement, apart from making false declaration before the authorities at the time of submission of the application that they have applied for only one district, their candidature was cancelled.

15. Disqualification of the respondents for the post of police driver was due to reason that they have submitted double Forms and applied in two different districts in violation of the condition stipulated in the advertisement and also for the reason that although they had applied in more than one district but made false declaration in the application form that he had not so applied.

16. Learned Single Judge did not consider that there had been a condition both in the advertisement as well as in the application form that a candidate shall not apply for more than one district. The writ court failed to consider that the respondents are bound by the condition stipulated in the advertisement which they have willingly accepted. While submitting two applications for two different districts, the respondents have made false declarations that they have applied for only one district and such declaration is a false one. When the candidates applied for the post of Police Driver, which is a part of the disciplined force, the candidates were expected to be truthful in making the declaration. Since the respondents have violated the condition stipulated in the advertisement and also made false declaration, their candidature/selection was rightly cancelled by the authorities.

17. Similar factual situation arose in the judgment reported in [K.G. Ashok and Others etc. Vs. Kerala Public Service Commission and Others,](#), wherein Kerala Public Service Commission invited applications for a certain number of posts of Junior Health Inspector Grade-II in 14 districts of the State and application could be filed by a candidate in any one of the 14 districts of his choice; but if he applied for more than one district his application was liable to be rejected on that ground alone. Similarly, application of a person was liable to be rejected if he had applied in more than one district but had made false declaration in the application form that he had not so applied. The writ petitions filed by the candidates who were disqualified on the ground that they have applied for more than one district and made false declaration was dismissed by the Kerala High Court. In the appeal preferred by candidates, rejecting the contention of the candidates, the Hon"ble Supreme Court held that the restriction that the application should not be sent for more than one district does not tantamount to denial of opportunity. The Hon"ble Supreme Court in paragraphs - 12 and 13 held as follows:

12. It appears that the Government introduced decentralisation of recruitment to the lower ministerial cadre in various departments and teaching posts in the Education Department to district level vide GO (MS) No. 154/71 dated 27-5-1971 with a view to avoid administrative inconvenience caused due to dearth of recruits in such cadres in the northern districts of Kerala. It was with this intention that the Government stipulated conditions restricting inter-district transfers vide government order dated 27-5-1971. However, while implementing the decentralisation, a lot of practical problems cropped up before the Commission. If candidates are allowed to apply to more than one district in response to the same notification, they have to be allowed to appear in the tests to be conducted in different districts on different dates and subsequently, if they find a berth in the ranked list relating to more than one district, they will have to be advised for recruitment from more than one district if the occasion arises. A candidate who is appointed in one district will have to forego appointment in another district and the same defeats the very purpose of the aforementioned government order. The circumstances as detailed above would put the Commission in an embarrassing situation and cause administrative difficulties. The situation would assume fresh dimensions if it is allowed to prevail in the present-day district wise selections. Therefore, the candidates are permitted to apply for one district only in one notification. It is in order to avoid such exigencies and to facilitate a feasible selection process, the Commission issued orders to the effect that candidates are prohibited from applying to more than one district for the post notified in one and the same notification. Accordingly, in the notification inviting applications for district wise selection, specific instructions are incorporated to the effect that a candidate should not send applications for the post in more than one district and his failure to observe the same would entail rejection, of application of such a person apart from taking other actions enumerated above.

13. Though a candidate is prohibited from applying in more than one district, he is free to choose any district of his choice and thus the only thing is that the candidate is not entitled to apply for the same post in more than one district at a time. Here, the right of the candidate is not curtailed as he/she is, not prevented from choosing the district of his/her choice. At the same time, if every person is permitted to apply for all districts the number of applications received by the Commission will be 14 times the number of applications, now being received with the result that the Commission will be doing a futile exercise of selection work in the other 13 districts, as a candidate can after all accept appointment in only one district. Considering all these aspects the Commission has imposed the restriction on candidates from applying in more than one district in response to one and the same notification. The restriction does not tantamount to the denial of opportunity to a candidate for applying to any post.

(Underlining added)

18. In so far as the candidates making false declaration that they are not entitled for consideration on equitable grounds, in K.G. Ashok's case in paragraphs-22 and 23 the Hon"ble Supreme Court held as under:

22.In our view, though in the present case written test was conducted in all the 14 districts on one day but that cannot be a ground for making any distinction. Applications of some of the appellants have been rejected on the ground that though they had applied for appointment in more than one district but made a false declaration that they had applied in one district only whereas in other cases they did apply in more than one district and stated in the application that they had so applied. According to the gazette notification both the grounds were independently sufficient for rejection of candidature of a candidate. It appears that the Commission has been liberal in simply rejecting their candidature for the time being and had not debarred them from applying for any public post either for a specified period or permanently inasmuch as for making a false declaration though the appellants were liable to be criminally prosecuted but no such steps have been taken against them.

23. Learned counsel for the appellants lastly submitted that as number of appellants had crossed the upper age limit and number of vacancies are available, without disturbing the already selected candidates, the appellants can be considered for selection on the basis of their placement in the merit list. In our view seeing the conduct of the appellants in making false declaration and applying in more than one district in contravention of the gazette notification, it is not possible to accede to their prayer even on equitable grounds.

19. Learned Senior Counsel for the respondents submitted that the respondents secured more marks than the lastly selected candidates and thus, better qualified candidates have been discriminated by depriving them of the opportunity. It was submitted that in respect of the public employment, there could be no discrimination among the candidates and the learned Single Judge rightly held that the conditions stipulated in the advertisement restricting the candidate from applying in more than one district is arbitrary and violative of Articles 14 and 16 of the Constitution of India. It was further submitted that the very valuable rights guaranteed under Articles 14 and 16 have been taken away from the respondents by inserting a condition in the advertisement, which has no backing of any rule or regulation.

20. Learned Single Judge was not right in observing that the candidates were deprived of the opportunity of applying for more than one district and that their rights were curtailed. Even though a candidate was prohibited from applying for more than one district, he was free to choose any district of his choice. Hence, the right of a candidate was not curtailed as he was not prevented from choosing the district of his choice.

21. Observing that such condition restricting the candidates not to apply for more than one district would not amount to discrimination or violation of Article 14 of the Constitution of India, in paragraph-18 the Hon"ble Supreme Court in [K.G. Ashok and Others etc. Vs. Kerala Public Service Commission and Others](#), held as follows:

18. None of the aforesaid decisions has any application to the facts of the present case as it has been simply pleaded that Note (2) of the gazette notification was violative of Article 14 of the Constitution. Neither before the High Court nor before this Court necessary facts showing discrimination have been pleaded inasmuch as there is nothing to show that more meritorious persons have been deprived of employment whereas persons of inferior merit have been selected. Apart from the fact that the necessary facts leading to discrimination have not been pleaded, there is absolutely no material to show that a case of discrimination is made out and accordingly the submission of learned counsel is devoid of any substance.

22. The ratio of the decision rendered in K.G. Ashok's case (supra) squarely applies to the case on hand. The judgment rendered in [K.G. Ashok and Others etc. Vs. Kerala Public Service Commission and Others](#), has not been placed before the writ Court.

23. It is also pertinent to note that before applying for selection for the post of the Police Driver, none of the candidates challenged the condition stipulated in the advertisement that the candidates shall submit their applications only for one district and the candidature of a candidate shall be cancelled, if more than one application is submitted by a candidate. When the respondents and other candidates have willingly accepted the said condition stipulated in the advertisement, the respondents are bound by the same and that they cannot raise the plea of discrimination or violation of Article 14.

24. Learned Single Judge held that the condition stipulated in the advertisement restricting a candidate to apply only for one district and not allowing for two districts is arbitrary and that it has no backing or background of any rule or regulation, nor executive instruction.

25. In this regard, the learned Additional Advocate General has drawn our attention to the Bihar Police Manual as adopted by the State of Jharkhand and submitted that the appointment of a constable is only district-wise and the appointing authority is the respective Superintendent of Police of the districts and the application can be made only for a district. Placing reliance upon the case [Ashwani Kumar and others Vs. State of Bihar and others, etc. etc.,](#), it was contended that power to prescribe condition of service can be exercised either by making rules or in absence of such rules, by issuing executive instructions in exercise of executive power. It was submitted that when the recruitment is district-wise and the appointing authority is the Superintendent of Police of the respective districts, the authorities cannot be alleged to have violated the Article 14 by stipulating a restriction that the candidates

shall submit application only for one district.

26. Learned Senior Counsel submitted that the State of Jharkhand adopted the Bihar Police Manual with certain amendments by Memo No. 3300 dated 12.11.2001. It was contended that as per the Police Manual, constable shall be appointed by the District Superintendent of Police and without any amendment being done by the State Government in exercise of its power under Article 309 of the Constitution of India, the condition stipulated prohibiting the candidates from applying in more than one district, has no backing of any rule or regulation and the restriction is arbitrary and violative of Articles 14 and 16 of the Constitution of India. It was also submitted that the respondents cannot be deprived of their valuable right to get public employment by inserting a condition which has no backing of any rule or regulation, nor any executive instruction.

27. The Bihar Police Manual with certain amendment was adopted by the State of Jharkhand. Rule 661 of the Jharkhand Police Manual deals with classes of Constables and recruitment. As per Rule 661(b), the Constable shall be appointed by district Superintendent of Police for which a list will be prepared by the selection Board duly constituted for the purpose. Rule 663 deals with selection of recruits. As per Rule 663(b), recruits shall be measured by the reserve inspector in the presence of Superintendent of Police at the time of enlistment. Rule 661 and 663 make it clear that the recruitment of Constables is only district-wise and Superintendent of Police is the appointing authority.

28. Rule 662 deals with recruitment in a foreign district, which reads as under:

662. Recruitment in a foreign district- When in any district able candidates are not available for scheduled castes and tribes whose quota is given in Appendix 40, the concerned Superintendent - shall request his Deputy Inspector-General for selection of recruits from those districts where there is possibility of availability of required number of candidates. The selection board for the recruiting district, after satisfying themselves that the candidates are qualified as regards health and character and that they are willing to go to the district for which they are required, shall ask the Superintendent concerned to enlist them and send them to the requisitioning district.

29. By a reading of Rules 661, 662 and 663, it is seen that the rules are framed for the recruitment of constables for the "recruiting district". The words, "recruiting district" and "recruitment in a foreign district" clearly show that the recruitment of constables is only district-wise and the appointing authority is the Superintendent of Police. The applicants were required to submit their application only for one district in their respective district office of the respective Superintendent of Police. We are of the view that the words, "recruiting district" occurring in the Manual clearly stipulates that the recruitment is district-wise and that the application could only be for one district.

30. Assuming that there are no rules, it is well settled that creation and abolition of post is the prerogative of the executive and power to prescribe the condition of service can be exercised either by making rules under proviso to Article 309 of the Constitution or in the absence of any rules, by issuing rules/instruction in exercise of its executive power. In the case of [Ashwani Kumar and others Vs. State of Bihar and others, etc. etc.,](#), Hon''ble Supreme Court held as under:-

9. In [T. Cajee Vs. U. Jormanik Siem and Another,](#) a Constitution Bench of this Court held that the Government has the power to carry on the administration including the power to appoint and remove the personnel for carrying on the administration. It is not necessary that there should exist statutory regulations so made or the laws so passed. The authorities concerned would at all relevant times have the power to appoint or remove the personnel under the general power of administration vested in them.

10. In [B.N. Nagarajan and Others Vs. State of Mysore and Others,](#) another Constitution Bench of this Court held that it was not obligatory under proviso to Article 309 of the Constitution to make rules of recruitment etc. before a service could be constituted or a post created or filled. Consequently, the State Government has executive power, in relation to all matters with respect to which the Legislature of the State had power to make laws and its power under Article 162, without a law, was not a breach.

11. In [P.C. Sethi and Others Vs. Union of India \(UOI\) and Others,](#) a three-Judge Bench of this Court held that in the absence of any statutory rules prior to the Central Secretariat Service Rules, 1962, it was open to the Government, in exercise of its executive power, to issue administrative instructions with regard to constitution and reorganisation of the Service as long as there was no violation of Articles 14 and 16 of the Constitution.

12. In [Ramesh Prasad Singh Vs. State of Bihar and Others,](#) a two-Judge Bench of this Court held that in the absence of rules, qualifications for a post can validly be laid down in the selfsame executive order creating the service or post and filling it up according to those qualifications.

13. In [Kamal Kanti Dutta and Others Vs. Union of India \(UOI\) and Others,](#) yet another Constitution Bench observed that the Government would prescribe procedure to fill up any particular vacancy or vacancies as may be required during any particular period. In [State of Haryana and others Vs. Piara Singh and others etc. etc.,](#) a three Judge Bench of this Court held in para 21 at p. 134 that

creation and abolition of a post is the prerogative of the Executive. It is the Executive again that lays down the conditions of service subject, of course, to a law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its

executive power. The court comes into picture only to ensure observance of fundamental rights, statutory provisions, rules and other instructions, if any, governing the conditions of service.

This Court laid down elaborate procedure for regularisation of ad hoc employees etc.

14. It would thus be settled law that existence of law or statutory rules made under proviso to Article 309 of the Constitution is not a precondition either to create a post or to fill up that post; Government having legislative backing on the subject, has executive power to lay down the conditions of service and prescribe procedure for appointment to the post or vacancies in accordance therewith. Simultaneously, the Government would be entitled to create posts. The instructions and the procedure thus laid down would be subject to law made by the Legislature or rules made under proviso to Article 309. They could be amended by subsequent instructions. They may supplant the rules. But they should be consistent with the rights guaranteed under Articles 14 and 16(1) of the Constitution.

31. The existence of a law or statutory rule for prescribing such restriction is not a pre-condition. The condition mentioned in the advertisement stipulating that a candidate can apply only for one district is a pre-requisite for appointment of Police Driver. It is for the executive to prescribe conditions of service either by rules or by issuing administrative instructions. Having accepted the condition stipulated in the advertisement, the respondents have submitted their applications making declaration that they have applied for only one district. The respondents, who have violated the stipulated condition in the advertisement, cannot contend that the restriction is not supported by any rules.

32. While allowing the writ petitions, learned Single Judge observed that even if a candidate applied for two or more districts and appeared in examination in both or more districts and also selected in more than one district, it will not cause any prejudice to the State since the candidate has to select one district for employment and that the candidates will join service only in one district and in those districts where the selected candidates have not joined, waiting list can be made operative and the candidates who are in waiting list can be appointed. While observing that the candidates' selection in more than one district will not cause any prejudice to the State, the learned Single Judge did not keep in view the administrative difficulties.

33. Learned Additional Advocate General - Mr. Ajit Kumar has submitted that in order to avoid administrative inconvenience, the Government has introduced decentralization i.e. district-wise selection and permitting the candidates to apply for more than one district defeats the very purpose of decentralization of the selection process.

34. As rightly submitted by the appellant-State, if the candidates are allowed to submit application in more than one District, they are to appear in the test to be conducted in the different districts on different dates and if their names are listed in more than one district, they will have to forego appointment in any one of the district/districts. This would defeat the very purpose of the decentralization of the recruitment. If the selected candidates forego appointment in any of the district, it would cause administrative inconvenience apart from causing dearth of recruits in such cadre. If the candidates are allowed to apply for more than one district by submitting more than one application, there would be multiplicity of applications and that would cause administrative difficulties in the Department and that was the reason there was condition restricting the candidates from applying for more than one district. The learned Single Judge did not keep in view the administrative difficulties caused by such applying for more than one district.

35. Learned Senior Counsel for the respondents placed reliance upon the judgment passed in W.P.(S) No. 3241/2007 (dated 20.3.2012), in and by which learned Single Judge allowed the writ petition quashing the order of cancellation of selection of the candidates whose selection was cancelled for the post of constable in respect of recruitment of the year 2007 on the ground that they applied for more than two districts. The order of the learned Single Judge in W.P.(S) No. 3241/2007 was confirmed by the Division Bench of this Court in LPA No. 263/2012 dated 6th March, 2013. On behalf of the respondents, it was submitted that earlier judgment of the Division Bench of this Court is binding upon the State and while so, the respondents in these appeals who are similarly situated cannot be denied appointment on the ground that they have applied for the post of Police Driver in more than one district.

36. W.P.(S) No. 3241/2007 relates to the advertisement for the post of Constable in 2007 for the districts of Hazaribagh, Koderma and Giridih (all the three districts constituting one Range). The selection of those candidates thereof was cancelled on the ground that they have applied for more than one district. W.P.(S) No. 3241/2007 was allowed mainly on the ground that similarly situated persons (relating to advertisement of 2007), who applied for two districts have been given appointment by the authorities and that the State was not in a position to controvert and deny the said fact in its counter-affidavit. Since similarly situated persons were given appointment, learned Single Judge allowed W.P.(S) No. 3241/2007 and the same was affirmed by a brief order in LPA No. 263/2012, vide order dated 6th March, 2012.

37. The present cases relate to the advertisement of 2010 for recruitment of Police Drivers in respect of Palamau Range (constituting Palamau, Latehar and Garhwa districts). Learned Additional Advocate General has produced the chart showing that the selection/candidature of about 156 candidates has been cancelled on the ground that they have applied for more than one district. It was submitted that out of those 156 candidates only 11 candidates who applied for more than one district have been appointed. Learned Additional Advocate General further submitted that

after the learned Single Judge allowed the writ petitions, under the threat of contempt these 11 persons were appointed and therefore, the present batch of cases stand on a different footing than the earlier writ petition, W.P.(S) No. 3241/2007, which related to the advertisement of 2007 for a different Range.

38. By perusal of the judgment passed in W.P.(S) No. 3241/2007, we find that the learned Single Judge allowed the writ petition mainly on the ground that similarly situated persons, who applied for more than one district, were given appointment. In this batch of cases, none of the similarly situated persons was appointed except those 11 cases, who were appointed either under the order of the court or under the threat of contempt. The ratio decidendi in the earlier judgment will apply only if the facts are same. When the facts are materially different, the earlier decision may not be binding on the courts and therefore, order passed in LPA No. 263/2012 cannot be taken to be a binding precedent.

39. Even assuming that some other similarly situated persons have been appointed, since Article 14 contains a positive concept, no benefit can be extended to the respondents. In the case of [State of Orissa and Others Vs. Prasana Kumar Sahoo, ,](#) Hon"ble Supreme Court held as under:-

20. It may be that some other persons similarly situated have been appointed. But Article 14 as is well known contains a positive concept. A writ of mandamus can be issued by the High Court only when there exists a legal right in the writ petitioner and corresponding legal obligation in the State. Only because an illegality has been committed, the same cannot be directed to be perpetuated by a court of law.

21. It is also well settled that there cannot be equality in illegality. See [Sushanta Tagore and Others Vs. Union of India \(UOI\) and Others, ,](#) [State, CBI Vs. Sashi Balasubramanian and Another,](#) and [U.P. State Sugar Corpn. Ltd. and Another Vs. Sant Raj Singh and Others, .](#)

40. Even though some of the respondents are stated to be working pursuant to appointment orders issued, their cases cannot be considered to be on a different footing. As pointed out earlier, the candidature of 156 applicants were cancelled on the ground that they have applied for more than one district. If any direction is issued in respect of the respondents, who were given the order of appointment either by virtue of the order of the court or under the threat of contempt proceedings, it will cause serious prejudice to all other candidates who have not approached the court and it will open Pandora's box. Therefore, in our view, it is not possible to accede to the prayer of the respondents even on equitable grounds.

41. Learned Single Judge failed to consider that the respondents were bound by the condition laid down in the advertisement as they have willingly accepted the same and if the candidates are bound by the same, no right of appointment can be claimed by them and they have no right of appointment. Learned Single Judge was not right in saying that the restriction is arbitrary and violative of Articles 14 and 16

of the Constitution of India. The learned Single Judge did not keep in view the false declaration made by the candidate as also the administrative difficulties of the authorities caused by the candidates by submitting application for more than one district. Therefore, the impugned orders of the learned Single Judge are liable to be set aside.

42. The order dated 22.9.2011 passed in W.P.(S) No. 2228/2011 (LPA No. 10/2012), order dated 23.9.2011 passed in W.P.(S) No. 1661/2011 (LPA No. 11/2012), order dated 23.9.2011 passed in W.P.(S) No. 1658/2011 (LPA No. 13/2012), order dated 23.9.2011 passed in W.P.(S) No. 1667/2011 (LPA No. 14/2012), order dated 23.8.2012 passed in W.P.(S) No. 3950/2012 (LPA No. 182/2013), order dated 21.3.2013 passed in W.P.(S) No. 5347/2012 (LPA No. 183/2013), order dated 18.3.2013 passed in W.P.(S) No. 4623/2012 (LPA No. 187/2013), order dated 16.1.2013 passed in W.P.(S) No. 3594/2012 (LPA No. 189/2013), order dated 7.1.2013 passed in W.P.(S) No. 4698/2012 (LPA No. 190/2013), order dated 20.3.2013 passed in W.P.(S) No. 109/2013 (LPA No. 191/2013) and order dated 21.9.2012 passed in W.P.(S) No. 5483/2012 (LPA No. 192/2013) are set aside and these Letters Patent Appeals are allowed. In so far as the candidates who were appointed, the appellant is at liberty to act in accordance with law.