

M.P. STATE COOP. BANK LTD., BHOPAL

A

v.

NANURAM YADAV AND ORS.

SEPTEMBER 25, 2007

[TARUN CHATTERJEE AND P. SATHASIVAM, JJ.]

B

*Service law:*

*Madhya Pradesh Lokayukt Evam Up-Lokayukt Adhiniyam, 1981—ss.10 and 12—Cooperative Bank—Clerk-cum-typist—Termination on the ground of illegality in selection process—Challenged on the ground that show cause notice not issued nor opportunity of hearing afforded in the enquiry by Lokayukt—Held: Termination not legal—Employees concerned were subjected to written test, interview, execution of security bond and satisfied Staff Service Rules—Madhya Pradesh Cooperative Societies Act, 1960—s.55(1)—Madhya Pradesh Rajya Sahakari Bank Employees (Terms of employment and Working Conditions) Rules, 1976.*

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*Public appointments—Principles to be followed—Reiterated.*

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**On 24.6.1994, the Managing Director of the appellant-Bank sent a letter to the Cooperative Commissioner and Registrar, Cooperative Societies, M.P. requesting for filling up of at least 60 posts against 100 vacant posts of Clerks-cum-Typists. Pursuant to the said request, Additional Registrar, by his reply dated 29.6.1994 granted permission to appoint 40 persons on *ad hoc* basis for six months mentioning that meanwhile the Bank would take steps to fill up the vacant posts by issuing legal advertisement and keeping in view the reservation under Government Rules and Staff Service Rules.**

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**On 11.11.1994, permission to fill up 20 more posts was granted. Pursuant to the aforesaid sanction letters, on 31.01.1995, the Bank appointed 60 clerks-cum-typists on *ad-hoc* basis for a period of six**

A months. After appointment, two employees left the services of the Bank. After expiry of six months, as envisaged under Rule 22(a) of the Staff Service Rules, 1976, all the appointed persons appeared in the written examination and were successful. Those persons appeared for an interview before the Selection Committee. The Selection Committee, B after satisfying itself, recommended their names for appointment on regular basis. All the appointed persons were asked by the Bank to furnish Security Bond for a period of three years with a deposit of Rs.5,000/-. All the appointees complied with the said condition. While they are discharging their duties, taking into consideration their C performance etc., the appointing authority, under Rule 14(b), confirmed their services on the post of clerks-cum-typists on 30.10.1996.

On 27.10.1997, without any notice or assigning any reason, the Managing Director of the Bank issued termination order under Rule D 61 of the Rules. Aggrieved by those orders, the affected persons filed writ petition before the High Court claiming that the termination order was issued by the Bank on the basis of the direction dated 01.08.1997 issued by the Commissioner Cooperatives-cum-Registrar, to the E Managing Director of the Bank on the foundation that the Lokayukt had found 58 clerks-cum-typists were illegally appointed on the post, hence it was imperative to terminate their services taking aid of Rule 61 of the Staff Service Rules. High Court allowed the writ petition. The Bank and the employees both filed appeals before this Court.

F Allowing the appeal of employees and disposing of the Bank's appeal, the Court

HELD: 1. It is clear that in the matter of public appointments, the following principles are to be followed: (1) The appointments made without following the appropriate procedure under the Rules/ G Government Circulars and without advertisement or inviting applications from the open market would amount to breach of Arts. 14 and 16 of the Constitution of India. (2) Regularisation cannot be a mode of appointment. (3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum H educational qualification and other essential qualification would be wholly

illegal. Such illegality cannot be cured by taking recourse to A  
regularization. (4) Those who come by back door should go through that  
door. (5) No regularization is permissible in exercise of the statutory  
power conferred under Art. 162 of the Constitution if the appointments  
have been made in contravention of the statutory Rules. (6) The Court B  
should not exercise its jurisdiction on misplaced sympathy. (7) If the  
mischief played is so widespread and all pervasive, affecting the result,  
so as to make it difficult to pick out the persons who have been unlawfully  
benefited or wrongfully deprived of their selection, it will neither be  
possible nor necessary to issue individual show-cause notice to each  
selectee. The only way out would be to cancel the whole selection. (8) C  
When the entire selection is stinking, conceived in fraud and delivered  
in deceit, individual innocence has no place and the entire selection has  
to be set aside. [Para 20] [322-E, F, G, H; 323-A, B, C, D]

*Krishan Yadav & Anr. v. State of Haryana and Ors.*, [1994] 4 SCC D  
165; *Union of India and Ors. v. O. Chakradhar*, [2002] 3 SCC 146; *A.  
Umarani v. Registrar, Cooperative Societies and Ors.*, [2004] 7 SCC 112,  
referred to.

2.1. The former General Manager of the Bank was examined as E  
witness No.2 before the Additional Registrar wherein he specifically  
deposed to the effect that all qualified applicants were invited as per  
the service rules. They had to undergo written examination and those  
who were found successful were required to face interview by the  
Selection Committee of the Bank based on the report of the Selection  
Committee. According to him, those persons were appointed by the F  
competent authority under the service Rules. In respect of a specific  
question, namely, whether the Bank had written a letter to the  
employment exchange for the names to be sent for the vacant posts,  
he answered "yes, the letter was sent two months before". When he  
was asked whether any list was received from the employment G  
exchange, he answered "No". In respect of another question whether  
the Bank had given advertisement prior to the regular appointment, he  
answered "No, because as per the Rules, it was necessary to write to  
the employment exchange and that was done". When he was confronted H

A with the letter dated 27.04.1996 of the employment exchange wherein  
it is stated that no such letter calling for a list was ever received, he  
emphatically denied and asserted that "false entry is not done by the  
Bank". After verifying the records, he concluded that all those persons  
who possess the necessary qualifications as per the service Rules of  
B the Bank alone were given appointments after completing the formalities  
in accordance with the Rules. [Para 26] [325-A, B, C, D, E]

2.2. The then Assistant Manager (Admn.) in the Bank deposed  
before the same authority that from the year 1995, the writ petitioners  
C were working with the Bank. According to him, initially they were  
appointed on *ad-hoc* basis in the post of clerk-cum-typist, thereafter, in  
the month of July, 1995, the employment exchange was informed and  
they were appointed on a regular pay-scale. In the cross-examination,  
after explaining the procedures to be followed, he asserted that in the  
D case of the petitioners also those procedures were adopted and prior  
notice was published. He further reiterated that all the candidates who  
were successful in the interview were appointed and only then the  
Selection Committee selected those persons and all the selected  
candidates were kept under probation for a period of one year. He also  
E informed before the Addl. Registrar that all the successful candidates  
who completed their probation period were asked to execute a bond.  
As per the bond, the appointees were to serve the Bank at least for  
three years and in fact deposited Rs.5,000/- as security. He also  
F highlighted that though some of the selectees sought permission to  
pursue higher studies but permission was not granted due to the  
undertaking given by them by way of executing a security bond.

[Para 27] [325-E, F, G, H; 326-A, B]

2.3. The above-mentioned statement of General Manager and  
Assistant Manager (Admn.) of the Bank cannot be lightly ignored. The  
G writ petitioners demonstrated that taking note of large number of  
vacancies in the post of clerk-cum-typist and urgency in filling up the  
same due to administrative reasons, after getting proper sanction from  
the competent authority i.e. Registrar, intimating the same to the  
employment exchange. They were initially appointed for a period of six  
H months on *ad-hoc* basis and thereafter by conducting written

examination followed by interview, they were selected. After completion of probationary period of one year, these persons were posted in the regular cadre. Though few selectees were related to the then Managing Director of the Bank, on this ground alone, their appointments cannot be interfered with. The High Court has lost sight of relevant material aspects and confirmed the order of termination mainly based on the report of the Lokayukt. [Para 28] [326-B, D, E, F, G]

3.1. The Government of Madhya Pradesh in order to make provision for the appointment and functions of certain authorities for the enquiry in the allegations against public servants and for matters connected therewith, enacted the M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981. S.10 makes it clear that both Lokayukt or Up-Lokayukt in each case before it, decide the procedure to be followed for making the enquiry and in so doing ensure that the principles of natural justice are satisfied. S.12 mandates that after enquiry into the allegations, the Lokayukt or Up-Lokayukt is satisfied that such allegation is established, submit a report in writing, communicate his findings and recommendations along with the relevant documents, materials and other evidence to the competent authority.

[Para 29] [326-G; 327-G; 328-A]

3.2. In view of s.2(g)(iv), officers of the apex society or central society under M.P. Cooperative Societies Act are amenable. After the appointments of the aforesaid 58 employees, a complaint was lodged with Lokayukt and the said complaint was investigated by the Lokayukt. Though it is stated that the Lokayukt afforded an opportunity of hearing to the Chairman of the Bank as well as officials of the Bank and Cooperative Department, admittedly the employees were not afforded notice or opportunity of being heard in the enquiry by the Lokayukt. On receipt of the report of Lokayukt, the competent authority forwarded the same to the Registrar of Cooperative Societies who, in turn, without taking a decision or an order by following the service rules or any of the provisions of the M.P. Cooperative Societies Act mechanically directed the Managing Director of the Bank to terminate all the appointees. Though the officers of the apex society under M.P.

**A Cooperative Societies Act are amenable to the jurisdiction of the Lokayukt, the persons concerned who are lower-grade employees i.e. clerks-cum-typists cannot be terminated without following the service rules applicable to them. The elaborate procedures are to be followed before terminating the service of an employee under the provisions of the M.P. Cooperative Societies Act and the service rules made thereunder. In those circumstances, in the absence of opportunity to the employees, the termination order which was sent at the instance of Commissioner, Cooperative Societies based on the report of Lokayukt cannot be sustained. [Para 29] [328-A, B, C, D, E, F, G]**

**4. The authorities were not justified in terminating the services of these workmen. It is unnecessary to go into the correctness or otherwise of Rule 61 of the Rules and the said issue is left open. There is no need to remit the matter to the Registrar or any other authority for determination of their status. The said direction of the High Court is also liable to be set aside. [Para 30] [328-H; 329-A, B]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4481 of 2007.

From the Judgment and Order dated 19.4.2006 of the High Court of M.P. at Jabalpur in CWP No. 1421 of 2005.

WITH

C.A. Nos. 4482 and 4483 of 2007.

S.K. Gambhir, S.K. Dubey, Sanjay Kapur, Rajiv Kapur, Arti Singh, Harsh Patak, T.G. Narayanan Nair, Krishna Mohan Shukla and Anil Kumar Jha for the Appellant.

B.S. Banthia, Vikas Upadhyay, Naven Sharma and Ramesh Babu M.R. for the Respondents.

The Judgment of the Court was delivered by

**P. SATHASIVAM, J.** (1) Leave granted in all the special leave petitions.

(2) How public appointments to be made, whether Lokayukt

constituted under the M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981 has jurisdiction to go into the appointment of employees of the M.P. State Cooperative Bank and whether 60 clerks-cum-typists appointed by the said Bank were in accordance with the service rules are the questions to be decided in these appeals? A

(3) The Madhya Pradesh State Cooperative Bank Ltd., through its Managing Director challenges the order dated 19.04.2006 passed by the Division Bench of High Court of Madhya Pradesh at Jabalpur in Writ Petition No. 1421 of 2005, by way of Special Leave Petition No. 12236 of 2006 before this Court. Questioning the very same order, some of the writ petitioners, numbering 26, who earlier approached the High Court, filed Special Leave Petition No. 19499 of 2006 before this Court. The other writ petitioners, numbering 27, who also agitated the matter before the High Court questioning certain directions filed another special leave petition No. 3979 of 2007 before this Court. Inasmuch as the issues raised and challenge in all these petitions relate to the very same order of the High Court and are interconnected, they are being disposed of by the following common judgment. B C D

(4) The brief facts, in nutshell, are as follows:

On 24.06.1994, the Managing Director of the M.P. State Cooperative Bank Ltd., (hereinafter referred to as 'the Bank') requested the Cooperative Commissioner and Registrar of the Cooperative Societies, M.P., Bhopal for appointment of 60 *ad-hoc* clerks-cum-typists in the Bank. By letter dated 29.06.1994, conditional sanction was granted for appointment of 40 clerks-cum-typists on *ad-hoc* basis for 6 months mentioning that in the meantime the Bank has to take steps to fill up the vacant posts by issuing advertisement and comply the Rules keeping in view the reservation under the Government Rules. Again, by letter dated 25.10.1994, the Managing Director of the Bank requested for sanctioning the appointment of another 20 clerks-cum-typists on *ad-hoc* basis. By letter dated 11.11.1994, the Cooperative Commissioner and Registrar sanctioned the appointment of another 20 clerks-cum-typists on *ad-hoc* basis for 6 months on the condition as mentioned in the earlier letter dated 29.06.1994. E F G H

A (5) Pursuant to the aforesaid sanction letters, on 31.01.1995, the Bank appointed 60 clerks-cum-typists on *ad-hoc* basis for a period of six months. After appointment, two employees left the services of the Bank.

B (6) After expiry of six months, as envisaged under Rule 22(a) of the Staff Service Rules, 1976, all the appointed persons (writ petitioners before the High Court) were required to appear in the written examination so that they could be appointed for a period of one year as probationers. All of them took the written examination and became successful. Those  
C persons were required by the Bank to appear for an interview on 21.07.1995 before the Selection Committee. The Selection Committee, after satisfying itself, recommended their names for appointment on regular basis. All the appointed persons were asked by the Bank to furnish service-cum-security Bond for a period of three years with a deposit of  
D Rs.5,000/- as security in the form of FDRs. All the appointees complied with the said condition. While they are discharging their duties, taking into consideration of their performance etc., the appointing authority, under Rule 14(b), confirmed their services on the post of clerks-cum-typists on 30.10.1996. When the matter stood thus, according to the writ petitioners,  
E all of a sudden, without any notice or assigning any reason, the Managing Director of the Bank issued termination order under Rule 61 of the Rules on 27.10.1997. Aggrieved by those orders, the affected persons approached the High Court. It is also the claim of the affected persons that after getting the order of termination they came to know that the  
F termination order was issued by the Bank on the basis of the direction dated 01.08.1997 issued by the Commissioner Cooperatives-cum-Registrar to the Managing Director of the Bank on the foundation that the Lokayukt had found 58 clerks-cum-typists had been illegally appointed on the post, hence it was imperative to terminate their services taking aid  
G of Rule 61 of the Staff Service Rules.

(7) The Division Bench of the High Court, by impugned order, while allowing the writ petition, came to the following conclusion:-

"i. The Rule 61 of the Staff Seiection Rules is *ultra-vires* and unconstitutional.

- (ii) The order dated 04.02.2005 passed by the Tribunal vide Annexure.P4 is quashed. A
- (iii) The issue as to the status earned by the writ petitioners is remanded to the M.P. Cooperative Tribunal for adjudication.
- (iv) The M.P. Cooperative Tribunal shall finalise the *lis* within a period of four months from the date of order." B

Questioning the above-said conclusions/directions, as stated earlier, the Bank as well as their employees/writ petitioners filed the above appeals.

(8) We heard Mr. S.K. Gambhir and Mr. S.K. Dubey, learned senior counsel and Mr. Krishna Mohan Shukla, learned counsel for the appellant and Mr. B.S. Banthia and Mr. Ramesh Babu M.R., learned counsel for the respondents. C

(9) Mr. S.K. Gambhir, learned senior counsel, appearing for the Bank, raised the following contentions: D

- (i) The appointment of 58 employees is not only contrary to the directions of the Commissioner Cooperative and Registrar, Cooperative Societies dated 29.6.1994 for holding regular appointments after advertisement etc. but also contrary to Rule 21 of the Rules; E
- (ii) The process adopted was a farce as only these candidates were put to written test and interview in which none of them was unsuccessful. The selection itself was a result of favouritism and nepotism and contrary to the provisions of Arts. 14 and 16 of the Constitution of India; F
- (iii) When the initial appointment itself was illegal and void *ab initio*, such appointments could not be made regular and there was no question to determine their status; G
- (iv) Lokayukt, who has jurisdiction upon enquiry, found that all the appointments were farce, pre-planned and intended to help the favoured persons. Since the said report has not been set aside, the recommendation of the Lokayukt is binding on the Government; H

A (v) The validity of Rule 61 was not called for because the employees were not entitled to any notice and their services deserve to be dispensed with straightaway.

B (10) Mr. S.K. Dubey, learned senior counsel and Mr. Krishna Mohan Shukla, learned counsel, appearing for the employees, raised the following contentions:

- C (i) The High Court having found Rule 61 invalid, there is no need to remit the matter to the Tribunal to find out the status of employees;
- C (ii) Lokayukt has no jurisdiction to go into the appointment of these employees;
- D (iii) Inasmuch as the employees concerned were subjected to written test, interview, executed security bond, successful in their probation period, satisfied Staff Service Rules, the order of the Managing Director terminating their services without notice and enquiry merely based on the direction of the Registrar of the Cooperative Societies, cannot be sustained;
- E (iv) In any event, the Registrar is obliged to examine the report of the Lokayukt before accepting the recommendations made therein;

(11) We have considered the rival contentions and the relevant materials.

F (12) Before analyzing the claim of both the parties, it is useful to refer to relevant provisions of the Staff Service Rules of Madhya Pradesh Rajya Sahakari Bank Maryadit which were approved by the Registrar, Co-operative Societies, M.P. Bhopal and made applicable with effect from 19th November, 1976. Chapter-3 deals with 'Classification of Employees'. Rule 3(b) defines "Permanent Employees" which reads as follows:

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H "3(b) A "Permanent Employee" means an employee who has been appointed as permanent employee or who has been confirmed on a vacant permanent post as such."

(13) Chapter-6 deals with selection of personnel in the Bank. Rules 21 and 22(a), which are relevant, read as follows: A

“21. All vacancies falling within the purview of the employment exchange (Notification of vacancies) Act, 1959 shall be duly notified to the employment exchange concerned. The post/posts may also be advertised in the local or All India Newspapers at the option of the appointing authority. The advertisement should give scales of pay, dearness allowance, the essential and preferential qualifications, age limit etc.” B

“ 22(a) Candidates for the posts in Grade Vth and such other posts shall have to undergo a written test in the manner prescribed by the ‘Staff Committee’. Candidates passing at such test shall be eligible for appointment only after the selection at personal interview by the ‘Selection Committee’ consisting of Chairman of the Bank or his nominee Director, Registrar, Cooperative Societies M.P. or his nominee not below the rank of Joint Registrar, Cooperative Societies, M.P. & Managing Director of the Bank for deciding the selection of employees. C D

Provided further that for the selection of technical staff Chief Engineer of the Bank shall additional member of the committee. It is also provided that when elected board ceases to function, by any reason, Chairman of the Bank shall be replaced by the Officer-In-Charge of the Bank remaining members of the ‘Selection Committee’ will remain the same. The meeting of ‘Selection Committee’ will be presided by the Chairman of the Bank/Officer-In-Charge of the Bank as the case may be. Presence of all the members of the committee shall be necessary for the meeting.” E F

(14) As per Rule 23(a)(iv), employees in Grade III, IV and V, the Selection Authority is Selection Committee and the Appointing Authority is Managing Director/General Manager/Deputy General Manager or any person authorized by the Managing Director. Rule 23(c) makes it clear that appointment made to fill a vacancy of a permanent post shall be made on probation unless otherwise specifically mentioned in the order of G

A appointment given to the employee.

(15) Under Section 55(1) of the Madhya Pradesh Cooperative Societies Act, 1960 (hereinafter referred to as “the Act”), the Registrar of Cooperative Society has been given power to frame Service Rules of the employees working under different cooperative institutions and in furtherance of the powers given under the aforesaid provision, the Registrar has framed the service conditions for the employees of the appellant-Bank, which are called Madhya Pradesh Rajya Sahakari Bank Employees (Terms of Employment and Working Conditions) Rules, 1976. It is also brought to our notice that these Staff Service Rules have since been amended from time to time. We have already referred to the Rules which are applicable to the issues raised in these appeals.

(16) Mr. S.K. Gambhir, learned senior counsel appearing for the appellant-Bank, by drawing our attention to the principles laid down by this Court in various decisions in respect to public appointments, submitted that inasmuch as the entire procedure and the selection made are contrary to the Rules, first those persons are not entitled to any notice in compliance with principles of natural justice and secondly all of them are liable to be sent out without further enquiry. In support of his submission, he relied on the decision of this Court in *Krishan Yadav & Anr. v. State of Haryana & Ors.*, [1994] 4 SCC 165. While considering fraud, nepotism, favouritism and arbitrariness in public appointments, this Court, in paragraphs 19 and 20 of the judgment, laid down the following principles which read as under:

“19. It is highly regrettable that the holders of public offices both big and small have forgotten that the offices entrusted to them are sacred trusts. Such offices are meant for use and not abuse. From a Minister to a menial everyone has been dishonest to gain undue advantages. The whole examination and the interview have turned out to be farcical exhibiting base character of those who have been responsible for this sordid episode. It shocks our conscience to come across such a systematic fraud. It is somewhat surprising the High Court should have taken the path of least resistance stating in view of the destruction of records, that it was helpless. It should

have helped itself. Law is not that powerless.

20. In the above circumstances, what are we to do? The only proper course open to us is to set aside the entire selection. The plea was made that innocent candidates should not be penalised for the misdeeds of others. We are unable to accept this argument. When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place as "Fraud unravels everything". To put it in other words, the entire selection is arbitrary. It is that which is faulted and not the individual candidates. Accordingly we hereby set aside the selection of Taxation Inspectors."

(17) In the case of *Union of India & Ors. v. O. Chakradhar*, [2002] 3 SCC 146, this Court following the law laid down in *Krishan Yadav's* case (supra), upheld the Railway Board's decision to cancel the selection on the ground of fraud committed by the Selection Authorities. This Court, in paragraph 12 of the judgment, concluded as under:

"12. As per the report of the CBI whole selection smacks of *mala fides* and arbitrariness. All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing the final result. In such circumstances it may not be possible to pick out or choose any few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so inter-mixed with the whole process of the selection that it becomes impossible to sort out the right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of

A those cases where it may have been possible to issue any individual  
notice of misconduct to each selectee and seek his explanation in  
regard to the large scale widespread and all pervasive illegalities  
and irregularities committed by those who conducted the selection  
B which may of course possibly be for the benefit of those who have  
been selected but there may be a few who may have deserved  
selection otherwise but it is difficult to separate the cases of some  
of the candidates from the rest even if there may be some. The  
decision in the case of *Krishan Yadav* (supra) applies to the facts  
of the present case. The Railway Board's decision to cancel the  
C selection cannot be faulted with. The appeal therefore deserves to  
be allowed.”

(18) In the case of *A. Umarani v. Registrar, Cooperative Societies  
& Ors.*, [2004] 7 SCC 112, this Court has reiterated the principles to  
D be followed in the matter of public employment. In that case, in the State  
of Tamil Nadu, a large number of employees of Cooperative Societies  
were appointed without notifying the vacancies to the employment  
exchange and without following the other mandatory provisions of the Act  
and the Rules framed thereunder relevant to recruitment. A large number  
E of appointees furthermore did not have the requisite educational  
qualification or other qualification like cooperative training, etc. The  
reservation policy of the State was not followed by the cooperative  
societies. The recruitments were made beyond the permissible cadre  
strength. With a view to condone the serious lapses on the part of the  
F cooperative societies in making such appointments in illegal and arbitrary  
manner, the State Government issued various orders from time to time,  
in terms whereof such appointments were sought to be regularized fixing  
a cut-off date therefor. Latest order was G.O. Ms. No. 86 dated  
12.3.2001 by which the cut-off date was extended up to 11.3.2001 and  
G which sought to regularize appointments made after 8.7.1980 without  
notifying the employment exchange in respect of those employees who  
had completed 480 days of service in two years, purported to be in terms  
of the T.N. Industrial Establishments (Conferment of Permanent Status  
to Workmen) Act, 1981. The legality and validity of the said Government  
H order was challenged before the High Court. The High Court, *inter alia*,

held that the said order shall not operate for regularization of any employee recruited by the cooperative societies in violation of sub-rule (1) of Rule 149 of the T.N. Cooperative Societies Rules, 1988, as amended by G.O. Ms. No. 212 dated 4.7.1995. The primal question for consideration in that appeals before this Court was whether the State had the requisite authority to direct regularization of services of the employees of the cooperative societies by reason of the impugned order. While dismissing the appeals, this Court, in paragraphs 39, 40, 41, 45, 68 and 69, held as under:

“39. Regularisation, in our considered opinion, is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a Statutory Act or the Rules framed thereunder. It is also now well-settled that an appointment made in violation of the mandatory provisions of the Statute and in particular ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularisation. (See *State of H.P. v. Suresh Kumar Verma and Anr.*, [1996] 7 SCC 562):

40. It is equally well-settled that those who come by backdoor should go through that door. (See *State of U.P. and Ors. v. U.P. State Law Officers Association & Ors.*, [1994] 2 SCC 204).

41. Regularisation furthermore cannot give permanence to an employee whose services are *ad-hoc* in nature.

45. No regularisation is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory Rules.

68. In a case of this nature this court should not even exercise its jurisdiction under Article 142 of the Constitution of India on misplaced sympathy.

69. In *Teri Oat Estates (P) Ltd. v. U.T., Chandigarh and Ors.*,

A [2004] 2 SCC 130, it is stated:

B “We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extra-ordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order, which would be in contravention of a statutory provision.”

C (19). In the case of *Indian Drugs & Pharmaceuticals Ltd. v. Workmen, Indian Drugs & Pharmaceuticals Ltd.*, [2007] 1 SCC 408, after referring the decision in *Uma Devi's* case (supra) and other decisions, this Court observed that the appointments made without following the appropriate procedure under the Rules/Government Circulars and without advertisement or inviting application from the open market was held to be in fragrant breach of Arts. 14 and 16 of the Constitution of India. It was further held that the Rules of recruitment cannot be relaxed and the Court/Tribunal cannot direct regularization of temporary appointees *de hors* the Rules, nor can it direct continuation of service of a temporary employee (whether called a casual, *ad hoc* or daily-rated employee) or payment of regular salaries to them.

(20) It is clear that *in the matter of public appointments*, the following principles are to be followed:

- F (1) The appointments made without following the appropriate procedure under the Rules/Government Circulars and without advertisement or inviting applications from the open market would amount to breach of Arts. 14 and 16 of the Constitution of India.
- G (2) Regularisation cannot be a mode of appointment.
- H (3) An appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal. Such illegality cannot be cured by taking recourse to regularization.

- (4) Those who come by back door should go through that door. A
- (5) No regularization is permissible in exercise of the statutory power conferred under Art. 162 of the Constitution of India if the appointments have been made in contravention of the statutory Rules. B
- (6) The Court should not exercise its jurisdiction on misplaced sympathy. B
- (7) If the mischief played so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notice to each selectee. The only way out would be to cancel the whole selection. C D
- (8) When the entire selection is stinking, conceived in fraud and delivered in deceit, individual innocence has no place and the entire selection has to be set aside. D

(21) Keeping in mind the abovementioned principles, we have to consider whether the appointments were made in accordance with the Rules by following the procedure? If our answer is in the affirmative, all appointments have to be upheld and the orders terminating their services are to be quashed. E

(22) By letter dated 24.6.1994 (Annexure P-1), Mr. Balram Prasad Sharma, Managing Director of the Bank requested the Cooperative Commissioner and Registrar, Cooperative Societies, M.P. that against 100 vacant posts of Clerks-cum-Typist, at least 60 posts should be filled up from *ad hoc* appointment of eligible persons so that work of the Bank may be executed efficiently. Pursuant to the said request, Mr. R.N. Sharda, Additional Registrar, by his reply dated 29.6.1994 (Annexure P-2), after considering the request of the Managing Director of the Bank permitted to appoint 40 persons on *ad hoc* basis for six months. In the same proceedings, the Additional Registrar reiterated that the posts should be filled up within six months after issuing legal advertisement and according F G H

A to Rules and keeping in view the reservation under Government Rules.

(23) By letter dated 11.11.1994 (Annexure P-3), the Joint Registrar accorded permission to fill up 20 more posts for six months on *ad hoc* basis under prescribed qualifications.

B (24) Annexures P-1, P-2 and P-3 make it clear that based on the large number of vacancies in the post of Clerk-cum-Typist, and on the request of the Managing Director of the Bank, the Registrar who is empowered to sanction, permitted the Bank to fill up 60 vacant posts by following the procedure.

C (25) Mr. Gambhir, learned senior counsel, submitted that it was the complaint of the Bank that all the above-mentioned vacant posts were filled up without following the procedure prescribed in Rules 21, 22, 23 of the Rules. In other words, according to the Bank, without proper D intimation to the employment exchange and advertisement in the newspapers mentioning all the details and without following the rule of reservation, these persons were appointed and subsequently regularized in the cadre of service. Rule 21 which we have already extracted in the paragraphs (supra) makes it clear that the vacancies should be notified E to the employment exchange. In other words, intimation to the employment exchange and calling for a list of candidates is a mandatory one. On the other hand, the above Rule makes it clear that advertisement F in the local or all India newspapers is at the option of the appointing authority. To put it clear, if there is proper intimation to the employment G exchange regarding the vacancy and a request for eligible candidates, that would satisfy Rule 21. It is the specific case of the Bank that the said Rule was not fully complied with. In support of his submission, learned senior counsel appearing for the Bank, heavily relied on the report of Lokayukta. We shall deal with the complaint, enquiry and ultimate decision by the Lokayukt in the later paragraphs.

H (26) Insofar as the compliance of the Rules is concerned, learned counsel appearing for the employees, by drawing our attention to the statement made by the officers of the Bank before the Additional Registrar, contended that there was no violation of any of the Rules. One Mr. S.

Kumar, former General Manager of the Bank was examined as witness A  
No.2 before the Additional Registrar wherein he specifically deposed to  
the effect that all qualified applicants were invited as per the service rules,  
have to undergo written examination and who found successful were  
required to face interview by the Selection Committee of the Bank based B  
on the report of the Selection Committee. According to him, those persons  
were appointed by the competent authority under the service Rules. In  
respect of a specific question, namely, whether the Bank had written a  
letter to the employment exchange for the names to be sent for the vacant  
posts, he answered "yes, the letter was sent two months before". When C  
he was asked whether any list was received from the employment  
exchange, he answered "No". In respect of another question whether the  
Bank had given advertisement prior to the regular appointment, he  
answered "No, because as per the Rules, it was necessary to write to  
the employment exchange and that was done". When he was confronted D  
with the letter dated 27.04.1996 of the employment exchange wherein it  
is stated that no such letter calling for a list was ever received, he  
emphatically denied and asserted that "false entry is not done by the  
Bank". After verifying the records, he concluded that all those persons  
who possess the necessary qualifications as per the service Rules of the  
Bank alone were given appointments after completing the formalities in E  
accordance with the Rules.

(27) One Mr. A.K.Parsi, then Assistant Manager (Admn.) in the  
Bank deposed before the same authority that from the year 1995, the  
writ petitioners were working with the Bank. According to him, initially F  
they were appointed on *ad-hoc* basis in the post of clerk-cum-typist,  
thereafter, in the month of July, 1995, the employment exchange was  
informed and they were appointed on a regular pay-scale. In the cross-  
examination, after explaining the procedures to be followed, he asserted  
that in the case of the petitioners also those procedures were adopted G  
and prior notice was published. He further reiterated that all the candidates  
who were successful in the interview were appointed and only then the  
Selection Committee selected those persons and all the selected candidates  
were kept under probation for a period of one year. He also informed  
before the Addl. Registrar that all the successful candidates who completed H

A their probation period were asked to execute a bond. He highlighted that as per the bond, the appointees are to serve the Bank at least for three years and in fact deposited Rs.5,000/- as security. He also highlighted that though some of the selectees sought permission to pursue higher studies but permission was not granted due to the undertaking given by them by way of executing a security bond.

(28) The above-mentioned statement of General Manager and Assistant Manager (Admn.) of the Bank cannot be lightly ignored. If we consider the correspondence between the Bank and the Registrar in respect of large number of vacancies, permission by the Registrar, who is none else than the competent authority, coupled with assertion of two responsible officers, it cannot be said that the procedures have not been strictly followed. No doubt, the employment exchange had intimated Lokayukt that there was no such information/request from the Bank, however, the fact remains that there was no such communication to the Registrar and under what circumstance, the same was intimated to the Lokayukt. The above-mentioned particulars show that procedures have been complied with before selecting those persons in the vacant posts. The private respondents/writ petitioners demonstrated that taking note of large number of vacancies in the post of clerk-cum-typist and urgency in filling up the same due to administrative reasons, after getting proper sanction from the competent authority i.e. Registrar, intimating the same to the employment exchange, they were initially appointed for a period of six months on *ad-hoc* basis and thereafter by conducting written examination followed by interview, they were selected. It is also brought to our notice that after completion of probationary period of one year, these persons were posted in the regular cadre. Though few selectees were related to the then Managing Director of the Bank, on this ground alone, their appointments cannot be interfered with. The High Court has lost sight of relevant material aspects and confirmed the order of termination mainly based on the report of the Lokayukt.

(29) Now, let us consider complaints, proceedings and the ultimate decision/recommendation of Lokayukt. The Government of Madhya Pradesh in order to make provision for the appointment and functions of

certain authorities for the enquiry in the allegations against public servants and for matters connected therewith, enacted the M.P. Lokayukt Evam Up-Lokayukt Adhiniyam, 1981. As per definition 2(f) Lokayukt means a person appointed as the Lokayukt under Section 3. Public servant as defined in Section 2(g) reads thus: A

“2. (g) “*Public servant*” means person falling under any of the following categories, namely,- B

(i) Minister;

(ii) a person having the rank of a Minister but shall not include Speaker and Deputy Speaker of the Madhya Pradesh Vidhan Sabha and Neta Pratipaksha; C

(iii) an officer referred to in clause (a);

(iv) an officer of an Apex Society or Central Society within the meaning of clause (t-1) read with clauses (a-1), (c-1) and (z) of Section 2 of the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961); D

(v) Any person holding any office in, or an employee of-

(i) a Government company within the meaning of Section 617 of the Companies Act, 1956; or E

(ii) a Corporation or local authority established by State Government under a Central or State enactment. F

(vi) xxx xxx xxxx”

Sections 7 and 8 speak about matters which may be enquired into by Lokayukt or Up-Lokayukt and matters not to be enquired by the said authorities. Section 10 makes it clear that both Lokayukt or Up-Lokayukt in each case before it, decide the procedure to be followed for making the enquiry and in so doing ensure that the principles of natural justice are satisfied. Section 12 mandates that after enquiry into the allegations, the Lokayukt or Up-Lokayukt is satisfied that such allegation is established, submit a report in writing, communicate his findings and G H

- A recommendations along with the relevant documents, materials and other evidence to the competent authority. Though detailed arguments were advanced pointing out that Lokayukt was not competent to go into the appointments that were made, in view of Section 2(g)(iv), we are of the view that officers of the apex society or central society under M.P. Cooperative Societies Act are amenable and there is no need to elaborate the said aspect in this matter since we are concerned about the validity or otherwise of the appointment of the employees in the Bank. It is seen from the materials that after the appointments of the aforesaid 58 employees, a complaint was lodged with Lokayukt by one Shri N.K. Saxena and the said complaint was investigated by the Lokayukt. Though it is stated that the Lokayukt afforded an opportunity of hearing to the Chairman of the petitioner Bank as well as officials of the Bank and Cooperative Department, admittedly the employees were not afforded notice or opportunity of being heard in the enquiry by the Lokayukt. It is not in dispute that on receipt of the report of Lokayukt, the competent authority forwarded the same to the Registrar of Cooperative Societies who, in turn, without taking a decision or an order by following the service rules or any of the provisions of the M.P. Cooperative Societies Act mechanically directed the Managing Director of the Bank to terminate all the appointees. We are of the view particularly, as observed earlier, though the officers of the apex society under M.P. Cooperative Societies Act are amenable to the jurisdiction of the Lokayukt, the persons concerned who are lower-grade employees i.e. clerks-cum-typists cannot be terminated without following the service rules applicable to them. It is not in dispute that elaborate procedures are to be followed before terminating the service of an employee under the provisions of the M.P. Cooperative Societies Act and the service rules made thereunder. In those circumstances, in the absence of opportunity to the employees, the termination order which was sent at the instance of Commissioner, Cooperative Societies based on the report of Lokayukt cannot be sustained.

(30) In the light of the factual details, while reiterating the above-mentioned principles in the matter of public appointment, we are of the considered view that the authorities were not justified in terminating the

services of these workmen. In view of our conclusion, it is unnecessary to go into the correctness or otherwise of Rule 61 of the Rules and the said issue is left open. We are also of the view and as rightly pointed out by counsel appearing for the employees that there is no need to remit the matter to the Registrar or any other authority for determination of their status. The said direction of the High Court is also liable to be set aside.

(31) In the light of the above discussion, we pass the following order:-

- (i) The conclusion with regard to Rule 61 of the Staff Selection Rules is not warranted and the issue is left open;
- (ii) The decision of the Bank as well as Registrar of the Cooperative Societies terminating the services of the employees based on the report of the Lokayukt cannot be sustained and the same is liable to be set aside.
- (iii) In view of our above conclusion, there is no need to remand the issue to the Registrar or any other authority for adjudication with regard to the status earned by these employees, consequently the said direction of the High Court is also set aside.

(32) In the result, Civil Appeal No. 4481 of 2007 arising out of SLP (C) No. 12236 of 2006 filed by the Bank is disposed of on the above terms. Civil Appeal No. 4483 of 2007 arising out of SLP (C) No. 19499 of 2006 and Civil Appeal No. 4482 of 2007 arising out of SLP (C) No. 3979 of 2007 filed by the employees are allowed. However, there shall be no order as to costs.

D.G.

C.A. 4481/2007 disposed of,  
C.A. No. 4483/2007 and C.A. 4482/2007 allowed.