

Swaran Lata vs Union Of India & Ors on 16 January, 1979

PETITIONER:

SWARAN LATA

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT 16/01/1979

BENCH:

ACT:

Constitution-Art, 309, proviso-If obligatory on the part of the Government to make rules of recruitment before a service could be constituted or post created or filled.

Interpretation of statutes-States Reorganisation Act 1966-S. 84-Scope of -Section If an incidental provision-Effect of incidental provision after its purpose was served.

Administrative directions issued by the Central Government for implementing scheme of reorganisation of services-If could circumscribe the powers of State Government-Nature of instructions issued.

Service Commission-If has power to relax essential qualifications in selecting a candidate for a post.

Words and phrases: "mainly"-Meaning of.

Mala fides-Burdens of proof-On whom it lies.

HEADNOTE:

Section 84 of the States' Reorganisation Act, 1966 empowered the Central Government to issue directions to the State Governments of Punjab and Haryana and to the Administrator of the Union territory of Chandigarh "for the purpose of giving effect to the foregoing provisions of this part (of the act)". For filling up the different posts under the control of the Chief Commissioner, Chandigarh, the Government of India issued instructions that the posts should be filled up by deputation mainly from the Punjab and Haryana State cadres, and that the officer whose services were sought to be borrowed should have been holding a post, the scale of pay of which was equivalent to the scale of pay of the post in the Chandigarh Administration for which the officer was to be selected on deputation.

At the request of the Chandigarh Administration the Government of Haryana forwarded a panel of three names, including that of the appellant, for appointment on deputation to the post of Principal of a Women's Technical Institute: The post carried

a scale of pay of Rs. 350-900. Although the appellant was junior to the other two candidates, she was selected and temporarily appointed to the post since at that time she was on a pay scale of Rs. 350-900 in Haryana. Since in the meantime she had been offered a post in Delhi she left the post in Chandigarh. All efforts to get a suitable candidate either from the State of Haryana or of Punjab having proved unsuccessful the Chandigarh Administration requested the Union Public Service Commission to select a candidate for the post.

None of the candidates that applied for the post satisfied all the prescribed qualifications for the post. Therefore, the UPSC relaxed one or the other

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qualification in respect of each of the candidates and eventually selected respondent No. 6, for the post. The appellant was also one of the candidates called for interview; but she was not selecteet.

Allowing the appellant's writ petition a single Judge of the High Court struck down the appointment of respondent no. 6 mainly on the ground that the presence of the Director of Technical Education representing the Chandigarh Administration in the interview board vitiated her appointment inasmuch as he was actuated by bias against the appellant. But on appeal a Division Bench reversed the order of the single Judge holding that the allegation of mala fides or bias had not been made out by the appellant against the representative of the Chandigarh Administration in the intervieww board.

The appellant, on appeal to this Court contended that (1) the post being a deputation post in terms of instructions issued by the Government of India under s. 84 of the States' Reorganisation Act, the Chandigarh Administration had no authority to fill up the post by direct recruitment and (2) the Union Public Service Commission had no power to relax the essential qualifications of the candidates wihout prior concurrence of the Chandigarh Adiministration.

Dismissing the appeal,

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HELD: 1 (a) The post of Principal of the Institute was not a "deputation post" and, theefore, the appooointment of respondent no. 6 to that post by direct recruitment was not invalid.[962 D]

(b) It is not obligatory under the proviso to Art. 309 to make rules of recritment before a service could be constituted or a post created or filled. The State Government has executive power in relation to all matters in respect of which the legislature of the State has power to make laws. There is nothing in the terms of Art. 309 which abridges the power of the executive to act under Art. 162 of the Constitution without a law. The same principle underlies Art. 73 in relation to the executive power of the Union.

[961 G-H]

In the instant case since there were no rules requiring the Administration to fill up the post by deputation, the Administration had the option either to make direct recruitment or to take a person on deputation from the State of Punjab or Haryana. [962 B]

B. N. Nagarajan v. State of Mysore, [1966] 3 SCR 682; T. Cajee v. N. Jormanik Siem & Anr., [1961] 1 SCR 750; Sant Ram Sharma v. States of Rajasthan & Anr., [1968] 1 SCR 111; referred to.

(c) Moreover the Chandigarh Administration did all that it could, for selecting a candidate on deputation from either Punjab or Haryana, but could not succeed. It cannot, therefore, be asserted that there was any breach of instructions issued by the Central Government under s. 84 of the Act, even assuming they were applicable. [962 E; 964 B;]

(d) The power of the Chandigarh Administration cannot be said to be circumscribed by the terms of the directions issued by the Central Government

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under s. 84 of the Act. The instructions issued were supplemental incidental or consequential to the provisions for the reorganisation of States. [959 A]

(e) The meaning of the word "mainly" used in the instruction issued by the Government of India must, in the context, mean "substantially", "as far as practicable" or "so far as possible". [959 C]

(f) The directions issued by the Central Government were only for the limited purpose of implementing the scheme for the reorganisation of services. When the process relating to integration of services as envisaged by the supplemental, incidental or consequential provisions for reorganisation of services under a law was completed an incidental provision like s. 84 necessarily ceases to have effect. Such power is only kept in suspended animation till the process of reorganisation of services is completed and once the integration of services was finalised there is no reason for a transitory, consequential or incidental provision like s. 84 to operate in perpetuity. [959 H]

Jagtar Singh v. State of Punjab & Ors. [1972] 1 SCC 171; referred to.

2(a) There was no statute or regulation having the force of law by which any qualifications were prescribed for the post. No rules were framed to regulate the recruitment and conditions of service of the post. It was, therefore the exclusive power of the Administration, to prescribe the essential qualifications for direct recruitment. The qualifications were prescribed in consultation with the Commission. [967 H]

(b) The appellant could not be heard at this stage to say that the Union Public Service Commission had no power to relax any of the essential qualifications. Her assertion in

the writ petition was that though the UPSC had the power to relax the qualifications it could not be exercised arbitrarily. [965 C]

(c) The Commission acted well within its powers in relaxing the qualification of the candidates called for interview and in making the appointment, the Administration ratified the Commission's action. [966 A]

(d) The essential qualifications were prescribed by the Administration in consultation with the Commission and while issuing the advertisement the Commission had reserved to itself the power to relax the qualifications in a suitable case. Where qualifications for eligibility were not prescribed by rules, broad decisions as to the method of recruitment are taken in consultation with the Commission. This requirement was fulfilled in this case. The Administration was fully aware that the Commission had reserved to itself the power to relax the essential qualifications. [965 G-H]

Union of India & Ors. v. S. B. Kohli & Anr., [1973] 3 SCR 117; Omprakash v. The State of M. P. & Anr., AIR 1978 MP 59; Maharashtra State Electricity Board Engineers' Association, Nagpur v. Maharashtra State Electricity Board, AIR 1968 Bom. 65; held inapplicable.

(e) The appellant could not approbate and reprobate. She knew fully well that, under the terms of the advertisement, the Commission had reserved to itself the power to relax any of the essential qualifications. Because she had not been selected she could not complain either that direct recruitment

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through the UPSC was invalid or that the Commission had usurped the functions of the Chandigarh Administration in relaxing the essential qualifications. [972 D]

(f) No relaxation in essential qualifications can be made after an advertisement had been issued and persons possessing the qualifications advertised for, have submitted their applications. If a relaxation has to be made a duty is cast on the Commission to re-advertise the post. In the present case, however, the advertisement itself contained the relaxation clause and nothing prevented a candidate with the requisite qualifications from making an application. [972 H]

3(a) The burden of establishing mala fides lies very heavily on the person alleging them. The Court would be justified in refusing to carry on an investigation into allegations of mala fides if necessary particulars of the allegation were not given in the writ petition. [970 B]

(b) There was nothing on record to substantiate the appellant's general and vague allegations as to the mala fides or bias on the part of the Director of Technical Education or that he influenced the members of the Selection Committee in any manner so as to vitiate the selection. A representative of the Chandigarh Administration was

associated as an expert member to the limited extent of apprising the Chairman of the Selection Committee as to the nature of duties to be performed by the selected candidate. There is nothing wrong in the Commission taking such expert advice. [970 H]

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 628 of 1978.

Appeal by Special Leave from the Judgment and Order dated 26-5-77 of the Delhi High Court in L.P.A. No. 34 of 1976.

P. P. Rao, N. D. Garg and T. L. Garg for the Appellant. H. L. S. Lal and Ashok Grover for Respondents 3 and 5. S. N. Anand and M. N. Shroff for Respondent No. 4. S. C. Gupta and Ramesh Chand for Respondent No. 6. C. M. Nayar for Respondent No. 7.

The Judgment of the Court was delivered by SEN, J. This appeal, by special leave, directed against a judgment of the Delhi High Court dated May 26, 1977, in its appellate jurisdiction reversing the judgment and order of a Single Judge of that Court dated February 13, 1976 mainly raises the question whether the appointment of the respondent No. 6, Smt. Prem Lata Dewan by the Chandigarh Administration to the post of Principal, Government Central Crafts Institute for Women, Chandigarh, by direct recruitment through the Union Public Service Commission was invalid, as being contrary to the directions issued by the Central Government under s. 84 of the Punjab Reorganisation Act, 1966.

The principal point in controversy in the appeal is whether the post of Principal of the Government Central Crafts Institute for Women, Chandigarh in the pay scale of Rs. 350-900 was a 'deputation post' and required to be filled in by the Chandigarh Administration only by an officer on deputation drawing an equivalent scale from the States of Haryana and Punjab or could also be filled up by appointment of a suitable candidate by advertising the post through the Union Public Service Commission.

Three subsidiary questions also arise in the appeal, namely (1) whether the Union Public Service Commission had, in fact, exceeded its power by usurping the functions of the newly created Union territory of Chandigarh by relaxing the essential qualifications of the candidates while recommending the name of respondent No. 6, Smt. Prem Lata Dewan for appointment to the post of Principal, and thereby altered the qualifications prescribed by the Chandigarh Administration to regulate recruitment to that post; (2) whether the appointment of respondent No. 6, Smt. Prem Lata Dewan by the Chandigarh Administration to the post of Principal was illegal inasmuch as, she did not possess the requisite essential qualifications, if any, prescribed for the post in question; and (3) whether the proceedings of the Selection Committee dated April 23, 1975 culminating in the selection of respondent No. 6, Smt. Prem Lata Dewan as the candidate most suitable for appointment to the post of Principal, were vitiated because Dr. O. S. Sehgal, Director, Technical

Education, Chandigarh assisted the Selection Committee in its deliberations during the interview, on account of his bias, if any, against the appellant.

The main argument advanced by the counsel for the appellant, can be conveniently considered under two heads:

The first branch of his contention is, that in terms of the instructions issued by the Central Government under s. 84 of the Punjab Reorganisation Act, 1966, the post of Principal of the Institute was 'deputation post' and, therefore, the Chandigarh Administration had no authority to fill up the post by direct recruitment through Union Public Service Commission. The other branch of the counsel's contention is that the Union Public Service Commission had no power to relax the essential qualifications of the candidates to be selected at the interview without the prior concurrence of the Chandigarh Administration.

There is no warrant for the contention that the power of the Chandigarh Administration in relation to the mode of filling up the post in question, which admittedly is under the control of the Administrator, Chandigarh Administration, stands circumscribed by the terms of the directions issued by the Central Government under s. 84 of the Act.

The decision must turn on a construction of the instructions issued on November 4, 1966 by which the Government of India, Ministry of Home Affairs, which consequent upon the amendment of the Government of India (Allocation of Business) Rules, 1961 by Order of the President of India dated October 30, 1966 was made responsible for the work of the Union territory of Chandigarh. These instructions were issued on the basis that personnel for the Union territory of Chandigarh would be provided on deputation by the two States of Punjab and Haryana. The said instructions, so far material, read as follows:

"Except for the department of (i) Printing and stationery (ii) Architecture and (iii) Post Graduate Institute of Medical Education and Research, Chandigarh, the posts in the other departments under the control of the Chief Commissioner, Chandigarh will be filled up by deputation mainly from the Punjab/Haryana State Cadres.

In respect of the above-mentioned departments, the staff will be taken en bloc by the Chandigarh Union territory Administration. A committee consisting of the representatives of the Governments of Punjab, Haryana, the Chandigarh Union territory Administration and the Ministry of Home Affairs has been constituted to recommend absorption of personnel against posts in the Chandigarh Union territory Administration, from the Punjab/Haryana State cadres on permanent basis."

The aforesaid communication also conveyed the order of the Government of India, Ministry of Home Affairs, sanctioning the creation and continuance of "existing posts" in the Union territory of

Chandigarh from November 1, 1966.

These instructions were in conformity with the earlier decision of the Government of India, Ministry of Home Affairs conveyed by the letter of the Chief Secretary to the Government of erstwhile State of Punjab dated August 9, 1966 stating that the Government had set up a committee headed by Sri V. Shanker, I.C.S., for the finalisation of the proposals of the Departmental Committees in regard to the allocation of the personnel to the reorganised States of Punjab and Haryana and the Union territory of Chandigarh. In regard to the Union territory of Chandigarh, the decision of the Government of India was in these terms:

"It may be presumed that personnel for the Union territory of Chandigarh will be provided on deputation by the two States of Punjab and Haryana."

The aforesaid instructions issued under s. 84 of the Act were supplemental, incidental or consequential provisions for the reorganisation of the States. The instructions were binding on the State Governments of Punjab and Haryana as also on the Chandigarh Administration in the matter of integration of services: *Jagtar Singh v. State of Punjab & Ors.*(1) The key to the interpretation of the aforesaid instructions issued under s. 84 of the Act, obviously lies in the word 'mainly'. According to the ordinary plain meaning, the word "mainly" must, in the context, mean "substantially", "as far as practicable" or "so far as possible." In *Shorter Oxford Dictionary*, 2nd Edn., vol. 1, p. 1189, the meaning given is: "For the most part; chiefly, principally". In *Webster's New International Dictionary*, 2nd Edn., vol. III, p. 1483, more or less the same meaning is given: "Principally, chiefly, in the main".

It seems to us that for a proper determination of the question, it is necessary first of all to formulate as clearly as possible the precise nature and the effect of the directions issued by the Central Government under s. 84 of the Punjab Re-organisation Act, 1966, which reads:

"84. Power of Central Government to give directions: The Central Government may give such directions to the State Governments of Punjab and Haryana and to the Administrators of the Union territories of Himachal Pradesh and Chandigarh as may appear to it to be necessary for the purpose of giving effect to the foregoing provisions of this Part and the State Governments and the Administrators shall comply with such directions."

The use of the words "for the purpose of giving effect to the foregoing provisions of this Part" clearly curtails the ambit of the section. The directions that the Central Government issues under the section are only for a limited purpose, i.e., for the implementation of the scheme for the re-organisation of services. When the process relating to integration of services as envisaged by the supplemental, incidental or consequential provisions for re-organisation of services under a law made by the Parliament in exercise of its power under Articles 2, 3 and 4 of the Constitution is completed, such an incidental provision like s. 84 necessarily ceases to have effect.

While it is not disputed that the power to regulate matters relating to services under the Union of India and under the various States specified in the First Schedule to the Constitution is an exclusive function of the Union and the States under Entry 70, List I and Entry 41, List II of Seventh Schedule read with Article 309 and normally, therefore, it is the exclusive power of the Union and the States to deal with their services either in exercise of their Legislative functions or rule-making powers, or in the absence of any law or rules, in exercise of their executive power under Article 73 and Article 162 of the Constitution, which is co-extensive with their legislative powers to regulate recruitment and conditions of service, nevertheless it is strenuously urged that this power of the Union and of the States which embraces within itself the power to regulate the mode of recruitment of services must yield to the supplemental, incidental or consequential directions issued by the Central Government in relation to the setting up of services in a newly formed State under a law made by the Parliament relating to Article 3 of the Constitution, in the context of reorganisation of States. To put it more precisely, it is argued that the newly formed State is completely divested of its power to deal with its services. In *Union of India v. P. K. Roy & Ors.*⁽¹⁾ this Court touched upon the subject, but expressed no final opinion since the question did not directly arise.

After the process of integration of services is finalized in conformity with any law made by the Parliament referred to in Articles 2 or 3 of the Constitution, the supplemental, incidental and consequential provisions contained therein, which, by reason of Article 4 have the effect to divest the newly formed State of its power to deal with its services, would no longer operate. Such power is only kept under suspended animation till the process of re- organisation of services is not completed. Once the integration of services in a newly formed State is finalized, there is no reason for a transitory, consequential or incidental provision like s. 84 of the Act to operate in perpetuity.

For the reasons already stated, there is no basis for the submission that the supplemental, incidental or consequential provisions which the Parliament is competent to make while enacting a law under Articles 2 or 3 have an overriding effect for all times. On the plain words of Article 4 of the Constitution, a provision like s. 84 of the Act, or the directions issued thereunder are only supplemental incidental or con-

sequential to the scheme of re-organisation of services, which is consequential upon the re-organisation of a State. They cannot be given a wider effect than what is intended.

It may incidentally be mentioned that on November 1, 1966, i.e., on the appointed day under s. 2(b), the President of India issued an order, in exercise of the powers conferred by the proviso to Article 309 of the Constitution directing that the Administrator of the Union territory of Chandigarh shall exercise the power to make rules in regard to the following matters namely:

- (i) the method of recruitment to the Central Civil Services and posts (Class II, Class III and Class IV) under his administrative control in connection with the affairs of the Union territory of Chandigarh;
- (ii) the qualifications necessary for appointment to such services and posts; and

(iii) the conditions of service of persons appointed to such services and posts for the purpose of probation; confirmation, seniority and promotion:

Provided that the power conferred by this notification shall not be exercisable in respect of such services and posts as are borne on a cadre common to two or more Union territories."

The Administrator in exercise of the powers conferred by the aforesaid order of the President, framed no rules to regulate recruitment and conditions of service of the post of Principal, Government Central Crafts Institute for Women, Chandigarh, nor were any rules framed prescribing the qualifications necessary for appointment to such posts.

It is not obligatory under the proviso to Article 309 to make rules of recruitment etc. before a service can be constituted, or a post created or filled. The State Government has executive power in relation to all matters in respect to which the Legislature of the State has power to make laws. It follows from this that the State Government will have executive powers in respect of List II, Entry 41 of the Seventh Schedule: 'State Public Services': *B. N. Nagarajan v. State of Mysore*. (1) There is nothing in the terms of Article 309 of the Constitution which abridges the power of the executive to act under Article 162 of the Constitution without a law. The same view has been taken by this Court in *T. Cajee v. U. Jormanik Siem & Anr.* (1) and *Sant Ram Sharma v. State of Rajasthan & Anr.* (2) The same principle underlies Article 73 of the Constitution in relation to the executive power of the Union.

There are thus no rules and regulations which require the Chandigarh Administration to fill up by deputation the vacancy in the post of the Principal, Government Central Crafts Institute for Women, Chandigarh. The Chandigarh Administration had, therefore, the option to either directly recruit persons to be appointed to the post through Union Public Service Commission or to request either the State of Punjab or the State of Haryana to send the names of suitable persons whom the Chandigarh Administration might be willing to appoint. It must, accordingly, be held that the post of principal of the Institute was not a "deputation post" and, therefore, the appointment of respondent No. 6, Smt. Prem Lata Dewan by the Chandigarh Administration to that post, by direct recruitment through the Commission was not invalid.

Even assuming that the directions issued by the Central Government under s. 84 of the Act were binding on the Chandigarh Administration, it is clear that there is no breach thereof. From the correspondence that passed between the Chandigarh Administration and the Government of Haryana, there can be no doubt whatever that the Chandigarh Administration made their utmost endeavour to get a suitable person on deputation for appointment as Principal of the Institute. A long correspondence on the subject ensued and eventually the Government of Haryana by its letter dated

July 7, 1974, informed the Chandigarh Administration that it was not possible to relieve any woman officers in the grade of Rs. 350-900 from the Industrial Training Department except that of Smt. Champa Malhotra who was facing an inquiry, with a request that the appellant should instead be appointed. The Government of Haryana was obviously wrong in insisting upon the appointment of an officer in the scale of Rs. 300-500. This could not obviously be done as it would be contrary to the instructions of the Government of India, Ministry of Home Affairs dated August 16, 1971 that an officer cannot be appointed on deputation to a post that carried a higher grade of pay in the Union territory of Chandigarh. Thus, the post of Principal in the pay scale of Rs. 350-900 could only be filled by a person on deputation who manned a post the scale of pay of which was equivalent to the scale of pay of the Principal i.e. Rs. 350-900.

It appears that the entire question was re-examined by the Chandigarh Administration. The Director, Technical Education by his letter dated October 9, 1974 addressed to the Home Secretary, Chandigarh Administration stated that the qualifications prescribed by the Government of India in the Training Manual for the post of Principal in such institutions were as under:

1. Degree or its equivalent in Mechanical Engineering or Electrical Engineering will be preferred.
2. In the case of degree holder, practical experience of one year in a reputed concern or in a training institute will be desirable.
3. In the case of Diploma holders, practical experience of 5 years in a reputed concern or in a training institute will be desirable.

Further, he mentioned that there was no institution similar to the Government Central Crafts Institute for Women, Chandigarh either in the State of Punjab or in the State of Haryana. There were only Government Industrial Schools for girls which were still in the process of being developed. These institutions were headed by Head-Mistresses Principals in the non-gazetted scale of Rs. 300-500. He therefore, rightly pointed out that the posts of Assistant Directresses in the States of Punjab and Haryana were equivalent to the post of Principal of the Institute, as they also carried the scale of Rs. 350-900 and that throughout the Chandigarh Administration had been appointing Principal of the Institute only from the cadre of Assistant Directresses.

In response to Government of Haryana's letter dated September 27/30, 1974, the Chandigarh Administration accordingly wrote on October 11/14, 1974 giving detailed reasons why it was not possible to take the appellant on deputation as Principal because on her reversion from her current assignment with the Delhi Small Industries Development Corporation she would be posted as Head Mistress in the scale of Rs. 300-500 whereas the scale of the Principal's post at the Institute was Rs. 350-900 inasmuch as the Government of India's instructions forbid giving a deputationist a scale of pay which she is not already holding in her parent State and also because it was of the opinion that

looking to her past performance as Principal during her short stay, it was considered that she would not be a suitable person to be appointed as Principal. The Chandigarh Administration also pointed out that they were still prepared to take back Smt. Champa Malhotra as Principal of the Institute despite the inquiry against her. But, the Government of Haryana maintained complete silence. It disdained from replying to this letter or from relieving Smt. Champa Malhotra.

It would, therefore, appear that right from March 7, 1974 till August 14, 1974 when the Chandigarh Administration forwarded requisition to the Union Public Service Commission to advertise the post for direct recruitment, i.e. for nearly 6 months, the Government of Haryana took no action in the matter. During this period, it just persisted in its stand in forwarding a panel of names of officers carried on the scale of Rs. 300-500 and when it was fully apprised about the true legal position by the Chandigarh Administration expressing their inability to take an officer working in a lower grade or to take back the appellant as Principal of the Institute, it still insisted in sponsoring her name, although this could not be done. This attitude of the Government of Haryana was just inexplicable. Nevertheless, the Chandigarh Administration by their letter dated August 20, 1974, i.e., just within six days of the requisition did what was expected of them and duly informed the Government of Haryana of their decision to recruit a Principal through the Commission and requested that it may direct the eligible officers from Haryana to apply for the post. In response, the Government of Haryana by its letter dated September 27/30, 1974 registered a protest staking a claim as if the post of Principal of the Institute was a Haryana-quota post, i.e., it could be filled in only by an officer on deputation from the State of Haryana. In spite of repeated letters sent by the Chandigarh Administration, the Government of Punjab also did not send up the name of a suitable officer. In view of these circumstances, it cannot be asserted that there was any breach of the instructions issued by the Central Government under s. 84 of the Act, if at all they were applicable.

Viewed from any angle, we must hold that the Chandigarh Administration was within their rights in making the appointment to the post of Principal, Government Central Crafts Institute for Women, Chandigarh by direct recruitment through the Union Public Service Commission. Thus the appointment of respondent No. 6, Smt. Prem Lata Dewan as Principal of the Institute was not invalid as being contrary to the directions issued by the Central Government under s. 84 of the Act inasmuch as the said directions were not applicable and also because there was no breach thereof, if at all they applied.

That leads us to the other branch of the appellant's contention, and the question arises whether in the case of this particular post could the Union Public Service Commission have relaxed the essential qualifications ? The appellant has nowhere alleged in the writ petition that the Union Public Service Commission had no authority to relax the essential qualifications. On the contrary, she avers in para 21 thereof:

"Though the Union Public Service Commission has the power of relaxing the qualifications but the said power can not be exercised arbitrarily."

In view of this admission, she cannot be heard to say that the Union Public Service Commission had not such power. Since however the point was argued at length, we think it necessary to deal with it.

It is undisputed that there is no statute or regulation having the force of law, by which any qualifications are prescribed for the post of Principal of the Institute. Nor has the Administrator framed any rules to regulate the method of recruitment to such post, or laying down the qualifications necessary for appointment to the post or the conditions of service attached to the post. The Chandigarh Administration accordingly while sending up its requisition dated August 14, 1974 to the Union Public Service Commission, suggested certain essential and desirable qualifications, keeping in view the qualifications prescribed by the Government of India in the Training Manual quoted above. The nature and duties of the post of Principal of the Institute are primarily administrative in nature, but the qualifications prescribed were, however, essentially technical. The Commission, therefore, by its letter dated September 16, 1974 returned the requisition to the Chandigarh Administration, with the observation that they should lay down the qualifications keeping in view the nature and duties of the post. The Chandigarh Administration accordingly on January 2/4, 1975 forwarded a fresh requisition revising the qualifications for the post i.e, including 'Administrative Experience for three years'. Thereafter, the Commission on February 1, 1975 advertised the post with the essential qualifications as suggested, with a relaxation clause. It will, therefore, appear that in the instant case, the essential qualifications were prescribed by the Chandigarh Administration in consultation with the Commission and also that the Commission had in the advertisement issued, reserved to itself the power to relax the qualifications in case of suitable candidates. Where qualifications for eligibility are not prescribed by rules, broad decisions as to the method of recruitment are taken in consultation with the Commission. This require-

ment was fulfilled in this particular case. The Chandigarh Administration was fully aware that the Commission had reserved to itself the power to relax the essential qualifications. The Commission, therefore, acted within its powers in relaxing the qualifications of the candidates called for interview. In fact, the Chandigarh Administration ratified the action of the Commission in making the appointment. The appointment of respondent No. 6, Smt. Prem Lata Dewan cannot, therefore, be challenged on the ground that either the Commission had no power to relax the qualifications or that she did not possess the minimum qualifications prescribed for the post.

It is, however, strenuously urged on the strength of the decision of the Madhya Pradesh High Court in Omprakash v. The State of Madhya Pradesh & Anr.(1) that the Union or the State Public Service Commissions cannot select a candidate who does not possess the qualifications prescribed. We do not see how this decision is of any avail to the appellant. On the contrary, while laying down that the Government has to fill up posts by appointing those who are selected by the Public Service Commission and must adhere to the order of merit in the list of candidates sent by the Commission, it observed:

"It is entirely in the wisdom and discretion of the Commission what mode or method it would adopt. That is subject to statutory provisions, if any. Where minimum qualifications for eligibility are prescribed by a statute or by the Government, the Public Service Commission cannot select a candidate who does not possess those qualifications. However, the Public Service Commission is free to screen the applicants, classify them in various categories according to their plus qualifications and/or experience, and call for interview only those candidates who fall within those

categories, eliminating others who do not satisfy these criteria."

This decision, in our opinion, instead of supporting the appellant goes against her.

We are of the view that the decision of this Court in *Union of India & Ors. v. S. B. Kohli & Anr.*(2) and that of the Bombay High Court in *Maharashtra State Electricity Board Engineers' Association, Nagpur v. Maharashtra State Electricity Board*(3) are both distinguishable on facts. In *S. B. Kohli's* case, this Court was concerned with interpretation of items 2 and 3 of Annexure I to the Second Schedule of the Central Health Service Rules, 1963, as amended, which prescribed "a post-graduate degree in the concerned speciality", and the question was whether the qualification of F.R.C. 5 satisfied the qualification prescribed for the post of Professor of Orthopaedic Surgery. It was held that the Regulations framed by the Medical Council required that in addition to the general F.R.C. 5, a Surgeon must have a diploma in Orthopaedics before he could be appointed a Professor, Reader or Lecturer in Orthopaedics. It was said that to hold otherwise, would mean that a person who has the qualification of F.R.C. 5 would be deemed to be specialised in Orthopaedics, without his having any such qualification.

In the *Maharashtra State Electricity Board's* case, (supra) the Board, which is a statutory Corporation, made the *Maharashtra State Electricity Board (Classification and Recruitment) Regulations, 1961*, in exercise of its powers under s. 79 of the *Electricity Supply Act, 1948*. Regulation 8 invests the power of modification of minimum qualifications or experience required for the various categories of posts only in the Board. Regulation 21, however, confers power on the Selection Committee to recommend, in deserving cases, relaxation of the age limit and educational or other qualifications. The Board issued an advertisement inviting applications for the post of Executive Engineer (E&M). The advertisement nowhere mentioned that the minimum requirements of qualifications and experience were liable to be relaxed. This resulted in denial of equal opportunity to the departmental candidates who could have applied when the post was advertised, if it was known that the qualifications and experience, as advertised, were not rigid and liable to relaxation. The High Court accordingly struck down the direct recruitment of a person to the post of Executive Engineer (E&M) since the advertisement effectively prevented the departmental candidates from applying for the post, because their period of experience was less than the advertised one, holding that, in effect, this was tantamount to a denial of equal opportunity to them in violation of Article 16(1). In our view, the decision turned on its own facts.

In the present case, as already pointed out, there was no statute or regulation having the force of law by which any qualifications were prescribed for the post of Principal. There were also no rules framed to regulate recruitment and conditions of service of the post under the proviso to Article 309 of the Constitution. It was the exclusive power of the Chandigarh Administration in the absence of any law or rules, to prescribe the essential qualifications for direct recruitment to the post, and accordingly the qualifications were prescribed in consultation with the Commission. The Commission while advertising the post, had reserved to itself the power to relax the qualifications in deserving cases. It is not that the Commission had relaxed one of the essential qualifications viz. qualification No. (ii) 'Diploma in Technology of three years duration', in the case of respondent No. 6 alone. There were three other candidates who were also interviewed in relaxation of essential

qualifications Nos. (ii) and (iv). The affidavit of Dr. A. C. Mathai, Under Secretary in the Union Public Service Commission shows that in the case of respondent No. 6, the Commission relaxed essential qualification No. (ii), as under :

"Requirement of Diploma of Industrial Training of two years' duration".

It is noteworthy that essential qualification No. 2, as advertised was 'Diploma in Technology of three years' duration or Diploma of Industrial Training of two years' duration with one year's teachers training/C.T.I.' Indeed, respondent No. 6 had essential qualification No. 2. The word 'or' made the two clauses disjunctive, and they were in the alternative. Respondent No. 6 besides being a graduate in Arts also held a three years' Diploma in Home Science from Lady Irwin College, Delhi.

It is a matter of common knowledge that Home Science, in some countries called 'domestic economics' or 'domestic science', is a broad field of learning integrating the subject-matters of several disciplines to form a body of knowledge focussed on the problems of the home and their living. It is concerned with all phases of home life and includes the following subjects : child development and family relationships; clothing, textiles and related arts; family economics and home management; food and nutrition; housing and house management. Shorter Oxford Dictionary, 3rd ed., Vol. II, p. 2253 gives the meaning of 'Technology' as :

"a discourse or treatise on an art or arts; the terminology of a particular art or subject; the scientific study of children."

In Webster's New International Dictionary, 2nd ed., vol. IV, p. 2590 apart from giving it the meaning of "industrial science", also conveys to it the meaning :

"any science or systematic knowledge of the industrial arts."

The Random House Dictionary of the English Language, p. 1349 gives some of the meanings of the term as:

"the application of knowledge for practical ends, as in a particular field : educational technology; the terminology of an art, science, etc.; technical nomenclature."

Though in its primary sense it is true that the word, 'Technology' involves a technical process, invention, method of the like, in the broader sense it embraces non- engineering related curricula pertaining to applied and graphic arts, education, health-care, nutrition, etc. i.e. it includes technique or professional skill in any of the subjects enumerated above. The expression 'Diploma in Technology' is, therefore, wide enough to include a Diploma in Home Science.

In S. B. Kohli's case (supra) this Court observed:

"This argument was based on the provision in the Annexure I to the Second Schedule which states that the qualifications are relaxable at Commission's discretion in the

case of candidates otherwise well qualified. That is no doubt so. But the discretion is given only to the Union Public Service Commission in cases of direct recruitment and not to the Departmental Promotion Committee in cases of promotion. As that is the intent of the law it has to be given effect to."

It was then observed:

"Moreover, the Union Public Service Commission when it proceeds to fill up a post by direct recruitment does so by calling for applications by extensive advertisements and it is but reasonable that if on a consideration of all those applications it finds that persons possessing the prescribed qualifications are not available but there are persons otherwise well qualified, they may be selected."

The Union Public Service Commission was, therefore, perhaps not wrong in selecting respondent No. 6 as a suitable candidate for the post.

The next question for consideration is whether there was bias. We are unable to hold from the material on record that there was any bias on the part of Dr. O. S. Sehgal Director, Technical Education, Chandigarh or that he influenced the members of the Selection Committee in any manner, so as to vitiate the selection of respondent No. 6. In our view, the allegations in the writ petition are not sufficient to constitute an averment of malafides or bias on the part of either the Chandigarh Administration or in particular against Dr. O. S. Sehgal sufficient to vitiate the appointment of respondent No. 6. No malafides as such are imputed against the Union Public Service Commission. The Court would be justified in refusing to carry on investigation into allegations of malafides, if necessary particulars of the charge making out a prima facie case are not given in the writ petition. The burden of establishing malafides lies very heavily on the person who alleges.

The Division Bench has pointed out, and we think rightly so, that the principles laid down in Kraipak's case (*supra*) were not applicable in the facts and circumstances of the present case. It rightly observes that no question of malafides or bias arises as it is clear from the letter written by Dr. O. S. Sehgal dated October 9, 1974 to the Home Secretary, Chandigarh Administration wherein he had not said a word against the appellant. All that he said in his capacity as Director, Technical Education was that on account of the failure to appoint a Principal for quite sometime the Institute was in a bad condition, and that although he had given charge to the Vice Principal, she did not prove effective, suggesting that the Government of Haryana should be requested to lend the services of Smt. Champa Malhotra as he was prepared to take her back as she had worked for a long time as Principal, in order that the work of the Institute should not suffer. The whole tenor of the document shows that it was written in the best interests of the institution. He as the Director of Technical Education was solely responsible for the due administration of the Institute. The Division Bench has also rightly held that no inference of malafides arises from the letter written by Sri B. S. Ojha, Home Secretary, Chandigarh Administration dated October 11/14, 1974.

All that is said is that Dr. O. S. Sehgal, Director, Technical Education, 'for reasons best known to him', did not went to appoint the appellant and, therefore, 'must have played an important part at the meeting of the Selection Committee' and was 'able to prevail upon the other members' to select the respondent No. 6 with a view so that the appellant who was better qualified should not be selected. The appellant further averred that she had in her representation dated May 1, 1975, alleged that after the interview she had overheard Dr. O. S. Sehgal talking to the third Lady member, saying as to 'how they could take this Lady', meaning the appellant, 'as the Principal' and, therefore, she felt that she was a victim of the machination of Dr. Sehgal. There is nothing on record to substantiate such general and vague allegations of the appellant as to malafides or bias on the part of Dr. Sehgal. Dr. Sehgal in his counter-affidavit has controverted the insinuations made against him. Not a word was said at the hearing about the alleged utterance attributed to him. Nothing was brought to our notice to show ill-will or malice on his part. The entire arguments are built around the two letters, the one written by Dr. O. S. Sehgal dated October 9, 1974 to the Home Secretary, and the other addressed by Sri B. S. Ojha, Home Secretary, Chandigarh Administration to Sri S. N. Bhanot, Secretary to the Government of Haryana, Industrial Training Department.

Dr. A. C. Mathai, Under Secretary, Union Public Service Commission has on affidavit stated that the Commission relaxed some of the essential qualifications after applying its own mind, uninfluenced by any extraneous considerations, and denied, in particular, that the Commission was advised by any extraneous authority. Dr. O. S. Sehgal as Representative of the Chandigarh Administration was associated only as an Expert Member and his only duty was to apprise the Chairman of the Selection Committee as to the nature of duties to be performed by the selected candidate. There was nothing wrong in the Union Public Service Commission taking such expert advice. We are informed that the Selection Committee had also selected the appellant for the post of Principal although, on evaluation of comparative merits and de-merits placed her as No. 2 While the respondent No. 6 was placed as No. 1. This circumstances clearly shows that the Selection Committee was wholly uninfluenced by any other consideration except merit. In *S. Pratap Singh v. The State of Punjab*(1) this Court laid down that he who seeks to invalidate or nullify any Act for Order, must establish the charge of bad faith and abuse or misuse by Government of its powers. The allegations which are of a personal nature are not borne out at all. Further, the allegations are wholly irrelevant and even if true, would not afford a basis upon which the appellant would be entitled to any relife. On the appellant's own showing, Dr. O. S. Sehgal as Director, Technical Education recorded appreciation of her as Principal of the Institute. This clearly shows that he had no particular animus against her.

Furthermore, as the Division Bench observes, merely because Sri B. S. Ojhas Home Secretary, Chandigarh Administration addressed a letter to Sri S. N. Bhanot, Secretary to the Government of Haryana, Industrial Training Department dated October 11/14, 1974 expressing his unwillingness to take the appellant on deputation because she was not holding a substantive rank in the pay scale of Rs. 350-900, contrary to the instructions of the Government of India and also because the Chandigarh Administration felt that looking to her past performance as Principal during her short stay, she was not a suitable person to be appointed as Principal, does not necessarily give rise to an inference of bias on the part of the Chandigarh Administration or Dr. O. S. Sehgal, Director of Technical Education. These were all matters within the competence of the Chandigarh Administration and it was for them to decide the suitability of candidate for appointment. There is

nothing to suggest that the reasons given by the Home Secretary were not his own reasons based upon his own information. It is needless to stress that the Home Secretary to the Government of a State holds a very sensitive position and is the nerve centre of the administration fully conversant with the realities. For aught we know, the Home Secretary had his own sources of information.

In any event, the appellant cannot approbate and reprobate. She had willingly, of her own accord, and without any persuasion by anyone, applied for the post, in response to the advertisement issued by the Union Public Service Commission for direct recruitment. She, therefore, took her chance and simply because the Selection Committee did not find her suitable for appointment, she cannot be heard to say that the selection of respondent No. 6 by direct recruitment through the Commission was invalid, as being contrary to the directions issued by the Central Government under s. 84 of the Act or that the Commission had exceeded its powers, by usurping the functions of the Chandigarh Administration, in relaxing the essential qualifications of the candidates called for interview or that respondent No. 6 was not eligible for appointment inasmuch as she did not possess the requisite essential qualifications. She fully knew that under the terms of the advertisement, the Commission had reserved to itself the power to relax any of the essential qualifications. With this full knowledge, she applied for the post and she appeared at the interview. We are clearly of the opinion that the appellant is precluded from urging these grounds.

Lastly, the contention of respondent No. 7, Smt. Usha Wadhwa that the failure of the Union Public Service Commission to re-advertise the post prevented her from applying for the post and thereby there was denial of equal opportunity to her in violation of Article 16(1) can be easily disposed of. It is true that no relaxation in qualifications can be made when an advertisement has duly been issued inviting applications and persons possessing the qualifications advertised, as prescribed by the rules, are available and have submitted their applications. If a relaxation has to be made, there is a duty cast to re-advertise the post. In the instant case, however, the advertisement itself contained a relaxation clause and, therefore, nothing prevented respondent No. 7 from making an application, if she felt that she was better, if not equally, qualified as respondent No. 6. The contention appears to be an afterthought and must be rejected.

In conclusion, we cannot but express our sympathy for the appellant. This unfortunately is a situation of her own making. The Courts can only act where there is any infringement of a right but not merely on equitable considerations. We wish to mention that the counsel appearing for the Chandigarh Administration very fairly suggested that if the Government of Haryana were to forward the name of an officer immediately senior to the appellant in the cadre of Head Mistresses, who may be holding a post in the pay scale of Rs. 350-900 for appointment on deputation in an equivalent post, such officer could be absorbed by the Chandigarh Administration in the pay scale of Rs. 350-900. That being so, the appellant could still be saved from the predicament of being posted as a Head-Mistress in the pay scale of Rs. 300-500 on her reversion to her parent State. This is, however, a matter for the Haryana Government to decide.

The result, therefore, is that the appeal fails and is dismissed. There shall be no order as to costs.

P. B. R.

Appeal dismissed

