Nihal Singh & Ors vs State Of Punjab & Ors on 7 August, 2013

Equivalent citations: AIR 2013 SUPREME COURT 3547, 2013 (14) SCC 65, 2013 AIR SCW 4919, 2013 LAB. I. C. 3859, (2014) 1 ALL WC 130, (2013) 5 LAB LN 109, (2013) 129 ALLINDCAS 35 (SC), 2013 (3) SERVLJ 315 SC, 2013 (10) SCALE 162, (2013) 139 FACLR 309, (2013) 4 SCT 469, (2013) 5 SERVLR 436, (2013) 10 SCALE 162

Bench: J. Chelameswar, H.L. Gokhale

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1059 OF 2005

Nihal Singh & Others …Appellants
Versus
State of Punjab & Others …Respondents

WITH
CIVIL APPEAL NO. 6315 OF 2013
[Arising out of SLP (Civil) No. 12448 of 2009)

Bhupinder Singh & Others …Appellants
Versus
State of Punjab & Others …Respondents

J U D G M E N T

Chelameswar, J.

1. Leave granted in SLP (Civil) No.12448 of 2009.

2. Since both the appeals raise a common question of law, the same are being disposed of by this common judgment. For the sake of convenience, we shall refer to the facts in Civil Appeal No.1059 of 2005.

3. This appeal arises out of a judgment in CWP No. 13915 of 2002 of the High Court of Punjab and Haryana dated 23rd January, 2003. 20 unsuccessful petitioners in the above writ-petition are the appellants herein. The High Court dismissed the writ petition following an earlier judgment of a Division Bench in LPA 209 of 1992 dated 6th September, 1993, which in turn arose out of Civil Writ Petition No. 5280 of 1988. The facts leading to all these writ petitions as could be culled out from the material on record are as follows:-

4. There was a large scale disturbance in the State of Punjab in 1980s. State was not in a position to handle the prevailing law and order situation with the available police personnel. Therefore, the State of Punjab resorted to recruitment under section 17[1] of the Police Act, 1861 (hereinafter referred to as 'the Act') which enabled the State (police officers not below the rank of Inspector) to appoint Special Police Officers.

5. The factual background in which persons such as the appellants herein came to be appointed is recorded in the judgment in LPA No. 209 of 1992 as follows:-

> "I was at the meeting held on March 24, 1984 between the Advisor to the Governor of Punjab and Senior officers of the banks in the public Sector Operating in Punjab that, after reviewing the security arrangements for banks in Punjab, it was decided that SPOs be appointed for the said purpose in terms of section 17 of the Police Act, 1861 (hereinafter referred to as the Act). This step was taken as it was felt that it would not be possible for the State Govt. to provide the requisite police guards to banks and that, thereafter, this additional force be raised, in order to do so, the banks undertook to take over the financial burden of the SPOs to be appointed, but it was clearly understood that as per the provisions of the Act, such Police Officers would be under the discipline and control of the Senior Superintendent of Police of the district concerned. As regards their remuneration it was decided that SPOs would be paid an honorarium of Rs. 15/- per day. This was, however, later enhanced to Rs. 30/- per day. Relevant in the context of the SPOs to be appointed, was the further decision"

6. The appellants herein assert that all the appellants are ex- servicemen and registered with the employment exchange. They were recruited as Special Police Officers.[2]

7. The appointment order of the first appellant reads as follows:

> "Nihal Singh s/o Shri Nidhan Singh r/o Kallah PS Sadar 7-7 is hereby appointed as a Special Police Officer under section 17 of the Police Act, 1961, in the rank of SPO and is assigned special constabulary number 277. He shall be entitled to all privileges under Police Act 1861 and shall be under the administrative control of the undersigned in the matter of discipline etc. He shall be paid Rs.35/- per day by the concerned bank of posting as honorarium from the date he actually takes over charge of his duty."

8. In the background of such appointments, various persons who were appointed, including the appellants herein, approached the High Court of Punjab & Haryana from time to time seeking appropriate directions for regularisation of their services. It appears that the petitioners herein also had approached the High Court earlier in CWP No.19390 of 2001 praying that their services be regularized in the light of notification No.11/34/2000-4PP-III/1301 dated 23.1.2001. The said writ petition was dismissed by order dated 12.12.2001 directing consideration of the cases of the petitioners therein (appellants herein) in accordance with the law and pass a speaking order.

9. Pursuant to the said directions, the Senior Superintendent of Police, Amritsar (hereinafter referred to as 'the SSP') purported to consider the cases of the appellants herein and passed an order dated 23.4.2002 rejecting the claim of the appellants. The relevant portion of the order reads as follows:

> "In compliance with the aforesaid order dated 12.12.2001 passed by the Hon'ble High Court of Punjab and Haryana, the joint legal notice dated 3.4.2001 (Annexure P-4) submitted by the petitioners, has been examined by the undersigned and it has been found that the petitioner is not entitled to claim the relief of regularization of his services as he was appointed as SPOs (Bank Guards) on daily wages basis @ Rs.30/- per day by the SSP/Amritsar vide No.14477-80/B dated 27.4.87 S.P.O. (Bank Guard), on the request of the Bank Authorities which were increased later on from time to time as per Govt. instructions. They were appointed as SPO (Bank Guards) in order to provide them power, privileges and protection of ordinary police official as provided under section 18 of the Police Act 1861 due to terrorism in the State at that time. The petitioners are still working as guards with the Gramin Banks and daily wages is being given by the Bank Authorities.

No seniority of the S.P.O. (Bank Guard) has been maintained in Amritsar District. SPO (Bank Guard) is still working with the Gramin banks in Amritsar district and he can lay his claim, if any, to the bank authorities instead of the Police Department.

Keeping in view the above legal notice dated 3.4.2001 (annexure P.4) has been considered. The notification No.11/34/2000-4PP-III/1301 dated 23.1.2001 is not applicable in the case bank guard as their daily wages are being paid by the bank. As such, the claim of the petitioner (Bank Guards) SPO Ajit Singh No.247/ASR is not maintainable against the State of Punjab or this Office. Legal notice Annexure P-4 is devoid of any legal force and is being rejected. The petitioner be informed personally."

10. Challenging the said order, the appellants herein once again approached the High Court of Punjab & Haryana in Civil Writ Petition No.13915 of 2002 which came to be dismissed by the judgment under appeal.

11. As already noticed, the appellants' writ petition was dismissed on the basis of an earlier judgment of the High Court of Punjab & Haryana passed in Letter Patent Appeal No.209 of 1992. In the said Letter Patent Appeal filed by the persons similarly situated as the appellants herein, the High Court

of Punjab & Haryana recorded a categoric finding that there is a relationship of master and servant between the State of Punjab and the SPOs:

> "Such being the situation, there can be no escape from the conclusion that the relationship of master and servant of SPOs is with the State govt. and not with the banks." However, the claim of the SPOs for regularization was refused holding:
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> "As regards regularization of the services of Special Police Officers, by the very nature and purpose of their appointment as such, no occasion arises to warrant such regularization. As mentioned earlier, there is no regular cadre for such posts, nor have any particular number of posts been created for this purpose. These factors clearly mitigate against such services being regularized."

12. Relying on the said conclusion, the writ petition of the appellants herein also came to be dismissed. Hence the present appeal.

13. We are required to examine the correctness of the decision dated 23.4.2002 of the SSP as approved by the judgment under appeal. The reason assigned by the SSP for rejecting the claim of the appellants (the relevant portion of which order is already extracted above) is that the appellants are working as guards with various banks and their wages are being paid by such banks and, therefore, their claim for regularization, if any, lay only to the concerned bank but not to the police department.

14. Learned counsel for the appellants Shri R.K. Kapoor submitted that the conclusion of the SSP that appellants cannot have any claim against the State of Punjab to seek regularization of their services is clearly wrong in view of the fact that the master and servant relationship exists between the appellants and the State of Punjab. Coming to the conclusion of the High Court that in the absence of regularly constituted cadre or sanctioned posts, regularization of the services of the appellants cannot be guaranteed, Shri Kapoor argued that the authority to create posts vests exclusively with the State. The State cannot extract the work from the persons like the appellants for decades and turn back to tell the court that it cannot regularize the services of such persons in view of the fact that these appointments were not made against any sanctioned posts.

15. On the other hand, Shri Kuldip Singh, learned counsel appearing for the State submitted that in the light of the Constitution Bench decision of this Court in Secretary, State of Karnataka and Ors v. Umadevi (3) and Ors (2006) 4 SCC 1, in absence of a sanctioned post the relief such as prayed by the appellants cannot be given.

16. As can be seen from the order of appointment of the 1st appellant - which we take to be representative of the orders of appointment of all the appellants (a fact which is not disputed by the respondent), the appointment was made by the SSP in exercise of the statutory power under section 17 of the Act. It is categorically mentioned in the said appointment order that the appellants are entitled to all the privileges under the Act. The powers, privileges and obligations of the SPOs appointed in exercise of the powers under section 17 of the Act are specified in section 18 which

reads as follows:

> "Every special police officers so appointed shall have same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalities and be subordinate to the same authorities, as the ordinary officers of police."

17. It is obvious both from the said section and also the appointment orders, the appellants are appointed by the State in exercise of the statutory power under section 17 of the Act. The appellants are amenable to the disciplinary control of the State as in the case of any other regular police officers. The only distinction is that they are to be paid daily wages of Rs.35 (which came to be revised from time to time). Further, such payment was to be made by the bank to whom the services of each one of the appellants is made available.

18. From the mere fact that the payment of wages came from the bank at whose disposal the services of each of the appellants was kept did not render the appellants employees of those banks. The appointment is made by the State. The disciplinary control vests with the State. The two factors which conclusively establish that the relationship of master and servant exists between the State and the appellants. A fact which is clearly recognized by the division bench of the High Court in LPA No.209 of 1992. It may be worthwhile mentioning here that under the law of contracts in this country the consideration for a contract need not always necessarily flow from the parties to a contract. The decision of the SSP to reject the claim of the appellants only on the basis that the payment of wages to the appellants herein was being made by the concerned banks rendering them disentitled to seek regularization of their services from the State is clearly untenable.

19. Coming to the judgment of the division bench of the High Court of Punjab & Haryana in LPA No.209 of 1992 where the claims for regularization of the similarly situated persons were rejected on the ground that no regular cadre or sanctioned posts are available for regularization of their services, the High Court may be factually right in recording that there is no regularly constituted cadre and sanctioned posts against which recruitments of persons like the appellants herein were made. However, that does not conclusively decide the issue on hand. The creation of a cadre or sanctioning of posts for a cadre is a matter exclusively within the authority of the State. That the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only demonstrates the arbitrary nature of the exercise of the power available under section 17 of the Act. The appointments made have never been terminated thereby enabling various banks to utilize the services of employees of the State for a long period on nominal wages and without making available any other service benefits which are available to the other employees of the State, who are discharging functions similar to the functions that are being discharged by the appellants.

20. No doubt that the powers under section 17 are meant for meeting the exigencies contemplated under it, such as, riot or disturbance which are normally expected to be of a short duration. Therefore, the State might not have initially thought of creating either a cadre or permanent posts.

21. But we do not see any justification for the State to take a defence that after permitting the utilisation of the services of large number of people like the appellants for decades to say that there are no sanctioned posts to absorb the appellants. Sanctioned posts do not fall from heaven. State has to create them by a conscious choice on the basis of some rational assessment of the need.

22. The question is whether this court can compel the State of Punjab to create posts and absorb the appellants into the services of the State on a permanent basis consistent with the Constitution Bench decision of this court in Umadevi's case. To answer this question, the ratio decidendi of the Umadevi's case is required to be examined. In that case, this Court was considering the legality of the action of the State in resorting to irregular appointments without reference to the duty to comply with the proper appointment procedure contemplated by the Constitution.

"4. ... The Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of the service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commissions or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employed, without the following of a regular procedure or even through the backdoor or on daily wages, approaching the courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the posts concerned. The courts have not always kept the legal aspects in mind and have occasionally even stayed the regular process of employment being set in motion and in some cases, even directed that these illegal, irregular or improper entrants be absorbed into service. A class of employment which can only be called "litigious employment", has risen like a phoenix seriously impairing the constitutional scheme. Such orders are passed apparently in exercise of the wide powers under Article 226 of the Constitution. Whether the wide powers under Article 226 of the Constitution are intended to be used for a purpose certain to defeat the concept of social justice and equal opportunity for all, subject to affirmative action in the matter of public employment as recognised by our Constitution, has to be seriously pondered over." (emphasis supplied)

23. It can be seen from the above that the entire issue pivoted around the fact that the State initially made appointments without following any rational procedure envisaged under the Scheme of the Constitution in the matters of public appointments. This court while recognising the authority of the State to make temporary appointments engaging workers on daily wages declared that the regularisation of the employment of such persons which was made without following the procedure conforming to the requirement of the Scheme of the Constitution in the matter of public appointments cannot become an alternate mode of recruitment to public appointment. It was further declared that the jurisdiction of the Constitutional Courts under Article 226 or Article 32 cannot be exercised to compel the State or to enable the State to perpetuate an illegality. This court held that compelling the State to absorb persons who were employed by the State as casual workers or daily-wage workers for a long period on the ground that such a practice would be an arbitrary practice and violative of Article 14 and would itself offend another aspect of Article 14 i.e. the State chose initially to appoint such persons without any rational procedure recognized by law thereby

depriving vast number of other eligible candidates who were similarly situated to compete for such employment.

24. Even going by the principles laid down in Umadevi's case, we are of the opinion that the State of Punjab cannot be heard to say that the appellants are not entitled to be absorbed into the services of the State on permanent basis as their appointments were purely temporary and not against any sanctioned posts created by the State.

25. In our opinion, the initial appointment of the appellants can never be categorized as an irregular appointment. The initial appointment of the appellants is made in accordance with the statutory procedure contemplated under the Act. The decision to resort to such a procedure was taken at the highest level of the State by conscious choice as already noticed by us. The High Court in its decision in LPA No.209 of 1992 recorded that the decision to resort to the procedure under section 17 of the Act was taken in a meeting dated 24.3.1984 between the Advisor to the Government of Punjab and senior officers of the various Banks in the public sector. Such a decision was taken as there was a need to provide necessary security to the public sector banks. As the State was not in a position to provide requisite police guards to the banks, it was decided by the State to resort to section 17 of the Act. As the employment of such additional force would create a further financial burden on the State, various public sector banks undertook to take over the financial burden arising out of such employment. In this regard, the written statement filed before the High Court in the instant case by respondent nos.1 to 3 through the Assistant Inspector General of Police (Welfare & Litigation) is necessary to be noticed. It is stated in the said affidavit:

> "2. That in meeting of higher officers held on 27.3.1984 in Governor House Chandigarh with Shri Surinder Nath, IPS, Advisor to Governor of Punjab, in which following decisions were taken:-
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> i) That it will not be possible to provide police guard to banks unless the Banks were willing to pay for the same and additional force could be arranged on that basis, it was decided that police guards should be requisitioned by the Banks for their biggest branches located at the Distt. and Sub Divisional towns.

They should place the requisition with the Distt. SSPs endorsing a copy of IG CID. In the requisition, they should clearly state that the costs of guard would be met by them. It will then be for the police department to get additional force sanctioned. This task should be done on a top priority. In the meantime depending upon the urgency of the need of any particular branch, police Deptt. may provide from police strength for its protection.

ii) For all other branches guards will be provided by Distt. SSP after selecting suitable ex-servicemen or other able bodied persons who will be appointed as Special Police Officer in terms of Section 17 of the Police Act. Preference may be given to persons who may already be in possession of licence weapons. All persons appointed as SPO for this purpose will be given a brief training for about 7 days in the Police Lines in the handling of weapons taking suitable position for protection of branches. These SPOs will work under the discipline and control and as per Police Act, they will

have the same powers, privileges and protection and shall be amenable to same penalty as an ordinary police personnel."

26. It can be seen from the above that a selection process was designed under which the District Senior Superintendent of Police is required to choose suitable ex-servicemen or other able bodied persons for being appointed as Special Police Officers in terms of section 17 of the Act. It is indicated that the persons who are already in possession of a licensed weapon are to be given priority.

27. It is also asserted by the appellants that pursuant to the requisition by the police department options were called upon from ex- servicemen who were willing to be enrolled as Special Police Officer (SPOs) under section 17 of the Police Act, 1861.[3]

28. Such a procedure making recruitments through the employment exchanges was held to be consistent with the requirement of Articles 14 and 16 of the Constitution by this Court in Union of India and Ors. v. N. Hargopal and Ors. (1987) 3 SCC 308.[4]

29. The abovementioned process clearly indicates it is not a case where persons like the appellants were arbitrarily chosen to the exclusion of other eligible candidates. It required all able bodied persons to be considered by the SSP who was charged with the responsibility of selecting suitable candidates.

30. Such a process of selection is sanctioned by law under section 17 of the Act. Viewed in the context of the situation prevailing at that point of time in the State of Punjab, such a process cannot be said to be irrational. The need was to obtain the services of persons who had some experience and training in handling an extraordinary situation of dealing with armed miscreants.

31. It can also be noticed from the written statement of the Assistant Inspector General of Police (Welfare & Litigation) that preference was given to persons who are in possession of licensed weapons. The recruitment of the appellants and other similarly situated persons was made in the background of terrorism prevailing in the State of Punjab at that time as acknowledged in the order dated 23.4.2002 of the SSP. The procedure which is followed during the normal times of making recruitment by inviting applications and scrutinising the same to identify the suitable candidates would itself take considerable time. Even after such a selection the selected candidates are required to be provided with necessary arms and also be trained in the use of such arms. All this process is certainly time consuming. The requirement of the State was to take swift action in an extra-ordinary situation.

32. Therefore, we are of the opinion that the process of selection adopted in identifying the appellants herein cannot be said to be unreasonable or arbitrary in the sense that it was devised to eliminate other eligible candidates. It may be worthwhile to note that in Umadevi's case, this Court was dealing with appointments made without following any rational procedure in the lower rungs of various services of the Union and the States.

33. Coming to the other aspect of the matter pointed out by the High Court - that in the absence of sanctioned posts the State cannot be compelled to absorb the persons like the appellants into the services of the State, we can only say that posts are to be created by the State depending upon the need to employ people having regard to various functions the State undertakes to discharge.

"Every sovereign Government has within its own jurisdiction right and power to create whatever public offices it may regard as necessary to its proper functioning and its own internal administration."[5]

34. It is no doubt that the assessment of the need to employ a certain number of people for discharging a particular responsibility of the State under the Constitution is always with the executive Government of the day subject to the overall control of the Legislature. That does not mean that an examination by a Constitutional Court regarding the accuracy of the assessment of the need is barred. This Court in S.S. Dhanoa v. Union of India (1991) 3 SCC 567 did examine the correctness of the assessment made by the executive government. It was a case where Union of India appointed two Election Commissioners in addition to the Chief Election Commissioner just before the general elections to the Lok Sabha. Subsequent to the elections, the new government abolished those posts. While examining the legality of such abolition, this Court had to deal with an argument[6] whether the need to have additional commissioners ceased subsequent to the election. It was the case of the Union of India that on the date posts were created there was a need to have additional commissioners in view of certain factors such as the reduction of the lower age limit of the voters etc. This Court categorically held that "The truth of the matter as is apparent from the record is that .....there was no need for the said appointments.....".

35. Therefore, it is clear that the existence of the need for creation of the posts is a relevant factor reference to which the executive government is required to take rational decision based on relevant consideration. In our opinion, when the facts such as the ones obtaining in the instant case demonstrate that there is need for the creation of posts, the failure of the executive government to apply its mind and take a decision to create posts or stop extracting work from persons such as the appellants herein for decades together itself would be arbitrary action (inaction) on the part of the State.

36. The other factor which the State is required to keep in mind while creating or abolishing posts is the financial implications involved in such a decision. The creation of posts necessarily means additional financial burden on the exchequer of the State. Depending upon the priorities of the State, the allocation of the finances is no doubt exclusively within the domain of the Legislature. However in the instant case creation of new posts would not create any additional financial burden to the State as the various banks at whose disposal the services of each of the appellants is made available have agreed to bear the burden. If absorbing the appellants into the services of the State and providing benefits at par with the police officers of similar rank employed by the State results in further financial commitment it is always open for the State to demand the banks to meet such additional burden. Apparently no such demand has ever been made by the State. The result is – the various banks which avail the services of these appellants enjoy the supply of cheap labour over a period of decades. It is also pertinent to notice that these banks are public sector banks. We are of

the opinion that neither the Government of Punjab nor these public sector banks can continue such a practice consistent with their obligation to function in accordance with the Constitution. Umadevi's judgment cannot become a licence for exploitation by the State and its instrumentalities.

37. For all the abovementioned reasons, we are of the opinion that the appellants are entitled to be absorbed in the services of the State. The appeals are accordingly allowed. The judgments under appeal are set aside.

38. We direct the State of Punjab to regularise the services of the appellants by creating necessary posts within a period of three months from today. Upon such regularisation, the appellants would be entitled to all the benefits of services attached to the post which are similar in nature already in the cadre of the police services of the State. We are of the opinion that the appellants are entitled to the costs throughout. In the circumstances, we quantify the costs to Rs.10,000/- to be paid to each of the appellants.

.....J. (H.L. Gokhale) .....J. (J. Chelameswar) New Delhi;

August 7, 2013.

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[1] Section 17, Police Act, 1861 – When it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbances of the peace has occurred, or is apprehended, it shall be lawful for any police officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police officers may require to act as SPOs for such time and within such limits as he shall deem necessary and the Magistrate to whom such application is made shall, unless he sees cause to the contrary, comply with the application.

[2] Ground IV of SLP - ...It was the Police Department which sent the intimation to the employment exchange and thereafter all the ex-servicemen who were enrolled with the Employment Exchange were called upon and got their option to be enrolled as Special Police Officer (SPOs) under section 17 of the Police Act, 1861. Those persons who were having armed licence were enrolled as SPOs and this enrolment was made by the Superintendent of Police, Amritsar. Similar orders were passed by the Superintendent of Police regarding all the petitioners between 1986 to 1994. [3] Paragraph 4 of the Writ petition and at page 34 of the SLP Paperbook:

> "That the Government made a policy to enrol the ex-servicemen to guard the life and property of the Government employees as well as Government employees. All the petitioners being ex-servicemen enrolled themselves in the employment exchange. The police department sent the intimation to the employment exchange and

thereafter all the ex-servicemen who were enrolled with the Employment Exchange were called upon and got their option to be enrolled in as Special Police Officer (SPOs) under section 17 of the Police Act, 1861 (hereinafter called as the SPOs). Those persons who were having armed licence were enrolled as SPOs and this enrolment was made by the Superintendent of Police, Amritsar." [4] 9. ... We, therefore, consider that insistence on recruitment through Employment Exchanges advances rather than restricts the rights guaranteed by Articles 14 and 16 of the Constitution. The submission that Employment Exchanges do not reach everywhere applies equally to whatever method of advertising vacancies is adopted. Advertisement in the daily press, for example, is also equally ineffective as it does not reach everyone desiring employment.

[5] 42 American Jurisprudence 902 Para 31 [6] "21. In the first instance, the petitioner and the other Election Commissioners were appointed when the work of the Commission did not warrant their appointment. The reason given by respondent 1 (Union of India), that on account of the Constitution (61st Amendment) Act reducing the voting age and the Constitution (64th Amendment) and (65th Amendment) Bills relating to election to the Panchayats and Nagar Palikas, the work of the Commission was expected to increase and, therefore, there was need for more Election Commissioners, cuts no ice. As has been pointed out by respondent 2, the work relating to revision of electoral rolls on account of the reduction of voting age was completed in all the States except Assam by the end of July 1989 itself, and at the Conference of the Chief Elecoral Officers at Tirupati, respondent 2 had declared that the entire preparatory work relating to the conduct of the then ensuing general elections to the Lok Sabha would be completed by August in the whole of the country except Assam. Further, the Constitution (64th and 65th Amendment) Bills had already fallen in Parliament, before the appointments. In fact, what was needed was more secretarial staff for which the Commission was pressing, and not more Election Commissioners. What instead was done was to appoint the petitioner and the other Election Commissioner on October 16, 1989.

Admittedly, further the views of the Chief Election Commissioner were not ascertained before making the said appointments. In fact, he was presented with them for the first time in the afternoon of the same day, i.e., October 16, 1989."
